

CHAPTER 206  
FORMERLY  
HOUSE BILL NO. 195  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1  
AND  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING NURSING FACILITIES, LONG TERM CARE FACILITIES, AND SERVICES.

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

Section 1. Amend Chapter 11, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

Chapter 11. ~~NURSING FACILITIES AND SIMILAR~~ LONG TERM CARE FACILITIES AND SERVICES.

Section 2. Amend § 1101, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1101. Purpose and overview.

(a) It is the intent of the General Assembly that the primary purpose of the licensing and regulation of ~~nursing facilities and similar~~ long term care facilities is to ensure that these facilities provide a high quality of care and quality of life to their residents.

(b) This chapter and the regulations adopted to implement it establish minimum acceptable levels of care. A violation of a minimum acceptable level of care is prohibited by law.

(c) The State shall undertake measures to prevent violations. Prevention shall be promoted through education, particularly regarding any new laws and regulations adopted by the State.

(d) The State shall undertake measures to assure that violations of this chapter and the regulations promulgated ~~thereunder~~ under this chapter are remedied. To that end, ~~the Department shall, in conformity with this chapter,~~ the Department shall do all of the following:

(1) ~~set~~ Set standards of ~~care,~~ care.

(2) ~~determine~~ Determine compliance with those standards through inspections, investigations and other compliance ~~measures, and impose~~ measures.

(3) Impose sanctions and remedies for noncompliance.

(e)(1) The Department shall be responsible for issuing licenses and certifying the compliance of facilities with state laws and regulations.

(2) Each facility licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the regulations promulgated thereunder. Components of quality of care and quality of life addressed by this Chapter and regulations promulgated thereunder ~~include: access to care; continuity of care; comprehensiveness of care, including activities; coordination of services;~~

~~humaneness of treatment and respect for the dignity of each resident; safety of the environment; and qualifications of caregivers.~~ include all of the following:

- a. Access to care.
- b. Continuity of care.
- c. Comprehensiveness of care, including activities.
- d. Coordination of services.
- e. Humaneness of treatment and respect for the dignity of each resident.
- f. Safety of the environment.
- g. Qualifications of caregivers.

~~(f) This chapter and the regulations promulgated hereunder apply to each licensed nursing facility and similar facility operating in the State regardless of the nature of its funding sources.~~ This chapter and its regulations are intended for use in state inspections of facilities licensed under this chapter and any investigations and enforcement actions, and are designed to be useful to consumers and providers in assessing the quality of care provided in a facility.

(g) The consumer protection goal of ensuring that residents of ~~nursing facilities and similar~~ long term care facilities receive quality care shall be strived for in the following ways:

(1) Monitoring the factors relating to the health, safety, welfare and dignity of each ~~resident;~~ resident.

(2) Providing effective remedies and requiring their prompt imposition for noncompliance with licensing ~~standards; and~~ standards.

(3) Providing the public with information concerning the operation of ~~nursing facilities and related~~ long term care facilities in this State.

(h) This ~~Chapter~~ chapter shall be construed broadly to accomplish the purposes set forth in this section.

Section 3. 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:~~ chapter:

(1) "Controlling Person" means:

a. A person who has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person.

b. For purposes of this chapter, "controlling person" includes the following:

1. A management company, ~~landlord~~ landlord, or other business entity that operates or contracts with others for the operation of a ~~facility;~~ facility.

2. Any person who is the controlling person of a management company or other business entity that operates a facility or who contracts with another person for the operation of a ~~facility;~~ facility.

3. Any other individual who, because of a personal, ~~familial~~ familial, or other relationship with the owner, manager, landlord, ~~tenant~~ tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally an owner, manager, director, officer, provider, consultant, ~~contractor~~ contractor, or employee of the facility.

c. A controlling person described by subsection (1)b.3. of this section does not include a person, such as an employee, lender, secured ~~creditor~~ creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility.

d. The Department may adopt regulations to define the ownership interest and other relationships that qualify a person as a controlling person.

(2) "Department" ~~shall mean~~ means the Department of Health and Social ~~Services;~~ Services.

(3) "Division" ~~shall mean~~ means the Division of Long-Term Care Residents ~~Protection;~~ Protection.

(4) "~~Nursing facility and similar facility~~" ~~shall mean~~ a. "Long term care facility" means a residential facility that provides shelter and food to more than 1 ~~person who;~~ individual who meet all of the following:

a. 1. Because of their physical ~~and/or~~ or mental ~~condition~~ condition, require a level of care and services suitable to their needs to contribute to their health, comfort, and ~~welfare;~~ welfare.

b. ~~Who are~~ 2. Are not related within the second degree of consanguinity to the ~~controlling person or persons of the facility;~~ facility's controlling person.

~~The facilities to be licensed pursuant to Chapter 11 include but are not limited to~~ b. "Long term care facility" includes all of the following: nursing facilities (commonly referred to as nursing homes); assisted living facilities; intermediate care facilities for persons with intellectual disabilities; neighborhood group homes; family care homes; rest residential facilities; retirement homes; rehabilitation homes; and hospices, with such terms to have such meaning as set forth in this title or, if not defined therein, as such terms are commonly used.

1. A nursing facility. As used in this chapter, "nursing facility" commonly referred to as a "nursing home," means a residential facility that provides services to residents including resident beds, continuous nursing services, and health and treatment services for individuals who do not currently require continuous hospital care and that provides care in accordance with a physician's order and requires the supervision of a registered nurse (RN).

2. An assisted living facility. As used in this chapter, "assisted living facility" means a special combination of housing, supportive services, supervision, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities

of daily living or instrumental activities of daily living. Facilities offer living arrangements to medically stable adult individuals who do not require the skilled nursing services of a nursing facility.

3. Intermediate care facility for persons with intellectual disabilities. As used in this chapter, “intermediate care facility for persons with intellectual disabilities” means a residential facility that provides services to residents with intellectual disabilities including resident beds, continuous nursing services, and health and treatment services for individuals who do not currently require continuous hospital care and that provides care in accordance with a physician's order and requires the supervision of a registered nurse (RN).

4. A neighborhood home. As used in this chapter, a “neighborhood home” means a residence for no more than 5 individuals that is fully integrated in the community, not on the grounds of an institution, has shared common living areas, is where the individual chooses to live, and offers 24 hour supports to individuals with intellectual or developmental disabilities.

5. A group home for persons with mental illness. As used in this chapter, a “group home for persons with mental illness” means a residence that provides 24 hour supports, mental health treatment, rehabilitation, housing for between 3 and 10 adults with a primary diagnosis of psychiatric disabilities, and is fully integrated in the community, not on the grounds of an institution, has shared common living areas, and is where the individual chooses to live. “Group home for persons with mental illness” does not include supervised apartments.

6. A group home for persons with AIDS. As used in this chapter, a “group home for persons with AIDS” means a residence for 16 or less individuals with AIDS that only admits those individuals with an established diagnosis and disease progression such that the individual requires a routine and frequent combination of physician, professional nursing, and supportive services.

7. A family care home. As used in this chapter, a “family care home” means a home, including a physical structure and the necessary equipment, that provides beds and personal care services for 2 or 3 residents who cannot live independently and who need or could benefit from a family living situation, and that provides shelter, housekeeping services, food, meals, and personal care for residents.

8. A rest residential facility. As used in this chapter, a “rest residential facility” means a facility that provides resident beds and personal care services in a homelike environment for adult individuals who are normally able to manage their own activities of daily living.

9. An intensive behavioral support and educational residence. As used in this chapter, an “intensive behavioral support and educational residence” means a residential facility that provides services to adult individuals with autism, developmental disabilities, or severe mental or emotional disturbances who have specialized behavioral needs.

(5) "Long-Term Care Residents' Trust Fund" ~~shall mean~~ means a fund maintained by the Department to which civil monetary penalties are to be remitted consistent with the federal Centers for Medicare and Medicaid Services ("CMS") regulations, 42 C.F.R. § 488.442(g), § 488.442(g). ~~regarding civil money penalties collected by the State, such money shall "be applied to the protection of the health or property of residents of facilities that the State or CMS finds noncompliant." Money deposited into this Trust Fund shall not be used for salaries or general operating costs of the Department but rather for the benefit and protection of long term care residents. If the amount in the Trust Fund reaches \$500,000, any funds in excess of that amount shall revert to the General Fund. The Department shall submit a detailed spending report on the uses of the Trust Fund to the Director of the Office of Management and Budget and Controller General no later than 30 days after the end of the fiscal year.~~

(6) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability ~~company~~ company, or any other legal ~~entity~~ entity, and includes a legal successor of those entities.

(7) "Protection and advocacy agency" ~~shall mean~~ means the Community Legal Aid Society, Inc. or successor agency designated the state protection and advocacy system ~~pursuant to:~~ under 42 U.S.C. § 10801 et seq.; 42 U.S.C. § 15001 et seq.; or 29 U.S.C. § 794e.

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

~~(8) (9) "State Civil Penalty Trust Fund" shall mean~~ means a fund maintained by the Department to which civil money penalties imposed for violations of state statute or regulation are to be remitted. ~~Money deposited into this fund shall be used~~ Money deposited into this Trust Fund may not be used for salaries or general operating costs of the Department but must be used for the benefit and protection of long term care residents to further the purposes set forth in § 1101 of this title and § 7971 this chapter and Chapter 79 of Title 29.

Section 4. Amend § 1103, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1103. License and renewal requirement.

~~(a) No person shall establish, conduct~~ A person may not establish, conduct, or maintain any ~~nursing facility or related long term care~~ long term care facility in this State without first obtaining a license from the Department and thereafter renewing this license on an annual basis. Failure to comply with this subsection shall result in the imposition by the Department of a civil penalty not to exceed \$10,000 per violation.

~~(b) No nursing home within this State, as defined in Chapter 52 of Title 24, shall~~ A nursing facility, assisted living facility, or rest residential facility must operate ~~except~~ under the direction of an individual authorized or licensed ~~pursuant to that chapter~~ to perform the functions of a nursing home administrator under Chapter 52 of Title 24.

Section 5. Amend § 1104, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1104. License and renewal application.

(a) An application for a license or renewal of a license shall be submitted to the Division on forms provided by the Division and must be accompanied by the applicable license fee.

(b) In addition to the general information requested on the application forms, the applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with all of the following:

(1) Minimum standards of medical ~~care, and/or~~ care or nursing care, as applicable by type of ~~facility; facility.~~

(2) Financial ~~capability; and~~ capability.

(3) Any other applicable state and federal laws and regulations for that category of facility.

(c) The Department shall consider the background and qualifications of the applicant or license holder and it may also consider the background and qualifications of all of the following:

(1) Any partner, officer, ~~director~~ director, or managing employee of the applicant or license ~~holder; holder.~~

(2) Any person who owns or controls the physical plant in which the facility operates or is to ~~operate; and~~ operate.

(3) Any controlling person with respect to the facility for which a license or license renewal is requested.

(d) In making the evaluation described in subsection (c) of this section, the Department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the Department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility any time during the 5 year period preceding the date on which the application is made. The Department by regulation shall define what constitutes a satisfactory compliance history. The Department may also require the applicant to file information relating to its financial condition during the 5 year period preceding the date on which the application is made. The Department may also request any of the above-described information about any other person described by subsection (c) of this section.

~~(e) Financial Disclosure Requirement. As part of the license and annual renewal application, or when the Department determines that conditions exist which threaten the health or safety of a resident or residents, each facility licensed under this chapter shall disclose the following financial information notwithstanding Chapter 100 of Title 29, the Department may promulgate regulations identifying which, if any, part of such financial information shall be available to the public:~~

~~(1) Audited annual financial statements;~~

~~(2) Annual financial reports;~~

~~(3) Other financial reports regularly filed with state or federal agencies;~~

~~(4) Any other information relative to the financial health of the facility.~~

The Department may monitor the financial capability and financial health of licensed long term care facilities. The Department shall promulgate regulations regarding the financial disclosure requirements for long term

care facilities and documents provided are not public records under the Freedom of Information Act, Chapter 100 of Title 29.

(f)(1) The license shall terminate if and when there is a transfer of a ~~nursing facility or similar~~ long term care facility to another person or controlling person or the business ceases legal existence or discontinues operation.

~~(2) No license granted by the Department shall be assigned or otherwise transferred to another person or controlling person, except upon such conditions as the Department may specifically designate and then only pursuant to written consent from the Department. Application for transfer of a license shall be submitted at least 90 days before the proposed transfer and shall contain the same information and be subject to the same criteria for approval as contained in this section.~~

(g) The Department shall grant a ~~provisional~~ an initial license to any newly established ~~or newly transferred nursing facility or related~~ long term care facility, provided that the requirements of this section are met. The term of such ~~provisional~~ license shall be 90 days, and thereafter the nursing facility or similar facility shall be entitled to an annual license, provided that the requirements of this section are met. initial license may be no more than 365 days.

(h) A license, unless sooner suspended or revoked, may be renewed annually upon filing by the licensee and payment of an annual licensure fee. A provisional license, as authorized by the Department, may be issued when requirements are not met and the annual licensure fee has been submitted. A long term care facility which has been issued a provisional license shall resubmit the application fee for re-inspection prior to the issuance of an annual license.

Section 6. Amend § 1105, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1105. Denial of license or its renewal.

(a) The Department may deny a license to any applicant or refuse to renew a license to any license holder if the Department finds that the applicant or license holder or any partner, officer, director, managerial employee or controlling person of the applicant or license holder has done any of the following:

(1) ~~Fails~~ Failed to meet the requirements of § 1104 of this ~~title; or title.~~

(2) Operated any ~~nursing facility or related~~ long term care facility without a license or under a revoked or suspended license in any ~~jurisdiction; or jurisdiction.~~

(3) Knowingly, or with reason to know, made a false statement of a material fact in an application for license or renewal, or any data attached thereto, or in connection with any matter under investigation by the Department, or in any document submitted to the Department, ~~including, but not limited to,~~ including a plan for the correction of ~~violation(s)~~ all violations of applicable laws or ~~regulations; or regulations.~~

(4) Refused to allow representatives or agents of the Department to inspect a portion of the premises of the facility or any ~~patient~~ resident related documents, ~~records~~ records, and files required to be maintained by the ~~facility; or facility.~~

(5) Interfered with or attempted to impede in any way the work of any authorized representative of the State or protection and advocacy agency or the lawful enforcement of any provision of this ~~chapter; or~~ chapter.

(6) Has a history of noncompliance with federal or state law or regulations in providing long-term care. ~~In deciding whether to deny a license under this section, the factors to be considered by the Department shall include the severity and recurrence of the noncompliance.~~

(b) The due process protections of notice and an opportunity to be heard ~~shall~~ must be provided to facilities prior to the denial of a license or its nonrenewal. The hearing process ~~shall~~ must be consistent with the Administrative Procedures Act, ~~§ 10104~~ Chapter 101 of Title 29.

(c) In deciding whether to deny a license or its renewal under this section, the factors to be considered by the Department must include the severity and recurrence of the noncompliance.

Section 7. Amend § 1106, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1106. License ~~or renewal~~ fees.

(a)~~(1)~~ (1) The fees for issuance and renewal of licenses pursuant to this chapter ~~shall~~ for nursing facilities, assisted living facilities, rest residential facilities, and intermediate care facilities for persons with intellectual disabilities may not exceed \$150 plus the following:

~~(1)~~ a. \$250 for facilities with less than 100 units of capacity or bed space for which a license is ~~sought, and~~ sought.

b. \$400 for facilities with ~~more than 100~~ or more units of capacity or bed ~~space for which a license is sought; and~~ space.

~~(2)~~ c. A background examination fee for initial applications in an amount set by the Department necessary to defray its expenses in administering its duties under § 1104(c) and (d) of this title, but not to exceed \$500.

~~(3) Notwithstanding paragraphs (1) and (2) of this section, the~~

(2) The total fee shall be \$50 for all other facilities with 10 or less 16 or fewer units of capacity or bed space for which a license is sought. space is \$50.

(b) The license fee required under subsection (a) of this section must be paid with each application for initial license, a renewal ~~license~~ license, or an initial license, or a change of ownership license. ~~An approved increase in bed space is subject to an additional fee.~~

(c) The State is not required to pay the license fee for any facilities it operates or owns which require licensure under this chapter.

(d) All license fees collected by the Department ~~shall~~ must be remitted to the General Fund.

(e) A new application and a fee of \$50 must be submitted for changes to a license which occur during the licensure year, including any of the following changes:

(1) An approved increase in bed space.

(2) An approved decrease in bed space.

(3) A facility change of name.

Section 8. Amend § 1107, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1107. Inspections and monitoring.

(a) The Department shall inspect each ~~nursing facility and similar~~ long term care facility on ~~an annual a~~ regular basis to ensure compliance with this chapter and the regulations adopted pursuant to it.

(b) The Department shall have the authority to assess additional fees to recover the actual costs and expenses of the Department for any monitoring or inspections needed beyond the standard inspection in those cases in which substantiated violations are found.

(c) ~~Access.~~— Any duly authorized employee or agent of the Department may enter and inspect any facility licensed under this chapter without notice at any time. All licensees are required to provide immediate access to Department personnel to conduct inspections. Such inspections may ~~include, but are not limited to,~~ include any of the following: ~~interviewing residents, family members and/or staff; reviewing~~

(1) Interviewing residents.

(2) Interviewing family members or staff.

(3) Reviewing and photocopying any records and documents maintained by the licensee; ~~inspecting licensee.~~

(4) Inspecting any portion of the physical plant of the facility; ~~and otherwise enforcing facility.~~

(5) Enforcing any provision of this chapter and the regulations pursuant to it, as well as applicable federal law and regulations. ~~All licensees are required to provide immediate access to Department personnel to conduct inspections.~~

(d) ~~No advance notice.~~— ~~No advance notice shall~~ Advance notice may not be given to any facility of any inspection conducted ~~pursuant to~~ under this chapter unless specifically authorized by the Secretary of the Department or ~~his or her~~ the Secretary's designee or as otherwise required by federal law or regulation. Failure to comply with this subsection ~~shall result~~ results in the imposition by the Department of a civil penalty not to exceed \$5,000 per violation.

(e) ~~Exit conference.~~— At the conclusion of each ~~annual and complaint driven or "surprise"~~ inspection, the Department shall promptly notify the facility of any violations of this chapter and its regulations as well as of federal law and regulations. It shall provide a comprehensive exit interview at the conclusion of each inspection whereby the facility is made aware of any problems found, including violations of applicable law or regulations. Representatives from the Long-Term Care Ombudsperson's Office shall be invited to attend each exit interview.

(f) ~~In conduct of any surveys under this chapter and the compliance decisions made thereunder, surveyors shall consider the diagnosis and treatment decisions of the resident's attending physician and of the facility's medical director, and to a plan of care established for such resident, as long as such decisions and plans are consistent with acceptable standards of practice. [Repealed.]~~

(g) Any person who is a former employee of a ~~nursing~~ long term care facility ~~shall be~~ is disqualified from participating for ~~5~~ 2 years in any manner in any ~~survey~~ inspection of that facility.

(h) Any person who has a relative residing or working in a long term care facility is disqualified from participating in any manner in any inspection of that facility.

Section 9. Amend § 1108, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1108. Posting of inspection summary and other information and public meetings.

(a) Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, ~~employees~~ employees, and visitors the following:

(1) The license issued under this subchapter.

(2) A sign prescribed by the Department that specifies complaint procedures and provides the "1-800" hotline number to receive complaints 24 hours a day, 7 days a week.

(3) The most recent state survey report prepared by the Department of the most recent inspection report for the facility.

(4) A ~~notice~~ notice, as required by regulation, in the form prescribed by the Department stating that informational materials relating to the compliance history of the facility are available for inspection at a location in the facility specified by the sign and online at a web site specified by the sign. The notice shall also provide the telephone number to reach the ~~Division~~ Department to obtain the same information concerning the facility.

(5) A ~~notice that the Board of Examiners of Nursing Home Administrators~~ notice, as required by regulation, that the Division of Professional Regulation can provide information about the ~~nursing~~ facility administrator along with the ~~Board of Examiners'~~ Division of Professional Regulation telephone number to call for this information.

~~(b) The notice relating to the compliance history of the facility must also be posted the facility as determined by regulations. [Repealed.]~~

(c) The compliance history information required to be maintained for public ~~inspection by a facility under subsection (a)(6) of this section~~ review must be maintained in a well-lighted accessible location. The compliance history material must include all inspection reports produced for that facility during the preceding 3 year period. The information must be updated as each new inspection or other Department report is received by the facility.

(d) Following completion of the annual inspection ~~report (including any administrative or other appeals therefrom) and any plan of action or other response developed by the nursing facility or similar facility in response to the annual inspection report~~, the Department shall schedule a ~~meeting as defined by regulations~~ meeting, as required under regulations, to take place at the facility to present the findings of the annual report ~~and the nursing facility or other facility's response~~.

(1) The Department shall require the facility to notify ~~nursing home~~ residents and their families of the meetings required ~~pursuant to~~ under this subsection.

(2) The Department shall ~~also~~ provide staff for these meetings and the staff shall be prepared to present the findings of the surveys and to answer questions regarding the ~~annual inspection~~ surveys and plans of action. ~~This annual meeting requirement shall apply to all nursing facilities during the first year after enactment of this law, and shall be phased in for all other facilities licensed under Chapter 11 of this title within 3 years after the enactment of this law. This section shall become effective on March 31, 1999.~~

Section 10. Amend § 1109, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1109. Civil penalties.

(a)(1) The Department may impose civil money penalties for the violation of provisions of this chapter or the regulations adopted pursuant to it. ~~For violations of this chapter or any of its regulations which the Department determines pose a serious threat to the health and safety of a resident or residents, a licensee or other person is liable for a civil penalty of not less than \$1,000 nor more than \$10,000 per violation.~~

(2) A licensee or other person is liable for a civil penalty of not less than \$1,000 nor more than \$10,000 per violation for violations which the Department determines pose a serious threat to the health and safety of a resident.

(b) In determining the amount of the penalty to be assessed under subsection (a) of this section, the Department ~~shall~~ must consider all of the following:

(1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard created by the violation to the health or safety of a resident or ~~residents; residents.~~

(2) The history of violations committed by the person or the person's ~~affiliate(s), employee(s), or controlling person(s);~~ affiliate, employee, or controlling person.

(3) The efforts made by the facility to correct the ~~violation(s);~~ violation.

(4) The culpability of the person ~~or persons~~ who committed the ~~violation(s);~~ violation.

(5) A misrepresentation made to the Department or to another person regarding any of the following:

a. The quality of services provided by the ~~facility;~~ facility.

b. The compliance history of the ~~facility; or~~ facility.

c. The identity of an owner or controlling person of the facility.

(6) Any other matter that affects the health, ~~safety~~ safety, or welfare of a resident ~~or residents.~~

(c) For all other violations that do not constitute a serious threat to the health and safety of a resident, but do violate this chapter or the regulations adopted pursuant to it, the maximum civil penalty ~~shall be~~ is \$5,000 per violation. Violations in this category ~~include, but are not limited to,~~ include any of the following:

(1) Making a false statement that the person knows or should know is false, about a ~~material fact;~~ one of the following:

a. ~~On~~ A material fact on an application for issuance or renewal of a license or any document attached ~~thereto; or~~ to an application.

b. ~~With~~A material fact with respect to a matter under investigation by the ~~Department;~~  
Department.

(2) Refusing to allow a representative of the Department to inspect without notice at any time either of  
the following:

a. Any portion of the premises of a ~~facility;~~ or facility.

b. Any documents, records, or files required to be maintained by a ~~facility;~~ facility.

(3) Willfully interfering with the work of a representative of the Department or with the enforcement  
of this ~~chapter;~~ or chapter.

(4) Willfully interfering with the preservation of evidence of a violation of this chapter or regulation  
pursuant to it.

(d) In determining the amount of the penalty to be assessed under subsection (c) of this section, the  
Department shall consider the ~~same six factors outlined in subsection (b)(1)-(6)~~ factors in subsection (b) of this  
section.

(e) Each day of a continuing violation constitutes a separate violation. However, ~~no~~ a penalty for a health  
and safety violation may not exceed \$2,500 per day beyond the initial day. ~~No~~ A penalty for a ~~nonhealth~~ non-health  
and safety violation ~~shall~~ may not exceed \$1,250 per day beyond the initial day.

Section 11. Amend § 1110, Title 16 of the Delaware Code by making deletions as shown by strikethrough  
and insertions as shown by underline as follows:

§ 1110. Waiver of penalty if first time violation(s) corrected.

~~(a) The Department may waive a civil penalty for a first time violation that does not constitute a threat to  
the health or safety of a resident or substantially limit the facility's capacity to provide care. The Department shall  
assess the amount of the penalty but notify the facility that the penalty will be waived if the violation is corrected  
within 30 days or a shorter time period if the facts so warrant.~~

~~(b) Penalties for failure to maintain correction.~~

~~The facility that corrects a violation under subsection (a) of this section must maintain that correction. If the  
facility fails to maintain a correction, the Department shall, in accordance with § 1109(b)(2) of this title, consider the  
facility's history of violations in determining the amount of the penalty to be assessed. If the facility fails to maintain  
a correction until at least the first anniversary of the date the correction was made, the Department may assess a  
penalty equal to 3 times the amount of the original penalty assessed but not collected under subsection (a) of this  
section. [§ 1110. Repealed.]~~

Section 12. Amend § 1111, Title 16 of the Delaware Code by making deletions as shown by strikethrough  
and insertions as shown by underline as follows:

§ 1111. Overlap of state licensing and federal certification penalties.

~~If the Department determines that a facility has violated this Chapter or regulation thereunder, and has  
thereby also violated a federal certification standard under Social Security Act or regulations adopted under it, the  
Department may not assess more than one civil money penalty for a violation arising out of the same act or failure to~~

~~act. If the federal government collects a civil monetary penalty for reported deficiencies, the State will not collect a civil monetary penalty for the same conditions.~~

(a) The Department may not collect a civil monetary penalty for the same deficient practice for which the federal government has levied a civil monetary penalty.

(b) In the event that a civil monetary penalty has been collected by the State and the federal government subsequently collects a penalty for the same conditions, the State shall refund the previously collected penalty.

Section 13. Amend § 1112, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1112. Collection of civil penalties.

(a) All civil penalties collected under this chapter ~~shall~~must be remitted to the Long-Term Care Residents' Trust Fund if based on a federal regulation, or to the State Civil Penalty Trust Fund, if based on a state statute or regulation.

(b) Payment of any civil penalty by a facility is not an allowable cost for reimbursement under the state Medicaid program or under other state funded programs.

(c) If a ~~nursing facility or similar long term care~~ facility, after notice and opportunity for hearing, does not pay a properly assessed penalty in accordance with this subchapter, the Department shall deduct the amount of the civil penalty from amounts otherwise due from the State to the ~~nursing long term care~~ facility and remit that amount to ~~the Long Term Care Residents' Trust Fund or the State Civil Penalty Trust Fund, as appropriate.~~

(d) Alternatively, the Department may add the amount of the civil penalty to the licensing fee for the ~~nursing facility or similar long term care~~ facility. If the licensee refuses to make the payment at the time of the application for renewal of its license, its license ~~shall~~may not be renewed.

(e) The Department may also proceed for the collection of the civil money penalty in an action brought in the name of the Department in any court of competent jurisdiction.

(f) In the event of financial hardship, ~~to be~~as determined by the Department, ~~it~~the Department may redirect the payment of penalties by the facility to take remedial action to correct the violation or violations.

Section 14. Amend § 1113, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1113. Other remedies for noncompliance.

In addition to civil money penalties, the Department may impose any or all of the following remedies for noncompliance with this chapter and the regulations promulgated pursuant to it or for noncompliance with § 1731A of Title 24 or § 903 of this title:

(1) ~~Monitoring~~ Require monitoring at facility expense, (according to the terms and conditions, including timeframes, determined necessary by the ~~Department~~); Department.

(2) ~~Suspension of~~ Suspend the admission or readmission of residents to the ~~nursing long term care~~ facility (~~according to~~under the terms and ~~conditions~~ conditions, including timeframes, determined by the ~~Department~~); Department.

(3) ~~Selective transfer of~~ Transfer residents whose care needs are not being met by the ~~licensee;~~ licensee.

(4) ~~Suspension, revocation or refusal~~ Suspend, revoke, or refuse to renew a ~~license;~~ license.

(5) In cases where the physical health or safety of residents is in imminent risk, ~~issuance of~~ issue an emergency order temporarily transferring the management of the facility to another qualified entity (~~according to~~ under the terms and conditions, including timeframes, ~~deemed necessary~~ determined by the ~~Department).~~ Department.

(6) ~~Issuance of~~ Issue a provisional license for a ~~nursing~~ long term care facility that is in substantial but not full compliance with applicable laws and regulations.

Section 15. Amend § 1115, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1115. Injunctive relief.

In addition to any other remedy provided by law, the Department may bring an action in Chancery Court to enjoin a ~~nursing facility or similar~~ long term care facility from engaging in activities that pose a threat to the health or safety of ~~resident(s)~~ a resident of the ~~nursing facility or similar~~ long term care facility. A temporary restraining order may be granted by the court if continued activity by the ~~nursing facility or similar~~ long term care facility would create an imminent risk to a resident ~~or residents~~ at the facility.

Section 16. Amend § 1116, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1116. Coordination of enforcement actions with the attorney general's office.

(a) The Department and the Attorney General shall work in close cooperation throughout any legal proceeding initiated by the Department to enforce this chapter and the regulations promulgated ~~pursuant to~~ under it.

(b) The Secretary of the Department or the Secretary's designee must be fully consulted before concluding any settlement agreement to a lawsuit brought under this chapter or any other law relating to the health and safety of residents in ~~nursing facilities and similar~~ long term care facilities.

Section 17. Amend § 1117, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1117. Retaliation or discrimination against complainant.

(a) ~~No~~ A licensee or other person ~~shall~~ may not discriminate or retaliate in any manner against a resident or employee in its facility on the basis that such resident or employee or any other person on behalf of the resident or employee has initiated or participated in any proceeding pursuant to this chapter, including providing information in connection with an inspection or facilitating a protection and advocacy agency investigation. The Department shall impose a civil penalty of not more than \$10,000 per violation upon any licensee or other person who violates this ~~section~~ subsection.

(b) Any attempt to expel a resident of the ~~nursing~~ long term care facility or any other type of retaliatory or discriminatory treatment of a resident or employee or any other person by whom, or upon whose behalf, a complaint

has been submitted to the Department or protection and advocacy agency or who has participated in any proceeding instituted ~~pursuant to~~under this chapter within 1 year of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the licensee or other person in retaliation for the filing of the complaint or the cooperation with the proceeding.

Section 18. Amend § 1118, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1118. Third-Party reimbursement.

Consistent with federal law, 42 U.S.C. § 1395i-3 (c)(5), with respect to admissions policy and practices, a ~~nursing facility or similar~~long term care facility must not require a third party guarantee or payment to the facility as a condition of admission ~~(or expedited admission)~~ or expedited admission to, or continued stay in the facility.

Section 19. Amend § 1119, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1119. Priority placement of publicly assisted persons.

~~Annually, the Department shall notify all public agencies which refer residents to facilities licensed under the chapter of those facilities found upon inspection within the previous 12 month period to be without violations or to have had violations deemed minor by the Department. Public agencies shall give priority to such facilities in referring publicly assisted persons. [Repealed.]~~

Section 20. Amend § 1119A, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1119A. "~~Confidentiality of residents~~"Confidentiality of resident records.

To protect the privacy of residents of a ~~nursing facility or similar~~long term care facility, the Department shall establish guidelines to protect the confidentiality of any records, ~~documents~~documents, or files pertaining to such residents.

Section 21. Amend § 1119B, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1119B. Pediatric nursing services.

A facility that provides services to a resident younger than 18 years of age shall ensure ~~that~~ all of the following:

(1) Nursing services for a resident younger than ~~16~~18 years of age are provided by staff who have received training ~~regarding and have~~and demonstrated competence in the care of ~~children; and~~children.

(2) Consultative pediatric nursing services are available to the ~~staff if the facility has a resident~~younger than 18 years of age. Staff.

Section 22. Amend § 1119C, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1119C. Regulations.

(a) The Department has the authority to adopt, ~~amend or repeal~~ amend, repeal, or issue regulations to implement this chapter. In addition to regulations by category of facility to be licensed, the Department shall also develop pediatric regulations regarding the care of children in ~~nursing facilities and similar~~ long term care facilities.

(b) The Department shall include in its regulations for all facilities licensed under this chapter a requirement of full cooperation with the protection and advocacy agency in fulfilling functions authorized by this chapter. Without limiting the protection and advocacy's agency's pursuit of other legal remedies, the Department shall enforce violations of such regulations consistent with §§ 1109 and 1113 of this title.

Section 23. Amend Subchapter II, Chapter 11, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown as follows:

Subchapter II. Rights of ~~Patients~~ Residents.

Section 24. Amend § 1121, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

§ 1121. ~~Patient's~~ Resident's rights.

(a) It is the intent of the General Assembly, and the purpose of this section, to promote the interests and well-being of the ~~patients and~~ residents in ~~sanitoria, rest homes, nursing homes, boarding homes and related institutions.~~ long term care facilities.

(b) It is declared to be the public policy of this State that the interests of the ~~patient~~ resident shall be protected by a declaration of a ~~patient's~~ resident's rights, and by requiring that all facilities treat their ~~patients~~ residents in accordance with such rights, which shall include ~~but not be limited to~~ the following:

(1) ~~Every patient and~~ Each resident shall have the right to receive considerate, respectful, and appropriate care, treatment and services, in compliance with relevant federal and state law and regulations, recognizing each person's basic personal and property rights which include dignity and individuality.

(2) Each ~~patient or~~ resident and the ~~family~~ authorized representative under § 1122 of this chapter of such ~~patient or~~ resident shall, prior to or at the time of admission, receive a written statement of the services provided by the facility including those required to be offered on an "as needed" basis, and a statement of related charges for services not covered under Medicare or Medicaid, or not covered by the facility's basic per diem rate. Upon receiving such statement, the ~~patient and the patient's representative~~ resident and the resident's authorized representative under § 1122 of this chapter representative shall sign a written receipt which must be retained by the facility in its files.

(3) After admission, each facility shall submit to the ~~patient,~~ resident or ~~legal~~ authorized representative, on a monthly basis, a written, itemized statement ~~detailing~~ detailing, in language comprehensible to the ordinary ~~layperson~~ layperson, the charges and expenses the ~~patient or~~ resident incurred during the previous month.

a. The statement shall contain a description of specific services, equipment and supplies ~~received~~ received, and expenses incurred for each such item.

b. The statement shall include an explanation of any items identified by code or by initials, but shall not include nursing home based physician charges if billed separately.

c. The facility shall make reasonable efforts to communicate the contents of the individual written statement to persons who it has reason to believe cannot read the statement.

(4) Each ~~patient~~ resident shall receive from the attending physician ~~or the resident physician of the facility or facility physician~~ complete and current information concerning the ~~patient's~~ resident's diagnosis, ~~treatment~~ treatment, and prognosis in terms and language the ~~patient~~ resident can reasonably be expected to understand, unless medically inadvisable. ~~The patient or~~

(5) Each resident shall participate in the planning of the ~~patient's or~~ resident's medical treatment, including attendance at care plan ~~meetings, meetings.~~

(6) Each resident may refuse medication or ~~treatment, treatment and must~~ be informed of the medical consequences of all medication and treatment ~~alternatives and alternatives.~~

(7) Each resident shall give prior informed consent to participation in any experimental research after a complete disclosure of the goals, possible effects on the ~~patient~~ resident and whether or not the ~~patient~~ resident can expect any benefits or alleviation of the ~~patient's~~ resident's condition.

a. In any instance of any type of experiment or administration of experimental medicine, there shall be written evidence of compliance with this section, including the signature of the ~~patient, or the signature of the patient's guardian or representative if the patient resident or the resident's~~ authorized representative if the resident has been adjudicated incompetent.

b. A copy of signed acknowledgment or informed consent, or both when required, shall be forwarded to each signer and a copy shall be retained by the facility.

~~(5)~~ (8) At the bedside of each ~~patient and resident~~ resident, the facility shall place and maintain in good order the name, ~~address~~ address, and telephone number of the physician responsible for the ~~patient's~~ resident's care.

~~(6)~~ (9) Each ~~patient and~~ resident shall receive respect and privacy in the ~~patient's or~~ resident's own medical care program. Case discussion, consultation, ~~examination~~ examination, and treatment shall be confidential, and shall be conducted discreetly. ~~In the patient's~~

a. At the resident's discretion, persons not directly involved in the ~~patient's~~ resident's care ~~shall may~~ not be permitted to be present during such discussions, consultations, examinations or treatment, except with the consent of the ~~patient or~~ resident.

b. Personal and medical records shall be treated confidentially, and shall not be made public without the consent of the ~~patient or~~ resident, except such records as are needed for a ~~patient's~~ resident's transfer to another health care institution or as required by law or third party payment contract.

c. No personal or medical records shall be released to any person inside or outside the facility who has no demonstrable need for such records.

~~(7) Every patient and~~ (10) Each resident shall be free from chemical and physical restraints imposed for purposes of discipline and convenience, and not necessary to treat the ~~patient's~~ resident's medical condition.

~~(8) Every patient and~~ (11) Each resident shall receive from the administrator or staff of the facility a courteous, ~~timely~~ timely, and reasonable response to requests, and the facility shall make prompt efforts to resolve grievances. Responses to requests and grievances shall be made in writing upon written request by the ~~patient or~~ resident.

~~(9) Every patient and~~ (12) Each resident shall be provided with information as to any relationship the facility has with other healthcare and related institutions ~~and/or or~~ or service providers, ~~including, but not limited to,~~ including pharmacy and rehabilitation services, to the extent the ~~patient~~ resident is offered care ~~and/or or~~ or services from these related entities. Such information shall be provided in writing upon admission, and thereafter when additional services are offered.

~~(10) Every patient and~~ (13) Each resident shall receive ~~reasonable continuity of care~~ that meets professional standards of care.

~~(11) Every patient and~~ (14)a. Each resident may associate and communicate, including visits and visitation, privately and without restriction with persons and groups of the ~~patient's or~~ resident's own ~~choice~~ choice ~~(on the patient's or~~ choice, on the resident's own or their ~~initiative)~~ initiative, at any reasonable ~~hour; may~~ hour; ~~send and shall receive mail promptly and unopened; shall have access at any reasonable hour to a telephone where the patient may speak privately; and shall have access to writing instruments, stationery and postage.~~ hour.

b. Nothing in 77 Del. Laws, c. 49 ~~shall preclude a nursing facility or similar~~ precludes a long term care facility, as defined in § ~~1102(4)~~ 1102 of this title, from restricting visitations due to attempts to interfere with ~~patient~~ resident care, the presentation of a threat to staff, ~~patients~~ and residents, or personnel, or other actions disruptive to the facility's operations.

(15) Each resident may send and shall receive mail promptly and unopened.

(16) Each resident shall have access at any reasonable hour to a telephone where the resident may speak privately.

(17) Each resident shall have access to writing instruments, stationery, postage, and the Internet.

~~(12)~~ (18) Each ~~patient and~~ resident has the right to manage the ~~patient's or~~ resident's own financial affairs.

a. If, by written request signed by the ~~patient or~~ resident, or by the ~~guardian or representative of a patient or~~ authorized representative of a resident who has been adjudicated incompetent, the facility manages the ~~patient's or~~ resident's financial affairs, it shall have available for inspection a monthly accounting, and shall furnish the ~~patient or~~ resident and the ~~patient's or resident's family or~~ resident's authorized representative with a quarterly statement of the ~~patient's or~~ resident's account.

~~b. The patient and~~ resident shall have unrestricted access to such account at reasonable hours.

~~(13)~~ (19) If married, ~~every patient and~~ a resident shall enjoy privacy in visits by the ~~patient's or~~ resident's spouse, and, if ~~both are in patients~~ spouses are both residents of the facility, they shall be afforded the opportunity where feasible to share a room, unless medically contraindicated.

~~(14) Every patient and~~ (20) Each resident has the right of privacy in the ~~patient's or~~ resident's own room, and personnel of the facility shall respect this right by knocking on the door before entering the ~~patient's or~~ resident's room.

~~(15) Every patient and~~ (21) Each resident has the right, ~~personally or through other persons or in combination with others, to exercise the patient's or resident's own rights; to present grievances; to recommend personally, through other persons, or in combination with others to do any the following:~~

a. Exercise the resident's own rights.

b. Present grievances.

c. Recommend changes in facility policies or services on behalf of the ~~patient's or~~ resident's self or ~~others; to present others.~~

d. Present complaints or petitions to the facility's staff or administrator, ~~to~~ the Department of Health and Social Services, the protection and advocacy ~~agency~~ agency, or ~~to~~ other persons or groups without fear of reprisal, restraint, interference, ~~coercion~~ coercion, or discrimination.

~~(16) A patient or resident shall~~ (22) A resident may not be required to perform services for the facility.

~~(17) Each patient and~~ (23) Each resident shall have the right to retain and use the ~~patient's or~~ resident's own personal clothing and possessions where reasonable, and shall have the right to security in the storage and use of such clothing and possessions.

~~(18) No patient or resident shall be transferred or discharged out of a facility except for medical reasons; inappropriate level of care; the patient's or resident's own welfare or the welfare of other patients or residents; or for nonpayment of justified charges. If good cause for transferal is reasonably believed to exist, the patient or resident shall be given at least 30 days' advance notice of the proposed action, together with the reasons for the decision, and the patient or resident shall have the opportunity for an impartial hearing to challenge such action if the patient or resident so desires. In emergency situations such notice need not be given. If a patient or resident is transferred out of a facility to an acute care facility or other specialized treatment facility, the facility must accept the patient or resident back into the facility when the resident no longer needs acute or specialized care and there is space available in the facility. If no space is available, the resident shall be accepted into the next available bed. For purposes of this section, "specialized treatment facility" shall mean a health care setting including, without limitation, settings licensed or certified pursuant to Chapters 11, 22, 50 or 51 of this title. The Division shall issue an annual report on implementation of this paragraph.~~ (24) The facility must permit each resident to remain in the

facility, and not transfer or discharge the resident from the facility, except as provided in § 1127 of this title.

~~(19) Every patient and resident shall have~~ (25) Each resident has the right to inspect all records pertaining to the ~~patient or~~ resident, upon oral or written ~~request~~ request, within 24 hours of notice to the facility. ~~Every patient and resident shall have~~ Each resident has the right to purchase photocopies of such records or any portion of them, at a cost not to exceed the community standard, upon written request and ~~two~~ 2 working days advance notice to the facility.

~~(20) Every patient and~~ (26) Each resident shall be fully informed, in language the ~~patient or~~ resident can understand, of the ~~patient's or~~ resident's rights and all rules and regulations governing ~~patient or~~ resident conduct and the ~~patient's or~~ resident's responsibilities during the stay at the facility.

~~(21) Every patient and resident shall have~~ (27) Each resident has the right to choose a personal attending physician.

~~(22) Every patient and resident shall have~~ (28) Each resident has the right to examine the results of the most recent survey of the facility conducted by federal ~~and/or~~ or state surveyors and any plan of correction in effect with respect to the facility. ~~Survey results shall be posted by the facility in a place readily accessible to patients and residents.~~

~~(23) Every patient and resident shall have~~ (29) Each resident has the right to receive information from the protection and advocacy agency and agencies acting as client advocates and be afforded the opportunity to contact those agencies.

~~(24) Every patient and~~ (30) Each resident shall be free from verbal, physical or mental abuse, cruel and unusual punishment, involuntary seclusion, withholding of monetary allowance, withholding of ~~food~~ food, and deprivation of sleep.

~~(25) Every patient and~~ (31) Each resident shall be free to make choices regarding activities, schedules, health ~~care~~ care, and other aspects of the ~~patient's or~~ resident's life that are significant to the ~~patient or~~ resident, as long as such choices are consistent with the ~~patient's or~~ resident's interests, ~~assessments~~ assessments, and plan of care and do not compromise the health or safety of the individual or other ~~patients or~~ residents within the facility.

~~(26) Every patient and~~ (32) Each resident has the right to participate in an ongoing program of activities designed to meet, in accordance with the ~~patient's or~~ resident's individualized assessments and plan of care, the ~~patient's or~~ resident's interests and physical, ~~mental~~ mental, and psychosocial well-being.

~~(27) Every patient and resident shall have~~ (33) Each resident has the right to participate in social, ~~religious~~ religious, and community activities that do not interfere with the rights of other ~~patients or~~ residents.

~~(28) Every patient and~~ (34) Each resident shall receive notice before the resident's room or roommate is changed, except in emergencies. The facility shall endeavor to honor the room or roommate requests of the resident whenever possible.

~~(29) Every patient and~~ (35) Each resident shall be encouraged to exercise the ~~patient's or~~ resident's own rights as a citizen of ~~the~~ this State and the United States of America.

~~(30) Every patient and resident shall have~~ (36) Each resident has the right to request and receive information regarding minimum acceptable staffing levels as it relates to the ~~patient's or~~ resident's own care.

~~(31) Every patient and resident shall have~~ (37) Each resident has the right to request and receive the names and positions of staff members providing care to the ~~patient or~~ resident.

~~(32) Every patient and resident shall have~~ (38) Each resident has the right to request and receive an organizational chart outlining the facility's chain of command for purposes of making requests and asserting grievances.

~~(33) Every patient and resident shall have~~ (39) Each resident has the right to compliance with the ~~patient's or~~ resident's advance ~~health-care~~ health-care directive, power of attorney, Delaware Medical Orders for Scope of Treatment, or similar document in accordance with and subject to Chapter 49 of Title 12 and Chapter 25 of this title.

~~(34) Where a patient or~~ (40) If a resident is adjudicated incompetent, is determined to be incompetent by the ~~patient's or~~ resident's attending physician, or is unable to communicate, the ~~patient's or~~ resident's rights shall devolve to the ~~patient's or resident's next of kin, guardian or representative.~~ resident's authorized representative, as established under any of the following:

a. An advance health-care directive.

b. A medical durable power of attorney for health-care decisions.

c. A court appointed guardian under Chapters 39 and 39A of Title 12, in accordance with the authority granted by the appointing court.

d. A surrogate appointed under Chapter 25 of this title.

e. An individual who is otherwise authorized under applicable law to make the health-care decisions being made by execution of the DMOST form on the patient's behalf under Chapter 25A of this title.

Section 25. Amend § 1122, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1122. Devolution of rights.

Where consistent with the nature of each right in § 1121 of this title, all ~~of such~~ rights, particularly as they pertain to a ~~person~~ resident adjudicated incompetent in accordance with state law, or a ~~patient~~ resident who is found medically incapable by the ~~patient's~~ resident's own attending physician, or a ~~patient~~ resident who is unable to communicate with others, shall devolve to the ~~patient's next of kin, guardian, representative, sponsoring~~ resident's authorized representative, as established under any of the following:

(1) An advance health-care directive.

(2) A medical durable power of attorney for health-care decisions.

(3) A court appointed guardian pursuant to Chapters 39 and 39A of Title 12, in accordance with the authority granted by the appointing court.

(4) A surrogate appointed under Chapter 25 of this title.

(5) An individual who is otherwise authorized under applicable law to make the health-care decisions being made by execution of the DMOST form on the patient's behalf under Chapter 25A of this title.

(6) A sponsoring agency or representative payee (except payee, except where the facility itself is the representative payee) selected pursuant to payee, selected under § 205(j) of the Social Security Act [42 U.S.C. § 405(j)].

Section 26. Amend § 1123, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1123. Notice to patient.

(a) Section 1121 of this title shall be posted conspicuously in a public place in all sanitoria, rest homes, nursing homes, boarding homes and related institutions, long term care facilities.

(b) Copies of §1121 of this title shall be furnished to the patient or resident upon admittance to the facility; all patients and residents currently residing in the facility; and the next of kin, guardian, representative, sponsoring agency or representative payee of the patient and resident. Receipts for the statement signed by the aforesaid parties shall be retained in the facility's files. authorized representative under § 1122 of this title. The long term care facility shall retain in its files a statement signed by each person listed in this subsection that the person has received a copy of § 1122 of this title.

Section 27. Amend § 1124, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1124. Staff training; issuance of regulations.

(a) Each facility shall provide appropriate staff training to implement the bill of rights set forth in under § 1121 of this title.

(b) Rules and regulations implementing this subchapter shall be developed by the Secretary of the Department of Health and Social Services and shall be promulgated within 60 days after June 28, 1978.

Section 28. Amend § 1125, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1125. Investigation of grievances.

(a) The Secretary of the Department of Health and Social Services or the Secretary's designee shall have the right and responsibility to shall independently investigate any grievance concerning sanitoria, rest homes, nursing homes, boarding homes and related institutions long term care facilities.

(b) Upon completion of an investigation, the Secretary of the Department of Health and Social Services or the Secretary's designee shall report the Secretary's or designee's findings to the complainants and to all other

appropriate agencies of the State, ~~county~~ county, or municipality as the case may be. If a grievance involves a protection and advocacy agency client, the findings shall be shared with the protection and advocacy agency.

Section 29. Amend § 1126, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1126. Recording anatomical gift data.

(a) All ~~sanitoria, rest homes and other health care facilities covered by this chapter~~ long term care facilities shall, if possible, ascertain from a ~~patient~~ resident upon admission whether or not the ~~patient~~ resident has donated all or part of the ~~patient's~~ resident's own body as an anatomical gift ~~either by will or by a form provided for in subchapter VIII of Chapter 17 of Title 24 in a manner permitted by § 2713 of this title and the person, institution~~ institution, or organization to which such gift has been made.

(b) All ~~facilities as defined in subsection (a) of this section~~ long term care facilities, as required by regulation, shall maintain as part of a ~~patient's~~ resident's permanent record the information required under this section and such other pertinent information about said anatomical gift which will facilitate the carrying out of the ~~patient's~~ resident's wishes in the event of the ~~patient's own~~ resident's death.

(c) Upon the death of a ~~patient~~ resident who has made an anatomical gift, ~~health care facilities as defined in subsection (a)~~ long term care facilities shall make every reasonable effort to contact without delay the person, ~~institution~~ institution, or organization to which such gift has been made.

Section 30. Amend Subchapter II, Chapter 11, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1127. Resident Transfer or Discharge.

(a) The facility must permit each resident to remain in the facility and not transfer or discharge the resident from the long term care facility unless at least one of the following criteria has been met:

(1) The transfer or discharge is both necessary for the resident's welfare and the resident's needs cannot be met in the facility with reasonable accommodations when assessed with due regard to the scope of the facility's license.

(2) The discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

(3) The transfer or discharge is appropriate because the safety of individuals in the facility is endangered by the clinical or behavioral status of the resident.

(4) The transfer or discharge is appropriate because the health of other individuals in the facility would otherwise be endangered.

(5) The resident has failed, after reasonable and appropriate notice, to pay for, or to have paid by Medicare, Medicaid, or third party, a stay at the facility leading to discharge provided that:

a. A resident who becomes eligible for Medicaid after admission to a facility may only be charged allowable charges under Medicaid.

b. A resident who has submitted the necessary paperwork for third party payment may not be discharged if a final decision on the claim has not been issued.

(6) The facility ceases to operate.

(b) Documentation —

(1) Transfers or discharges under this section must be documented in the resident's clinical record and must include all of the following:

a. The basis for the transfer or discharge under subsection (a) of this section.

b. In the case of a transfer or discharge under subsection (a)(1) of this section, all of the following:

1. The specific needs that cannot be met in the facility.

2. The attempts made to meet those needs.

3. The services available at the receiving facility to meet those needs.

c. The certification of the resident's personal attending physician that transfer or discharge is necessary under subsection (a)(1) or (a)(2) of this section.

d. A physician certification that transfer or discharge is necessary under subsection (a)(3) or subsection (a)(4) of this section.

(c) Before a long term care facility transfers or discharges a resident, the facility must issue a written notice of the transfer or discharge to the resident or resident's authorized representative under § 1122 of this chapter and, if known, a family member or legal representative of the resident, whose content conforms to subsection (b) of this section.

(d) Timing of the notice of transfer or discharge —

(1) Except as permitted under paragraph (d)(3) of this subsection, a notice of discharge must be issued by the long term facility at least 30 days before the resident is transferred or discharged.

(2) A long term care facility may not discharge a resident during the pendency of administrative proceedings implementing a resident's appeal of a discharge.

(3) Notice must be issued as soon as practicable before transfer or discharge when one of the following standards is met:

a. An immediate transfer or discharge is required by the resident's urgent medical needs supported by the certification required under paragraph (b) of this section.

b. There is a significant and immediate threat to the health or safety of other individuals in the long term care facility as documented under paragraphs (b)(1)c. or (b)(1)d. of this section.

c. The resident was admitted solely on a respite basis not to exceed 14 days or as an emergency placement by the Department not to exceed 21 days.

(e) The written notice described in subsection (d)(3) of this section must include all of the following in language comprehensible to the ordinary layperson subject to revision to meet known special language considerations of the recipient:

- a. A detailed individualized explanation of each reason for the transfer or discharge.
- b. The effective date of transfer or discharge.
- c. The location to which the resident is transferred or discharged.
- d. The time frame and procedure to appeal the action to the State.
- e. The name, address, and telephone number of the State long-term care ombudsman and Division.
- f. The name, address, and telephone number of the protection and advocacy agency for facility residents with developmental disabilities or mental illness.

(f) In administrative and judicial proceedings implementing a resident's appeal of a transfer or discharge, resident rights and protections conferred by applicable federal law must be considered.

(g) For any transfer or discharge authorized by subsection (a) of this section, the long term care facility shall develop a plan with the participation of the resident and resident's authorized representative under § 1122 of this chapter, if any, to assist with orientation and the safe and orderly transfer or discharge from the facility.

(h)(1) If a resident is transferred out of a long term care facility to an acute care facility or other specialized treatment facility all of the following apply:

- a. The long term care facility must accept the resident back when the resident no longer needs acute or specialized care and there is space available in the facility.
- b. If no space is available, the resident must be accepted into the next available bed.

(2) For purposes of this subsection, "specialized treatment facility" means a health care setting including, settings licensed or certified pursuant under this chapter or Chapters 22, 50, or 51 of this title.

Section 31. Amend Subchapter III, Chapter 11, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

Subchapter III. Abuse, Neglect, ~~Mistreatment~~ Mistreatment, or Financial Exploitation of Residents or Patients.

Section 32. Amend § 1131, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly 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. As used in this subchapter:~~

(1) Abuse shall mean "Abuse" means the infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish and includes all of the following:

- a. Physical abuse by unnecessarily inflicting – Physical abuse. "Physical abuse" means the unnecessary infliction of pain or injury to a patient or resident. This includes but is not limited to; "Physical abuse" includes hitting, kicking, punching, ~~slapping~~ slapping, or pulling hair. ~~When~~ If any act constituting physical abuse has been ~~proved, proven~~, the infliction of pain is ~~assumed, presumed~~.

b. ~~Sexual abuse which includes, but is not limited to,~~ Sexual abuse. “Sexual abuse” includes 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~~ is not a defense that the sexual contact, sexual penetration, or sexual intercourse was consensual.

e. ~~Emotional abuse which includes, but is not limited to,~~ Emotional abuse. “Emotional abuse” means the use of oral, written, or gestured language that includes disparaging and derogatory terms to patients, residents, their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. “Emotional abuse” includes the violation of resident rights and privacy through the posting of inappropriate materials on social media. “Emotional abuse” includes all of the following: ridiculing, demeaning, humiliating, or cursing at a patient or resident; resident; punishment or deprivation; or threatening a patient or resident with physical harm.

d. ~~Medication diversion by knowingly, or intentionally, interrupting, obstructing, or altering (1)~~ Medication diversion. “Medication diversion” means the knowing or intentional interruption, obstruction, or alteration of the delivery, or ~~administration,~~ administration of a prescription drug to a patient or resident, ~~providing that such prescription drug was;~~ if both of the following apply:

1. ~~Prescribed~~ a. The prescription drug was prescribed or ordered by a health care provider licensed independent practitioner for the patient or resident; and resident.

2. ~~b. The interruption, obstruction, or alteration occurred without the prescription, or order, of a health care provider;~~ prescription or order of a licensed independent practitioner.

e. ~~A person is justified in engaging in conduct otherwise prohibited in paragraph (1)d. of this section if the conduct was (2)~~ “Medication diversion” does not mean conduct performed by any of the following:

1. ~~A health care provider,~~ a. A licensed independent practitioner or licensed health-care professional, professional who acted in good faith within the scope of the person’s individual’s practice or employment; or employment.

2. ~~A person~~ b. An individual acting in good faith while rendering emergency care at the scene of an emergency, 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;~~ means all of the following:

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

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

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

d. Any hospital as defined ~~in § 1001(3) under Chapter 10~~ of this title. "Hospital" ~~as defined in § 1001(3) of this title~~ is included in the definition of facility only for the purposes and application of §§ 1131 and 1136 of this title.

(5) "Financial exploitation" ~~shall mean~~ means 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) "Health care 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 § 2501 of this title.~~

(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.

(8) "Investigation" ~~shall mean~~ means the collection of evidence in response to ~~a report~~ an allegation of abuse, neglect, ~~mistreatment~~ mistreatment, or financial exploitation of a resident or patient to determine if that resident or patient has been abused, neglected, ~~mistreated~~ mistreated, or financially exploited. The ~~Division~~ Department 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.

( ) "Licensed independent practitioner" means a physician or an individual licensed and authorized to write medical orders under Chapter 17 or Chapter 19 of Title 24 and who is providing care for the patient or resident or is overseeing the health care provided to the resident.

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

(10) "Neglect" ~~shall mean~~ means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. Neglect includes all of the following:

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

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

~~(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 this title or any other drug that can only be dispensed upon written, or verbal, authorization from a licensed health-care provider. Drug required by federal or state law or regulation to be dispensed only by a prescription, which means a lawful written or verbal order of a practitioner for a drug, including finished dosage forms and active ingredients, subject to § 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 353(b)).~~

Section 33. Amend § 1132, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

§ 1132. Reporting requirements.

(a)~~(1)~~ Any employee of a facility or ~~anyone~~ person who provides services to a patient or resident of a facility on a regular or intermittent basis who has reasonable cause to believe that a patient or resident in a facility has been abused, mistreated, ~~neglected~~ neglected, or financially exploited shall immediately report such abuse, mistreatment, ~~neglect~~ neglect, or financial exploitation to the Department by oral communication. A written report shall be filed by the employee or person providing services to a patient or resident of a facility ~~or service provider~~ within 48 hours after the employee or person providing services to a patient or resident of a facility ~~service provider~~ first gains knowledge of the abuse, mistreatment, neglect or financial exploitation.

(2) In addition to the persons required to report abuse, neglect, mistreatment, or financial exploitation under paragraph (a)(1) of this section, any other person, including a patient or facility resident, may contact the Department to report any complaint concerning the health, safety, and welfare of patients or facility residents.

(3) The Department shall inform a person making a report under paragraphs (a)(1) or (a)(2) of this section of the person's right to obtain information concerning the disposition of the report. Such person shall receive, if requested, information on the general disposition of the report at the conclusion of the investigation.

(4) If the Department does not have jurisdiction over the report, the Department shall so advise the person making the report under paragraphs (a)(1) or (a)(2) of this section and shall promptly refer the person to the appropriate agency.

(b) Any person required by ~~subsection (a)~~ paragraph (a) or (c) of this section to make an oral and a written report who fails to do so ~~shall be~~ is to be fined not more than \$1,000 or ~~shall be~~ imprisoned not more than 15 days, or both. In any action brought under this section, if a court finds a violation, the court may award costs and attorney's fees.

(c) In addition to those persons subject to subsection (a) of this ~~section~~ section, any other person ~~may~~ shall make such a report, if ~~such persons have~~ the person has reasonable cause to believe that a patient or resident of a facility has been abused, mistreated, ~~neglected~~ neglected, or financially exploited. Such reports are confidential and the reporting person cannot be compelled to do either of the following:

(1) Notify the facility, care provider, or individual implicated in the event.

(2) Provide information regarding the reported abuse, neglect, mistreatment, or financial exploitation to the facility, care provider, or individual implicated in the event.

(d) Any ~~individual~~ person who intentionally makes a false report under this subchapter ~~shall be~~ is guilty of a class A misdemeanor.

(e) Any correspondence or other written communication from a resident or patient to the Department, the Attorney General's office, the protection and advocacy ~~agency and/or~~ agency, or a law-enforcement agency ~~shall, must,~~ if delivered to or received by a facility, be promptly forwarded, unopened, by the facility ~~or service provider~~ to the agency to which it is written. Violation of this subsection is punishable by a civil penalty not to exceed \$1,000 per violation.

(f) Any correspondence or other written communication from the Department, the Attorney General's office, the protection and advocacy ~~agency and/or~~ agency or a law-enforcement agency to a resident or patient shall, if delivered to or received by the facility ~~or other service provider~~, be promptly forwarded, unopened, by the facility ~~or other service provider~~ to such resident or patient. ~~Failure to comply with this section shall result in~~ Violation of this subsection is punishable by a civil penalty not to exceed \$1,000 per violation.

Section 34. Amend § 1133, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1133. Contents of reports.

The reports required under this subchapter shall contain all of the following information:

(1) The name and sex of the patient or ~~resident; the~~ resident.

(2) The name and address of the facility in which the patient or ~~resident resides; the~~ resident resides.

(3) The age of the patient or resident, if ~~known; the~~ known.

(4) The name and address of the reporter and where the reporter can be ~~contacted; any~~ contacted.

(5) Any information relative to the nature and extent of the abuse, ~~mistreatment or neglect, and~~ mistreatment, financial exploitation, or neglect and, if known to the ~~reporter~~ reporter, any information relative to prior abuse, ~~mistreatment~~ mistreatment, financial exploitation, or neglect of such patient or ~~resident; the~~ resident.

(6) The circumstances under which the reporter became aware of the abuse, ~~mistreatment or neglect; what~~ mistreatment, financial exploitation, or neglect.

(7) What action, if any, was taken to treat or otherwise assist the patient or ~~resident; and any~~ resident.

(8) Any other information which the reporter believes to be relevant in establishing the cause of such abuse, ~~mistreatment~~ mistreatment, financial exploitation, or neglect.

Section 35. Amend § 1134, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

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

(a) The Department shall ensure that patients or residents are afforded the same rights and protections as other individuals in the State.

(b) ~~In addition to the persons required to report abuse, neglect, mistreatment or financial exploitation pursuant to § 1132(a) of this title, any other person, including a nursing facility resident or patient, may contact the Department to report any complaint concerning the health, safety and welfare of facility residents and patients.~~  
[Repealed.]

(c) ~~Establish~~ The Department shall establish and maintain a 24-hour statewide toll-free telephone report line operating at all times and capable of receiving reports of alleged abuse, neglect, ~~mistreatment~~ mistreatment, and financial exploitation.

(d) ~~In responding to abuse, neglect, mistreatment and financial exploitation complaints, the Division~~ Upon receipt of an allegation of abuse, neglect, mistreatment, or financial exploitation, the Department shall do all of the following:

(1) Receive and maintain reports in a computerized central data base.

(2) Acknowledge all complaints, when authorized by the person making the report. The acknowledgement shall identify other relevant remedial agencies, including the protection and advocacy agency, Office of the Long-Term Care ~~Ombudsman~~, Ombudsperson, and victim rights resource organizations. ~~If the Division does not have jurisdiction over the complaint, its staff shall so advise the person making the complaint and shall promptly refer the complainant to the appropriate agency.~~

(3) Forward complaints to the appropriate ~~Division~~ Department staff who shall determine, through the use of standard operating procedures developed by the ~~Division~~, Department, whether an investigation should be initiated to respond to the complaint. The protocols for making this determination shall be developed by the ~~Division~~ Department and shall give priority to ensuring the well-being and safety of residents and patients.

(4) Begin the investigation within 24 hours of receipt of any report or complaint that alleges any of the following:

a. A resident's or patient's health or safety is in imminent ~~danger~~, or danger.

b. A resident or patient has died due to alleged abuse, ~~neglect or mistreatment~~, or neglect, or mistreatment.

c. A resident or patient has been hospitalized or received medical treatment due to alleged abuse, ~~neglect or mistreatment~~, or neglect, or mistreatment.

d. If the report or complaint alleges the existence of circumstances that could result in abuse, ~~neglect~~ neglect, or mistreatment and that could place a resident's or patient's health or safety in imminent ~~danger; or danger~~.

e. A resident or patient has been the victim of financial exploitation or risk thereof and exigent circumstances warrant an immediate response.

(5) Except in situations outlined in paragraph (d)(4) of this section, initiate and conclude an investigation within 10 days of receiving a report or complaint unless extenuating facts warrant a longer time period to complete the investigation.

(5) Contact the appropriate law enforcement agency immediately upon receipt of any complaint requiring an investigation ~~immediately~~ under this section and shall provide the police with a detailed description of the complaint received.

a. The appropriate law enforcement agency shall conduct its investigation or provide the ~~Division, Department~~ within a reasonable time period, an explanation detailing the reasons why it is unable to conduct the investigation.

b. The Department may defer its own investigation in these circumstances until it receives appropriate guidance from the Attorney General's Office and the relevant police agency with respect to how to proceed with its investigation thereby assuring a coordinated investigation.

c. Notwithstanding any provision of the Delaware Code to the contrary, to the extent the law enforcement agency with jurisdiction over the case is unable to assist, the ~~Division~~ Department may request that the Delaware State Police exercise jurisdiction over the case and, upon such request, the Delaware State Police may exercise such jurisdiction.

~~(6) Upon receipt of any report pursuant to paragraph (d)(4) of this section, the law enforcement agency having jurisdiction shall conduct a full and complete criminal investigation based on their departmental policies and shall assess probable cause and effectuate arrests when appropriate. The Attorney General's Office or other law enforcement agency conducting the investigation shall keep the Division informed of the case status and all major decisions pursuant to Memoranda of Understanding between the Division and the Attorney General's Office and other relevant law enforcement agencies. The Memoranda of Understanding shall be executed within 180 days of the signing of this legislation and may be amended as needed. To the extent the criminal arrest and criminal prosecution, the Department of Justice shall keep the Division well informed of the case status and all major decisions, including but not limited to the disposition of criminal charges and the specifics of any sentencing order rendered.~~

(7) ~~The Department shall have~~ Have the authority to secure a medical examination of a ~~nursing facility resident or patient~~ long term care facility resident or patient upon the consent of the resident or patient without the consent of the ~~service provider~~ long term care facility if the resident or patient has been reported to be a victim of abuse, ~~neglect~~ neglect, or mistreatment; provided, that such case is classified as an investigation ~~pursuant to~~ under this subchapter.

(8) When a written report of abuse, neglect, ~~mistreatment~~ mistreatment, or financial exploitation is made by a person required to report under § 1132(a) of this title, the ~~Division~~ Department shall contact the person who made such report within 48 hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information, including medical records, which may be pertinent.

(9) ~~The Division shall conduct~~ Conduct an investigation involving all reports which, if true, would constitute criminal offenses pursuant to any of the following provisions of ~~Title 11 of the Delaware Code:~~ Title 11: §§ 601, 602, 603, 604, 611, 612, 613, 621, 625, 626, 627, 631, 632, 633, 634, 635, 636, 645, 763, 764, 765, 767, 768, 769, 770, 771, 772, 773, 774, 775, 791, 841, 842, 843, 844, 845, 846, 848, 851, 861, 862 and 908 or an attempt to commit any such crime. Except for situations outlined in paragraph (d)(4) of this section requiring the initiation of an investigation within 24 hours, all other investigations under this subchapter shall be initiated within 10 days and conducted during that timeframe unless extenuating facts warrant a longer time period to complete the investigation.

(10) ~~The Division shall develop~~ Develop protocols to ensure that it shall conduct its investigation in coordination with the relevant law enforcement agency. The primary purpose of the ~~Division's~~ Department's investigation shall be the protection of the ~~resident(s) or patient(s):~~ resident or patient.

(11) ~~In Do any of the following when investigating abuse, neglect, mistreatment mistreatment, or financial exploitation reports, the Division may:~~ reports:

a. Make unannounced ~~visit(s)~~ visits to the ~~facility~~ facility, as required, to determine the nature and cause of the alleged abuse, neglect, ~~mistreatment or financial exploitation;~~ mistreatment, or financial exploitation.

b. Interview available witnesses identified by any source as having personal knowledge relevant to the reported abuse, neglect, ~~mistreatment or financial exploitation;~~ mistreatment, or financial exploitation.

c. Conduct interviews in private unless the witness expressly requests that the interview not be ~~private;~~ private.

d. Write an investigation report that includes ~~the~~ all of the following:

1. The investigator's personal observations, a observations.

2. A review of the medical and all other relevant documents and ~~records,~~ a records.

3. A summary of each witness ~~statement and a~~ statement.

4. A statement of the factual basis for the findings for each incident or problem alleged in the complaint.

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

~~a. The Secretary of the Department of Health and Social Services may appoint qualified persons to be special investigators for the Division of Long Term Care Residents Protection. 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 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. 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.~~

~~c. The salary of special investigators shall be fixed by the Secretary within the appropriations made to the Department.~~

~~d. Special investigators will assist in the training of other Division staff.~~

~~(13) The Department the Office of the Attorney General and other law enforcement agencies shall develop Memoranda of Understanding pursuant to this subchapter which provide for timely notification, co investigation, referral of cases, including automatic referral in certain cases, and ongoing coordination in order to keep each other apprised of the status of their respective investigations. This paragraph shall become effective March 31, 1999.~~

~~(14) If the Division suspects or discovers information indicating the commission of violations of standards of professional conduct by facilities licensed under this chapter or by staff employed by such facilities, the Division shall immediately contact the Office of the Attorney General and the relevant professional licensing board.~~

~~(15) The Division and the Attorney General's Office shall cooperate with law enforcement agencies to develop training programs to increase the effectiveness of Division personnel, Attorney General's Office personnel and law enforcement officers in investigating suspected cases of abuse, neglect, mistreatment or financial exploitation.~~

~~(16) A person required to report to the Division under § 1132(a) of this title shall be informed by the Division of the person's right to obtain information concerning the disposition of the report. Such~~

~~person shall receive, if requested, information on the general disposition of the report at the conclusion of the investigation.~~

(17) Before the completion of an investigation, ~~the Division shall~~ file a petition for the temporary care and protection of the resident or patient if the ~~Division~~ Department determines that immediate removal is necessary to protect the resident or patient from further abuse, neglect, ~~mistreatment~~ mistreatment, or financial exploitation.

(18) Upon completing an investigation of a complaint, the ~~Division~~ Department shall take 1 or more of the following courses of action, as appropriate:

a. If representatives of the Department, the Attorney General's Office ~~and/or~~ or the appropriate law enforcement agency are unable to substantiate a complaint that applicable laws or regulations have been violated the Department or appropriate law enforcement agency shall so advise the complainant and the facility, ~~agency~~ agency, or individual against which the complaint was made.

b. If ~~Division~~ Department representatives are able to substantiate a complaint that applicable laws or regulations have been violated, the ~~Division~~ Department shall take appropriate enforcement action.

~~e. Enforcement~~ 1. An enforcement action may include instituting actions by the ~~Division~~ Department for injunctive relief or other relief deemed appropriate.

2. The Office of the Attorney General shall provide legal advice and assist the ~~Division~~ Department to institute ~~such proceedings.~~ an enforcement action.

d. If the ~~Division~~ Department discovers a ~~deficiency in~~ violation of federal laws or regulations or rules administered by any other government agency, the ~~Division~~ Department shall refer the matter directly to the appropriate government agency for an enforcement action.

~~e. In the event that a criminal prosecution for abuse, neglect, mistreatment or financial exploitation is initiated by the Attorney General's Office pursuant to a report under this subchapter, and incarceration of the person who is the subject of the report is ordered by the Court, the Attorney General's Office shall keep the Division informed of actions taken by the Court which result in the release of any such individual, provided that the Attorney General's Office is represented at such a hearing.~~

~~f. In the event that a criminal prosecution for abuse, neglect, mistreatment or financial exploitation is initiated by the Attorney General's Office against a person employed by or associated with a facility or organization required to be licensed or whose staff are required to be licensed under Delaware law, the Attorney General shall notify the Department within 48 hours and the Department shall then notify the person's employer.~~

1. ~~Upon return of an indictment charging such person with having committed at least one felony offense involving an allegation of abuse, neglect, mistreatment or financial exploitation; or~~

2. ~~Upon an adjudication of guilt of such person for any misdemeanor or violation, when such offense involved abuse, neglect, mistreatment or financial exploitation.~~

(19) ~~Protect the privacy of the nursing facility resident or patient and his or her family, and the Division~~ long term care resident or patient and the patient or resident's family.

a. The Department shall establish guidelines concerning the disclosure of information relating to complaints and investigations regarding abuse, neglect, ~~mistreatment~~ mistreatment, or financial exploitation involving that resident or patient. ~~The Division~~

b. The Department may require persons to make written requests for access to records maintained by the ~~Division. Notwithstanding Chapter 100 of Title 29, the Division~~ Department.

c. Records maintained for investigations conducted under this section are not public records under Chapter 100 of Title 29 and the Department may only release information to persons who have a legitimate public safety need for such information and such information ~~shall~~ must be used only for the purpose for which it is released ~~pursuant to~~ under a user agreement with the ~~Division.~~ Department.

(e) The protection and advocacy agency is authorized to complement the Department's complaint resolution system through monitoring, ~~investigation~~ investigation, and advocacy on behalf of facility patients or residents. In furtherance of this authority, protection and advocacy agency representatives may engage in all of the following functions:

(1) Solicit and receive oral and written reports and complaints of abuse, neglect, ~~mistreatment~~ mistreatment, or financial exploitation of facility patients or ~~residents; and~~ residents.

(2) Access a ~~facility; interview patients, residents, facility staff and agents; and~~ interview facility.

(3) ~~Interview patients, residents, facility staff, and agents; and inspect agents.~~

(4) Inspect and copy records pertaining to the patient or resident with valid consent or as otherwise authorized by federal law.

(f) The Department may develop protocols with the protection and advocacy agency to facilitate coordination whenever both agencies have initiated an overlapping investigation.

(g) The immunities and protections compiled in § 1135 of this title ~~shall~~ apply to persons offering reports or testimony to initiate or support protection and advocacy agency investigation or advocacy.

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

(1) The Secretary of the Department may appoint qualified persons to be special investigators.

a. Such investigators hold office at the pleasure of the Secretary.

b. Any individual appointed under this section must have all of the following qualifications:

1. A minimum of 10 years experience as a "police officer," as that term is defined in § 1911(a) of Title 11.
2. Significant investigatory experience while working as a police officer.
3. Be in good standing with the previous or present law-enforcement agency where such individual was or is employed.
4. Such other qualifications deemed appropriate by the Secretary.

(2) Special investigators appointed under this section may conduct investigations of abuse, neglect, mistreatment, or financial exploitation of patients and residents of facilities and adults who are impaired as defined in § 3902 of Title 31 anywhere in this State as directed by the Department and shall have the power to make arrests and serve writs anywhere in this State.

a. In conducting such investigations, the special investigators have the statewide powers enumerated under § 1911 of Title 11 and such other powers as conferred by law on police officers, but such powers are limited to offenses involving abuse, neglect, mistreatment, or financial exploitation of patients and residents of long term care facilities and adults who are impaired anywhere in this State as directed by the Department.

b. To the extent possible, special investigators under this section may consult with the police agency having jurisdiction and the Department prior to making an arrest and shall do so in all cases after making such arrest.

(3) The Secretary of the Department shall fix the salary of special investigators within the appropriations made to the Department.

(4) Special investigators shall assist in the training of other Department staff.

(i) Upon receipt of any report under paragraph (d)(5) of this section, the law enforcement agency having jurisdiction shall conduct a full and complete criminal investigation based on their departmental policies and shall assess probable cause and effectuate arrests when appropriate.

(1) The Attorney General's Office or other law enforcement agency conducting the investigation shall keep the Department informed of the case status and all major decisions under memoranda of understanding between the Department and the Attorney General's Office and other relevant law enforcement agencies entered into under subsection (j) of this section.

(2) The Department of Justice shall keep the Department well informed of the case status and all major decisions, including the disposition of criminal charges and the specifics of any sentencing order rendered.

(j) The Department, the Office of the Attorney General, and other law enforcement agencies shall develop memoranda of understanding under this subchapter which provide for timely notification, co-investigation, referral of cases, including automatic referral in certain cases, and ongoing coordination in order to keep each other apprised of the status of their respective investigations. The Memoranda of Understanding may be amended as needed.

(k) If the Department suspects or discovers information indicating the commission of violations of standards of professional conduct by facilities licensed under this chapter or by staff employed by such facilities, the Department shall immediately contact the Office of the Attorney General and the relevant professional licensing board.

(l) The Department and the Attorney General's Office shall cooperate with law enforcement agencies to develop training programs to increase the effectiveness of Department personnel, Attorney General's Office personnel, and law enforcement officers in investigating suspected cases of abuse, neglect, mistreatment, or financial exploitation.

(m) In the event that a criminal prosecution for abuse, neglect, mistreatment, or financial exploitation is initiated by the Attorney General's Office based on a report under this subchapter, and incarceration of the individual who is the subject of the report is ordered by the Court, the Attorney General's Office shall keep the Department informed of actions taken by the Court which result in the release of any such individual, provided that the Attorney General's Office is represented at such a hearing.

(n) In the event that a criminal prosecution for abuse, neglect, mistreatment, or financial exploitation is initiated by the Attorney General's Office against a person employed by or associated with a facility or organization required to be licensed or whose staff are required to be licensed under Delaware law, the Attorney General shall notify the Department within 48 hours and the Department shall then notify the individual's employer as follows:

(1) When such individual is charged with having committed at least one felony offense involving an allegation of abuse, neglect, mistreatment, or financial exploitation.

(2) Upon an adjudication of guilt of such person for any misdemeanor or violation, when such offense involved abuse, neglect, mistreatment, or financial exploitation.

Section 36. Amend § 1135, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1135. Immunities and other protections.

(a) ~~No~~ A person making any oral or written report ~~pursuant to~~ under this subchapter ~~shall be~~ is not liable in any civil or criminal action by reason of such report where such report was made in good faith or under the reasonable belief that such abuse, financial exploitation, ~~mistreatment~~ mistreatment, or neglect has taken place.

(b) ~~No facility shall~~ A facility may not discharge, or in any manner discriminate or retaliate against any person, by any means whatsoever, who in good faith makes or causes to be made, a report under this subchapter, or who testifies or who is about to testify in any proceeding concerning abuse, financial exploitation, ~~mistreatment~~ mistreatment, or neglect of patients or residents ~~in said of a~~ facility.

(c) Any facility which discharges, ~~discriminates~~ discriminates, or retaliates against a person because the person has reported, ~~testified~~ testified, or is about to testify concerning abuse, financial exploitation, ~~mistreatment~~ mistreatment, or neglect of patients or residents ~~shall be~~ is liable to such person for treble damages, ~~costs~~ costs, and attorney fees. ~~Where~~ If a facility discharges, ~~demotes~~ demotes, or retaliates by any other ~~means~~ means against a person after the person made a report, testified, or was subpoenaed to testify as a result of a report authorized under

this subchapter, there ~~shall be~~ is a rebuttable presumption that such facility discharged, ~~demoted~~ demoted, or retaliated against such person as a result of such report or testimony.

(d) This section ~~shall~~ does not apply to any person who has engaged in the abuse, financial exploitation, ~~mistreatment~~ mistreatment, or neglect of a patient or resident.

Section 37. Amend § 1136, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1136. Violations.

(a) Any ~~person,~~ person who knowingly or recklessly abuses, ~~mistreats~~ mistreats, or neglects a patient or resident of a facility ~~shall be~~ is guilty of a class A misdemeanor.

~~Where abuse results in~~ (1) If the abuse involves sexual contact such person ~~shall be~~ is guilty of a class G felony. ~~Where~~

(2) If the abuse, mistreatment ~~mistreatment,~~ or neglect results in serious physical injury, sexual ~~penetration~~ penetration, or sexual intercourse, such person ~~shall be~~ is guilty of a class C felony. ~~Where~~

(3) If the abuse, mistreatment ~~mistreatment,~~ or neglect results in death, then the person ~~shall be~~ is guilty of a class A felony.

(b) Any person who knowingly causes medication diversion of a ~~patient,~~ patient or resident, ~~shall be~~ is guilty ~~of a~~ of the following:

(1) A class G felony and guilty of a felony.

(2) A class F felony, if committed by a health-care professional.

(c) Any person who knowingly ~~exploits~~ commits financial exploitation of a patient's or resident's resources ~~shall be~~ is guilty of a the following:

(1) A class A misdemeanor ~~where~~ if the value of the resources is less than \$1,000 ~~and shall be~~ guilty of a \$1,000.

(2) A class G felony ~~where~~ if the value of the resources is \$1,000 or more.

(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~~ mistreated, neglected, or financially exploited and fails to promptly take corrective action ~~shall be~~ is guilty of a class A misdemeanor.

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

Section 38. Amend § 1138, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1138. Suspension or revocation of license for violation by facility.

Upon a finding that abuse, ~~mistreatment~~ mistreatment, financial exploitation, or neglect has occurred in a facility, ~~the Department or the Attorney General shall notify the appropriate licensing board and, if such facility receives public funding, the appropriate state or federal agency. If, after a hearing,~~ if it is determined that a member of the board of directors or a high managerial agent knew that patients or residents were abused, ~~mistreated~~

~~mistreated, financially exploited,~~ or neglected and failed to promptly take corrective action, the ~~appropriate board shall suspend or revoke such~~ Department must suspend or revoke the facility's license.

Section 39. Amend § 1139, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1139. Treatment by spiritual means.

Nothing in this subchapter ~~shall may~~ be construed to mean that a patient or resident is abused, ~~mistreated~~ mistreated, or neglected for the sole reason the patient or resident relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, nor ~~shall may~~ anything in this subchapter be construed to authorize or require any medical care or treatment over the implied or express objection of said patient or resident.

Section 40. Amend Subchapter IV, Chapter 11, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

Subchapter IV. Criminal Background Checks; Mandatory Drug Screening; Long Term Care Facilities; Nursing Home Compliance with Title XIX of the Social Security Act.

Section 41. Amend§ 1141, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

§ 1141. Criminal background checks.

(a) Purpose. — The purpose of the criminal background check and drug screening requirements of this section and § 1142 of this title is the protection of the safety and well-being of residents of ~~nursing facilities and similar~~ long term care facilities licensed pursuant to this chapter. These sections shall be construed broadly to accomplish this purpose.

(b) Definitions. — As used in this subchapter:

(1) "Applicant" means any of the following:

- a. A person seeking employment in a ~~facility, as defined below;~~ facility.
- b. A current employee of a facility who seeks a promotion in the ~~facility;~~ facility.
- c. A self-employed person or a person employed by an agency for work in a ~~facility;~~ facility.
- d. A current employee of a facility or a person as defined in paragraph (b)(1)c. of this section ~~above~~ who the Department of ~~Health and Social Services~~ has a reasonable basis to suspect has been arrested for a disqualifying crime since becoming employed or commencing ~~work;~~ work.
- e. A former employee who consents prior to leaving employment to periodic review of his or her criminal background for a fixed time period.

(2) "Background Check Center (BCC)" means the electronic system which combines the data streams from various sources within and outside the State in order to assist an employer in determining the suitability of a person for employment in a ~~nursing facility or similar facility~~ long term care facility.

(3) "Criminal history" means a report from the Department of ~~Health and Social Services~~ regarding its review of the applicant's entire federal criminal history from the Federal Bureau of

Investigation, ~~pursuant to~~ under Public Law 92-544 as amended (28 U.S.C. ~~§ 534)~~ § 534), and ~~his or her~~ the applicant's Delaware record from the State Bureau of Identification.

(4) ~~"Department" means the Department of Health and Social Services (DHSS).~~

(5) "Facility" means any facility licensed ~~pursuant to this chapter, including but not limited to~~ nursing facilities (commonly referred to as nursing homes), assisted living facilities, intermediate care facilities for persons with intellectual disability; neighborhood group homes, family care homes, rest residential homes, intensive behavioral support and educational residences; retirement homes and rehabilitation homes with such terms to have such meaning as set forth in this title or, if not defined therein, as such terms are commonly used. under Subchapter I of this chapter.

(6) ~~"Grandfathered employee" means an employee of a facility who was not fingerprinted pursuant to this statute because the employment commenced before the effective date of the statute (March 31, 1999), and no requirement for fingerprinting has since applied (see paragraph (b)(1) of this section above).~~

(7) "SBI" means the State Bureau of Identification.

(c) ~~Ne~~ An employer may not employ an applicant for work in a facility before obtaining a criminal history. The criminal history of any person not employed directly by the facility must be provided to the facility upon the person's commencement of work.

(d) ~~Conditional hire.~~— The requirements of subsection (c) of this section may be suspended for 60 days if the employer wishes to employ the applicant on a conditional basis.

(1) Before an employer may offer conditional employment, the employer must receive verification that the applicant has been fingerprinted by the SBI for purposes of the criminal history. ~~Ne~~

(2) The Department may not issue a criminal history ~~will be issued~~ if the applicant fails to provide information to ~~DHSS~~ the Department regarding the status or disposition of an arrest within 45 days from the date of notice from ~~DHSS~~ the Department of an open criminal charge. ~~DHSS~~ The Department may extend the time limits for good cause shown.

(e) ~~Ne~~ An employer is ~~permitted to~~ may not employ or continue to employ ~~a person~~ an individual with a conviction deemed disqualifying by ~~DHSS's~~ the Department's regulations.

(f) Any employer who employs an applicant and fails to secure a criminal history ~~shall be~~ is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation. An employer is also subject to this penalty if that employer conditionally employs an applicant before receiving verification that the applicant has been fingerprinted for purposes of the criminal history.

(g) The criminal history provided to the employer is strictly confidential. It may be used solely to determine the suitability of an applicant for employment or continued employment in a facility. It must be stored in a manner that maintains its confidentiality.

(h) ~~No~~ An applicant is ~~permitted to~~ may not be employed in a facility, other than conditionally ~~pursuant to~~ under subsection (d) of this ~~section above;~~ section, until the applicant's employer has secured the applicant's criminal history.

(i) Before an applicant is permitted to be employed in a facility, the applicant must, upon request, do all of the following:

(1) Provide accurate information sufficient to secure a criminal ~~history;~~ history.

(2) Execute a full release to enable the employer to secure a criminal history and to update the criminal history while ~~employed;~~ employed.

(3) Execute a full release giving the employer permission to provide the criminal history to the facility where the work is to be performed if the employer is other than the facility.

(j) An applicant who fails to comply with subsection (i) of this section is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

~~(k) All grandfathered employees must be fingerprinted by the SBI within 120 days from the date of BCC implementation. SBI:~~

~~(1) Shall use the fingerprints to establish the grandfathered employee's identity and to assign an SBI identification number for the sole purpose of enabling the person's criminal record to be monitored for new arrests while the grandfathered employee continues to work at a nursing facility or similar facility;~~

~~(2) Shall not secure a state or federal criminal history on the grandfathered employee unless the grandfathered employee is also an applicant as defined in subsection (b) of this section above;~~

~~(3) Shall comply with § 1911 of Title 11.~~

~~(4) No employer is permitted to continue to employ a grandfathered employee who has not been fingerprinted within 120 days from the date of BCC implementation and assigned an SBI number.~~

(m) ~~DHSS~~ The Department shall promulgate regulations regarding all of the following:

(1) The criteria it uses to determine unsuitability for ~~employment;~~ employment.

(2) The policies and procedures for preparing the criminal history which govern the frequency of criminal record review and ~~updating;~~ updating.

(3) The frequency with which fingerprints must be ~~obtained;~~ obtained.

(4) The information that ~~DHSS~~ the Department provides in the criminal history about disqualifying and nondisqualifying criminal ~~convictions;~~ convictions.

(5) The methods for notifying applicants and employers of the results of ~~DHSS's~~ the Department's review, and for providing applicants with the criminal ~~history;~~ history.

(6) The administrative review process available to a person desiring to contest adverse ~~information;~~ information.

(7) Other provisions required to achieve the purpose of this section.

Section 42. Amend § 1142, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1142. Mandatory drug screening.

(a) ~~No~~An employer is ~~permitted to~~ may not employ an ~~applicant, as defined in § 1141 of this title,~~ applicant without first obtaining the results of that applicant's mandatory drug screening.

(b) All ~~applicants, as defined in § 1141 of this title,~~ applicants must submit to mandatory drug screening, as specified by regulations promulgated by the ~~Department of Health and Social Services (DHSS).~~Department.

(c) ~~DHSS~~The Department shall promulgate regulations, regarding the pre-employment testing of all applicants, for use of all of the following illegal drugs:

(1) ~~Marijuana/cannabis;~~ Marijuana/cannabis.

(2) ~~Cocaine;~~ Cocaine.

(3) ~~Opiates;~~ Opiates.

(4) ~~Phencyclidine ("PCP");~~ Phencyclidine ("PCP").

(5) ~~Amphetamines;~~ Amphetamines.

(6) Any other illegal drug specified by ~~DHSS, pursuant to~~ the Department under regulations promulgated ~~pursuant to~~ under this section.

(d) An agency, including ~~but not limited to~~ temporary agencies, must provide the drug screening results it receives regarding an applicant referred to work in a ~~facility, as defined in § 1141 of this title,~~ facility to that particular facility so that the facility is better able to make an informed decision whether to accept the referral.

(e) The employer must provide confirmation of the drug screen in the manner prescribed by ~~DHSS's~~ the Department's regulations.

(f) Any employer who fails to comply with the requirements of this section is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

Section 43. Amend § 1143, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1143. Standards of care for nursing homes providing care to Medicaid recipients.

(f) The Secretary of the Department ~~of Health and Social Services~~ or the Secretary's designee shall have jurisdiction to hear any matter arising under subsections (a) and (e) of this section and shall have the power to impose any remedy listed under subsections (b), ~~(c),~~ (c), and (d) of this section. Any party who is not satisfied with a decision of the Secretary or the Secretary's designee may appeal to the Superior Court for the county in which the facility is located. Such appeal must be filed within 30 days from the date of the Secretary's or the Secretary's designee's decision and ~~shall~~ must be on the record made before the Secretary or the Secretary's designee.

Section 44. Amend Subchapter V, Chapter 11, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

Subchapter V. ~~Home Health Agencies and Private Residences~~ —Criminal Background Checks; Drug Testing – Home Care Agencies.

Section 45. Amend § 1145, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

§ 1145. Criminal background checks.

(a) Purpose. —The purpose of the criminal background check and drug screening requirements of this section and § 1146 of this title is the protection of the safety and well-being of residents of this State who use the services of home health agencies, hospice agencies, or personal assistance services agencies licensed ~~pursuant to~~ under this title or who employ a person to provide care in a private ~~residence, as defined below.~~ residence. These sections ~~shall~~ must be construed broadly to accomplish this purpose.

(b) Definitions. —As used in this subchapter:

(1) "Applicant" means any of the following:

- a. A person seeking employment with an ~~employer, as defined below;~~ employer.
- b. A current employee who seeks a promotion from an ~~employer, as defined below;~~ employer.
- c. A self-employed person seeking employment in a private residence for the purpose of providing services to protect the health, ~~safety~~ safety, and well-being of an individual who requires home health care service as defined in ~~§ 122(3)e.~~ § 122(3)m, § 122(3)o., or § 122(3)x. of this title.

d. A current employee of an employer ~~as defined below who DHSS~~ who the Department has a reasonable basis to suspect has been arrested for a disqualifying crime since becoming employed.

e. A former employee who consents prior to leaving employment to periodic review of ~~his or her~~ the former employee's criminal background for a fixed time period.

( ) "Authorized representative" means an individual who has the highest priority to act for the patient under law, and who has the authority to make decisions with respect to the patient's health care preferences. The patient's authorized representative can be one of the following:

a. An individual designated by a patient under an advance health-care directive; an agent under a medical durable power of attorney for health-care decisions.

b. A guardian of the person appointed under Chapter 39 or 39A of Title 12, in accordance with the authority granted by the court; a surrogate appointed under Chapter 25 of this title.

c. An individual who is otherwise authorized under applicable law to make health care decisions on the patient's behalf, if the patient lacks decision-making capacity.

(2) "~~Criminal history~~" means ~~a report from the Department of Health and Social Services regarding its review of the applicant's entire federal criminal history from the Federal Bureau of Investigation, pursuant to Public Law 92-544 as amended (28 U.S.C. § 534) and his or her Delaware record from the State Bureau of Identification.~~

(3) "Background Check Center (BCC)" means the electronic system which combines the data streams from various sources within and outside the State in order to assist an employer in determining the suitability of a person for employment in a ~~nursing facility or similar facility,~~ or home care agency or private residence.

( ) "Criminal history" means a report from the Department regarding its review of the applicant's entire federal criminal history from the Federal Bureau of Investigation, under Public Law 92-544 as amended (28 U.S.C. § 534) and the applicant's Delaware record from the State Bureau of Identification.

(4) "Department" means the Department of Health and Social ~~Services (DHSS)~~.Services.

(5) "Employer" ~~means~~ means a home care ~~agency as defined in this section~~; agency; a management company that contracts to provide services on behalf of a home care agency; or other business ~~entity (including but not limited to a temporary employment agency)~~ entity, including a temporary employment agency, that contracts to provide services on behalf of a home care agency.

~~(6) "Grandfathered employee" means an employee of an Employer who was not fingerprinted pursuant to this statute because the employment commenced before July 1, 2001, and no requirement for fingerprinting has since applied. See paragraph (b)(1) of this section above.~~

(7) "Home care agency" ~~includes~~ means all programs or agencies licensed ~~pursuant to § 122(3)(m), or (3)(o), or (3)(x) under § 122(3)m., § 122(3)o., or § 122(3)x.~~ of this title that provide services to individuals in their private ~~residence, as defined below.~~ residence.

(8) "Private residence" means the domicile of the individual in need of care, either personally owned by that individual or considered the place of residence of that individual. ~~A private residence does not include those healthcare facilities licensed by the Department of Health and Social Services under Chapter 11 of this title.~~

(9) "SBI" means the State Bureau of Identification.

(c) ~~No~~ An employer is permitted to may not employ an applicant for work in a private residence before ~~getting~~ obtaining a criminal history.

(1) Upon ~~request~~ request, the criminal history must be provided to the person for whom the services are to be provided, or to the person's ~~guardian, agent for health care decisions, or surrogate~~ authorized representative upon the applicant's commencement of work.

(d) A private individual seeking to hire or employ a self-employed individual to provide services in a private residence may secure access to the BCC from ~~DHSS.~~ the Department.

(1) The BCC user fee shall be set by regulation, but may not exceed that charged to an employer.

(2) The cost of the criminal background check from SBI ~~and/or~~ or drug screening ~~shall~~ must be borne by the person making the request.

(e) ~~Conditional hire.~~ — The requirements of subsection (c) of this section may be suspended for 60 days from the date of hire if the employer wishes to employ the applicant on a conditional basis.

(1) Before an employer may offer conditional employment, the employer must receive verification that the applicant has been fingerprinted by the SBI for purposes of the criminal history. ~~No~~

(2) The Department may not issue a criminal history ~~will be issued~~ if the applicant fails to provide information to ~~DHSS~~ the Department regarding the status or disposition of an arrest within 45 days from

the date of notice from ~~DHSS~~ the Department of an open criminal charge. ~~DHSS~~ The Department may extend the time limits for good cause shown. ~~No~~

(f) ~~employer~~ An employer, other than a private ~~person~~ person, ~~is permitted to~~ may not employ or continue to employ an individual with a conviction deemed disqualifying by ~~DHSS~~ the Department's regulations.

(g) Any ~~employer~~ employer, other than a private ~~person~~ person, who employs an applicant and fails to secure a criminal history ~~shall be~~ is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation. An employer is also subject to this penalty if that employer conditionally employs an applicant before receiving verification that the applicant has been fingerprinted for purposes of the criminal history.

(h) The criminal history provided to the employer is strictly confidential. It may be used solely to determine the suitability of an applicant for employment or continued employment ~~in a private residence~~.

(i) No applicant is permitted to be employed by an employer other than conditionally ~~pursuant to~~ under subsection (e) of this ~~section above~~, section until the applicant's employer has secured the applicant's criminal history.

(j) Before an applicant ~~is permitted to~~ may be employed by an employer, the applicant must, upon ~~request~~: request, do any of the following:

(1) Provide accurate information sufficient to secure a criminal ~~history~~; history.

(2) Execute a full release to enable the employer to secure a criminal history and to update the criminal history while ~~employed~~; employed.

(3) Execute a full release giving the employer permission to provide the criminal history to the person for whom the services are to be provided, or to the person's ~~guardian, agent for health care decisions, or surrogate~~; authorized representative.

(k) An applicant who fails to comply with subsection (j) of this section is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

~~(l) All grandfathered employees must be fingerprinted by SBI and be registered in the BCC within 120 days from the date of BCC implementation. SBI:~~

~~(1) Shall use the fingerprints to establish the grandfathered employee's identity and to assign an SBI identification number for the sole purpose of enabling the person's criminal record to be monitored for new arrests while employed in a private residence.~~

~~(2) Shall not secure a state or federal criminal history on the grandfathered employee, unless the grandfathered employee is also an applicant as defined in subsection (b) of this section above;~~

~~(3) Shall comply with § 1911 of Title 11.~~

~~(m) No employer is permitted to continue to employ a grandfathered employee who has not been fingerprinted and assigned an SBI number within 120 days from the date of BCC implementation.~~

(n) ~~DHSS~~ The Department shall promulgate regulations regarding all of the following:

(1) The criteria it uses to determine unsuitability for ~~employment~~; employment.

(2) The policies and procedures for preparing the criminal history which govern the frequency of criminal record review and ~~updating~~; updating.

(3) The frequency with which fingerprints must be ~~obtained~~; obtained.

(4) The information that ~~DHSS~~ the Department provides in the criminal history about disqualifying and ~~nondisqualifying criminal convictions~~; non-disqualifying criminal convictions.

(5) The methods for notifying applicants and employers of the results of ~~DHSS's~~ the Department's review, and for providing applicants with the criminal ~~history~~; history.

(6) The administrative review process available to a person desiring to contest adverse ~~information~~; information.

(7) Other provisions required to achieve the purpose of this section.

Section 46. Amend § 1146, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

§ 1146. Mandatory drug screening.

(a) ~~Definitions.~~—

(1) ~~"Applicant" is defined in § 1145 of this title.~~

(2) ~~"Department" means the Department of Health and Social Services (DHSS).~~

(3) ~~"Employer" means: a home care agency as defined in this section; a management company that contracts to provide services on behalf of a home care agency; or other business entity (including but not limited to a temporary employment agency) that contracts to provide services on behalf of a home care agency.~~

(4) ~~"Home care agency" includes all programs or agencies licensed pursuant to § 122(3)(m), or (3)(o), or (3)(x) of this title that provide services to individuals in their private residence, as defined below.~~

(5) ~~"Private residence" means the domicile of the individual in need of care, either personally owned by that individual or considered the place of residence of that individual. A private residence does not include those healthcare facilities licensed by the Department of Health and Social Services under Chapter 11 of this title.~~

(b) ~~No~~ An employer is ~~is permitted to~~ may not employ any applicant without first obtaining the results of that applicant's mandatory drug screening.

(c) All applicants, with the exception of a self-employed individual seeking employment from a private person to provide services in a private residence, must submit to mandatory drug screening, as specified by regulations promulgated by ~~DHSS~~ the Department. The requirement for drug screening for self-employed persons seeking employment in a private residence is left to the discretion of the ~~employer~~; individual in need of care in the private residence.

(d) ~~DHSS~~ The Department shall promulgate regulations regarding the pre-employment screening of all applicants for use of the following illegal drugs:

(1) ~~Marijuana/cannabis~~; Marijuana/cannabis.

(2) ~~Cocaine~~; Cocaine.

(3) ~~Opiates~~; Opiates.

(4) ~~Phencyclidine ("PCP")~~; Phencyclidine ("PCP").

(5) ~~Amphetamines~~; Amphetamines.

(6) Any other illegal drug specified by ~~DHSS, pursuant to the~~ Department under regulations promulgated ~~pursuant to~~ under this section.

(e) ~~No~~An employer may not employ an applicant for work in a private residence before getting the results of that applicant's drug screening. Upon request, the results of the drug screen must be provided upon the applicant's commencement of work to the person for whom the services are to be provided, or to the person's ~~guardian, agent for health care decisions, or surrogate~~ authorized representative.

(f) The employer must provide confirmation of the drug screen in the manner prescribed by ~~DHSS's~~ the Department's regulations.

(g) Any employer who fails to comply with the requirements of this section ~~shall be~~ is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

Section 47. Amend § 1151, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1151. Definitions.

As used in this subchapter:

(1) "Agency" means any private or public agency operating in the State, one of whose purposes is the funding, provision or regulation of health care services.

(2) "Long-term care facility" means any ~~facility, institution, foster home, group living arrangement, adult care home or any other facility which is required to be licensed under this chapter.~~ facility as defined in § 1102 of this chapter.

(3) "Long-Term Care Ombudsperson" or "Ombudsperson" means the person designated under § ~~307(a)(12) of the Older Americans Act Amendments of 1987 (42 U.S.C. § 3027(a)(12))~~, Act, as amended (42 U.S.C. § 3001 et. seq.) to perform the mandated functions of the Office of the Long-Term Care Ombudsperson in the State, or the Ombudsperson's designee.

(4) "Record" means any medical, ~~social~~ social, or financial information pertaining to a resident of a long-term care facility which is maintained by any agency regulated under this chapter or Chapter 10 of this title; provided, however, that "record" ~~shall~~ does not include criminal investigative files.

Section 48. Amend § 1152, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1152. Purpose and duties.

The purpose of the Ombudsperson is to provide a program to advocate for and promote the adequacy of care received and the quality of life experienced by residents of long-term care facilities in Delaware. The Ombudsperson shall have the power to:

(7) Perform other duties as mandated by the Older Americans Act of 1965, as amended (42 U.S.C. § 3001 et. seq.).

Section 49. Amend § 1180, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

§ 1180. Definitions.

As used in this subchapter:

~~(1) The terms "CMS," "DHSS," "managed care company under contract to the Medicaid agency," "Medicaid," "Medicaid resident day," "nursing facility," "nursing facility services," have the meaning given these terms in Chapter 65 of Title 30.~~

( ) "CMS" means as defined in § 6501 of Title 30.

( ) "Managed care company under contract to the Medicaid agency" means an entity as defined in § 6501 of Title 30.

( ) "Medicaid" means as defined in § 6501 of Title 30.

(2) "Medicaid enrolled nursing facility" means a nursing facility enrolled in the Medicaid program ~~and/or or~~ enrolled with a managed care company under contract to the Medicaid agency for the purpose of providing nursing facility services to Medicaid eligible patients, ~~but shall exclude residents, but excludes~~ the Delaware Veterans Home and any state, ~~federal~~ federal, or other public government-owned facilities and any facilities that exclusively serve children.

( ) "Medicaid resident day" means as defined in § 6501 of Title 30.

(3) "Medicaid share of the quality assessment" means for each nursing facility, the assessment cost applicable to Medicaid residents.

( ) "Nursing facility" means as defined in § 6501 of Title 30.

( ) "Nursing facility services" means as defined in § 6501 of Title 30.

Section 50. Amend § 1181, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1181 Nursing Facility Quality Assessment Fund — Establishment; funding.

(a) There shall be established in the State Treasury and in the accounting system of the State a special fund to be known as the Nursing Facility Quality Assessment Fund (the "Fund").

(b) ~~The~~ All of the following revenue ~~shall~~ must be deposited into the Fund:

(1) As specified in § 6502(e)(1) of Title 30, 90% of the quality assessment ~~collected;~~ collected.

(2) On the last day of each month, the State Treasurer shall credit the Fund with interest on the average balance in the Fund for the preceding month. The interest to be paid to the Fund ~~shall~~ must be that proportionate share, during such preceding month, of interest to the State as the Fund's and the State's average balance is to the total State's average balance.

Section 51. Amend § 1182, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1182. Use of Nursing Facility Quality Assessment Fund; payments.

(a) Funds deposited into the Nursing Facility Quality Assessment Fund ~~shall must~~ be used by ~~DHSS- the Department~~ exclusively to secure federal matching funds available through the state Medicaid plan and any applicable waivers, and together with the Federal funds ~~shall must~~ be used exclusively by ~~DHSS- the Department~~ including any managed care companies under contract to the Medicaid agency to do all of the following:

(1) Provide for per diem rate adjustments in accordance with § 1183 of this title to Medicaid enrolled nursing ~~facilities;~~ facilities.

(2) ~~To reimburse-~~ Reimburse the Medicaid share of the quality assessment in accordance with § 1183 of this ~~title;~~ title.

(3) ~~To reimburse-~~ Reimburse any funds advanced from the ~~DHSS- the Department~~ Medicaid budget appropriation that were used to make the payments referred to under paragraphs (a)(1) and (2) of this section.

(b) If the quality assessment imposed by § 6502 of Title 30 and the payments referred to by paragraphs (a)(1) and (2) of this section are repealed, any funds remaining in the Nursing Facility Quality Assessment Fund ~~shall; must:~~

(1) First reimburse ~~DHSS- the Department~~ if the total of all quality assessment payments received from nursing facilities are equal to or less than the state share of all of the payments referred to by paragraphs (a)(1) and (2) of this section made by ~~DHSS- the Department~~ including managed care companies under contract to the Medicaid agency to nursing ~~facilities;~~ and facilities.

(2) If the total of all quality assessments received is greater than the state share of the payments issued referred to by paragraphs (a)(1) and (2) of this section, the remaining funds ~~will must~~ be distributed back to the nursing facilities generally and proportionately on the same basis as the assessments were collected in the last calendar quarter.

Section 52. Amend Chapter 11, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

Subchapter IX. Criminal Background Checks; Drug Testing - PPECC

§ 1190 Criminal background checks.

(a) The purpose of the criminal background check and drug screening requirements of this section and § 1191 of this title is the protection of the safety and well-being of residents of this State who use the services of prescribed pediatric extended care centers licensed under this title or who employ a person to provide care in the facility. These sections must be construed broadly to accomplish this purpose.

(b) Definitions. As used in this subchapter:

(1) "Applicant" means any of the following:

a. An individual seeking employment with an employer.

b. A current employee who seeks a promotion from an employer.

c. A self-employed individual or contractor seeking employment in a prescribed pediatric extended care center.

d. A current employee of an employer who the Department has a reasonable basis to suspect has been arrested for a disqualifying crime since becoming employed.

e. A former employee who consents prior to leaving employment to periodic review of his or her criminal background for a fixed time period.

(2) "Background Check Center" ("BCC") means the electronic system which combines the data streams from various sources within and outside the State in order to assist an employer in determining the suitability of an individual for employment in a prescribed pediatric extended care center.

(3) "Criminal history" means a report from the Department of Health and Social Services regarding its review of the applicant's entire federal criminal history from the Federal Bureau of Investigation, under Public Law 92-544 as amended (28 U.S.C. § 534) and the applicant's Delaware record from the State Bureau of Identification.

(4) "Employer" means a prescribed pediatric extended care center.

(5) "Prescribed pediatric extended care center" means a facility licensed under § 122(3)q. of Title 16.

(6) "SBI" means the State Bureau of Identification.

(c) An employer may not employ an applicant for work in a prescribed pediatric extended care center before obtaining a criminal history. The criminal history of any individual not employed directly by the facility must be provided to the facility upon the individual's commencement of work.

(d) The requirements of subsection (c) of this section may be suspended for 60 days from the date of hire if the employer wishes to employ the applicant on a conditional basis.

(1) Before an employer may offer conditional employment, the employer must receive verification that the applicant has been fingerprinted by the SBI for purposes of the criminal history.

(2) The Department may not issue a criminal history if the applicant fails to provide information to the Department regarding the status or disposition of an arrest within 45 days from the date of notice from the Department of an open criminal charge. The Department may extend the time limits for good cause shown.

(e) An employer may not employ or continue to employ an individual with a conviction deemed disqualifying by Department regulations.

(f) Any employer who employs an applicant and fails to secure a criminal history is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation. An employer is also subject to this penalty if that employer conditionally employs an applicant before receiving verification that the applicant has been fingerprinted for purposes of the criminal history.

(g) The criminal history provided to the employer is strictly confidential. It may be used solely to determine the suitability of an applicant for employment or continued employment. It must be stored in a manner that maintains its confidentiality.

(h) An applicant may not be employed by an employer other than conditionally pursuant to subsection (d) of this section until the applicant's employer has secured the applicant's criminal history.

(i) Before an applicant is permitted to be employed in a prescribed pediatric extended care center, the applicant must, upon request, do any of the following:

(1) Provide accurate information sufficient to secure a criminal history.

(2) Execute a full release to enable the employer to secure a criminal history and to update the criminal history while employed.

(3) Execute a full release giving the employer permission to provide the criminal history to the facility where the work is to be performed if the employer is other than the facility.

(j) An applicant who fails to comply with subsection (i) of this section is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(k) The Department shall promulgate regulations regarding all of the following:

(1) The criteria it uses to determine unsuitability for employment.

(2) The policies and procedures for preparing the criminal history which govern the frequency of criminal record review and updating.

(3) The frequency with which fingerprints must be obtained.

(4) The information that the Department provides in the criminal history about disqualifying and non-disqualifying criminal convictions.

(5) The methods for notifying applicants and employers of the results of the Department's review, and for providing applicants with the criminal history.

(6) The administrative review process available to a person desiring to contest adverse information.

(7) Other provisions required to achieve the purpose of this section.

§ 1191 Mandatory drug screening.

(a) An employer may not employ any applicant without first obtaining the results of that applicant's mandatory drug screening.

(b) All applicants must submit to mandatory drug screening, as specified by regulations promulgated by the Department.

(c) The Department shall promulgate regulations regarding the pre-employment screening of all applicants for use of all of the following illegal drugs:

(1) Marijuana/cannabis.

(2) Cocaine.

(3) Opiates.

(4) Phencyclidine ("PCP").

(5) Amphetamines.

(6) Any other illegal drug specified by the Department, under regulations promulgated under this section.

(f) The employer must provide confirmation of the drug screen in the manner prescribed by the Department's regulations.

(g) Any employer who fails to comply with the requirements of this section is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

Approved February 14, 2018