

CHAPTER 387
FORMERLY
HOUSE BILL NO. 41
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE CREATING A
COMMUNITY MENTAL HEALTH TREATMENT ACT.

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

Section 1. Amend Chapter 51, Title 16, Delaware Code by adding the following new subchapter:

“Subchapter VIII. Community Mental Health Treatment Act.

§ 5191. Definitions.

As used in this Chapter:

(1) ‘Department’ means the Department of Health and Social Services except that Department means the Department of Services for Children, Youth and Their Families in the context of a treatment facility serving minors.

(2) ‘Facility’ or ‘treatment facility’ means an entity, other than a licensed hospital, that provides care, supportive lodging or treatment to individuals with mental illness. This Section includes mental health providers serving individuals in both inpatient and outpatient settings, day treatment programs, and supervised apartments. ‘Facility’ does not include the following:

- a. a hospital or residential center as defined in Section 5161(b) of this Title;
- b. shelters or leased premises, apart from supervised apartments, solely providing housing without mental health provider services;
- c. outpatient practice offices of licensed independent practitioners, including, but not limited to, physicians, psychologists, social workers and counselors.

(3) ‘Mental health provider’ means any professional who provides assessment, care, treatment, counseling, medication, case management, or therapeutic services to an individual with mental illness, including but not limited to psychiatrists, psychologists, psychiatric nurses and social workers.

(4) ‘Mental illness’ means a mental disorder as defined in the most recent edition of the American Psychiatric Association’s ‘Diagnostic and Statistical Manual of Mental Disorders’.

(5) ‘Patient’ means any individual receiving involuntary or voluntary care, supportive lodging, treatment or other mental health provider services from a facility.

(6) ‘Patient representative’ means an individual or entity authorized to act on the patient’s behalf by operation of law or express appointment by the patient.

(7) ‘Protection and Advocacy Agency’ means 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. 794(e)].

§ 5192. Community Mental Health Patients’ Rights.

It is the intent of the General Assembly and purpose of this section to promote the interests and well being of residential and nonresidential mental health patients of treatment facilities. It is declared to be the public policy of this State that the interests of the patient shall be protected by a declaration of a patient’s rights and by requiring that all facilities treat their patients in accordance with the following minimum rights:

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

(2) Upon request at the time of admission, and at mutually agreeable intervals thereafter, the facility shall provide each patient or patient's representative a written statement of facility services and net charges not covered by insurance or public benefits programs for which patient payment is expected. Such statements shall be provided in a format and language comprehensible to the ordinary layperson.

(3) Each patient or patient's representative shall receive from the attending or resident physician or staff of the facility complete and current information concerning the patient's diagnosis, treatment and prognosis in terms and language the patient or representative can reasonably be expected to understand. The patient or patient's representative shall participate in the planning of the patient's medical treatment, including attendance at treatment plan meetings, shall be informed of the medical consequences of all medication and treatment alternatives, and shall give prior written informed consent to participation in any experimental research after a complete disclosure of the goals, possible effects on the patient and whether or not the patient can expect any benefits or alleviation of the patient's condition.

(4) Upon request, the facility shall provide the name, address and telephone number of the primary staff person or physician responsible for the patient's care.

(5) Each patient or patient's representative shall receive respect and privacy in the patient's own medical care program. Case discussion, consultation, examination and treatment shall be confidential and shall be conducted discreetly. In the patient or patient's representative's discretion, persons not directly involved or participating in the patient's care shall not be permitted to be present during such discussions, consultations, examinations or treatment except with the consent of the patient or patient's representative. Personal and medical records shall be treated confidentially and shall not be made public without the consent of the patient or patient's representative, except such records as are needed for a patient's transfer to another health care institution or as required by law or third party payment contract.

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

(7) Every patient or patient's representative shall receive from the administrator or staff of the facility a courteous, 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 patient's representative.

(8) Upon request, every patient or patient's representative shall be provided with information as to any relationship the facility has with other health care and related institutions and/or service providers, including, but not limited to, pharmacy and rehabilitation services, to the extent the patient is offered care and/or services from these related entities. Such information shall be provided in writing upon admission and thereafter when additional services are offered.

(9) Upon request, every patient shall receive reasonable continuity of care.

(10) Within residential treatment facilities, every patient or patient's representative may send and shall receive mail promptly, and shall have access at any reasonable hour to a telephone where the patient may speak privately, and shall have access to writing instruments, stationary and postage when applicable.

(11) Each patient has the right to manage personal financial affairs. If a facility determines that a patient lacks the capacity to exercise this right, and no patient representative can be identified as provided in §5193 of this subchapter, the facility shall consult the Department to assess available options, including enrollment in money management or bill payment programs. Nothing in this section shall preclude a facility from serving as a representative payee through designation of a public agency or written authorization by a patient or patient's representative.

(12) Every patient or patient's representative has the right, personally or through other persons or in combination with others, to exercise the patient's rights; to present grievances; to recommend changes in facility policies or services on behalf of the patient or others; to present complaints or petitions to the facility's staff or administrator, to the Department of Health and Social Services, and, if the patient is a minor

under the age of 18, to the Department of Services for Children, Youth and Their Families, or to other persons or groups without fear of reprisal, restraint, interference, coercion or discrimination.

(13) A patient or patient's representative shall not be required to perform services for the facility.

(14) Every patient or patient's representative shall have the right to inspect all records pertaining to that patient upon oral or written request. If a patient or patient's representative requests records to assist with preparation of any court hearing under this chapter, such records will be supplied on an expeditious basis.

(15) All patients shall be fully informed, in language they can understand, of their rights and all rules and regulations governing patient conduct and their responsibilities during the stay at the facility. Every patient shall be directed to a prominent place within the facility where a listing of the patient's rights is posted. The facility shall guarantee that a current list of patient rights is always posted in a highly visible and accessible place.

(16) Every patient shall have the right to receive information from agencies acting as client advocates, including the Protection and Advocacy Agency, and be afforded the opportunity to contact those agencies without reprisal.

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

(18) Every patient has the right to participate in an ongoing program of activities designed to meet, in accordance with personal assessments and plan of care, the patient's interests and physical, mental and psychosocial well being.

(19) Every patient shall have the right to participate in social, religious and community activities that do not interfere with the patient's treatment plan or the rights of other patients.

(20) Every patient eligible to vote under Delaware law shall be entitled to vote in primary and general elections. The facility shall offer affirmative assistance to enable patients to exercise voting rights, including assistance in accessing voter registration forms and applications for absentee ballots.

(21) Every patient shall have the right to request and receive the names and positions of staff members providing care to the patient.

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

(23) A patient's care and treatment shall be provided in a setting and under conditions which restrict the patient's personal liberty only to the extent required by the patient's treatment needs, applicable law and judicial orders.

(24) The rights described in this subchapter are in addition to, and not in derogation of, any other constitutional, statutory or regulatory rights. Nothing in this subchapter shall be construed to limit patient enforcement of rights through a complaint to an administrative agency or court of competent jurisdiction.

§ 5193. Devolution of Rights.

Consistent with the nature of each right in § 5192 of this subchapter, the entitlement may devolve to the patient representative. Authority to act on behalf of patients who are minors may be exercised by the minor's parent, guardian, or custodian. Authority to act on behalf of an adult patient may be exercised by a guardian acting within the scope of appointment or through an agent acting pursuant to a valid power of attorney, health care directive, or similar instrument. In the absence of such authorized representative, if the patient's physician determines that the patient is incapable of exercising rights under this subchapter due to mental or physical incapacity, authority to exercise such rights shall devolve to the patient's next of kin.

§ 5194. Reporting Requirements.

(a) Any employee of a facility or anyone who provides services to a patient of a facility on a regular or intermittent basis who has reasonable cause to believe that a patient in a facility has been abused,

mistreated, neglected or financially exploited shall immediately report such abuse, mistreatment, neglect or financial exploitation to the Department by oral and written communication. The written report shall be filed by the employee or service provider within 48 hours after the employee or service provider first gains knowledge of the abuse, mistreatment, neglect or financial exploitation.

(b) Any person required by subsection (a) of this Section to make an oral and a written report who fails to do so shall be liable for a civil penalty not to exceed \$1,000 per violation.

(c) In addition to those persons subject to subsection (a) of this Section, any other person may make such a report if such person has reasonable cause to believe that a patient of a facility has been abused, mistreated, neglected or financially exploited.

(d) No facility shall retaliate or discriminate against any patient or person facilitating submission of a report or cooperating with any investigation prompted by a report under this Section.

(e) Any correspondence or other written communication from a patient to the Department, the Attorney General's office, the Protection and Advocacy Agency and/or a law enforcement agency shall, if delivered to or received by a facility, be promptly forwarded, unopened, by the facility to the agency to which it is written. Any correspondence or other written communication from the Department, the Attorney General's office and/or a law enforcement agency to a patient shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to such patient. Failure to comply with this Section shall result in a civil penalty not to exceed \$1,000 per violation.

§5195. Protection and Advocacy Agency.

(a) The Protection and Advocacy Agency is authorized to complement the role of the Department in promoting the health, safety, and well being of patients under this subchapter through monitoring, investigation, and advocacy. In furtherance of this authority, the Protection and Advocacy Agency may engage in the following functions:

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

(2) access a facility; interview patients, residents, facility staff and agents; and inspect and copy records pertaining to a patient with valid consent or as otherwise authorized by Federal law.

(b) No facility shall retaliate or discriminate against any patient or person submitting a report to the Protection and Advocacy Agency or cooperating with the Agency's monitoring, investigation, or advocacy activities.

§ 5196. Enforcement of Rights.

This subchapter shall be enforceable by the Attorney General, the Protection and Advocacy Agency, and aggrieved patients and patient representatives. Without limitation, notwithstanding 10 Del. C. § 342, the Court of Chancery shall have jurisdiction over actions, including those requesting declaratory relief, to enforce or resolve disputes concerning the rights arising out of this subchapter.”.

Approved July 15, 2010