

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1102(7) (16 **Del.C.** §1102(7))  
16 **DE Admin. Code** 3201; 3225; 3230; 3301; 3305; 3310 & 3315

### PROPOSED

### PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Section 1102(7), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend policies to require facilities to cooperate fully with the state protection and advocacy agency.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, by Monday, April 4, 2011.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### SUMMARY OF PROPOSED CHANGES

The proposal amends policies regarding Long Term Care Residents Protection to require facilities to cooperate fully with the state protection and advocacy agency as required by the amendment to 16 **Del.C.** §1102 which added a paragraph (7).

The proposed changes affect the following policy sections:

- 3201 Skilled and Intermediate Care Nursing Facilities;
- 3225 Assisted Living Facilities (Formerly Regulation No. 63);
- 3230 Rest (Residential) Home Regulations;
- 3301 Group Home Facilities for Persons with AIDS (Formerly Regulation No. 62);
- 3305 Group Homes for Persons with Mental Illness;
- 3310 Neighborhood Homes for Persons with Developmental Disabilities; and
- 3315 Rest (Family) Care Homes

### Statutory Authority

16 **Del.C.** Ch. 11, Nursing Facilities and Similar Facilities

**Please Note: Only those sections of the regulations that are being amended are reproduced below. The complete regulation can be viewed in the Administrative Code.**

### 3201 Skilled and Intermediate Care Nursing Facilities

#### *(Break in Continuity of Sections)*

### 3.0 General Requirements

- 3.1 The term "nursing home" or "nursing facility" shall not be used as part of the name of any facility in this State unless it has been so licensed by the Division.
- 3.2 Each nursing facility shall develop written policies pertaining to the services provided.
- 3.3 A nursing facility shall not adopt any policy which conflicts with applicable statutes or regulations.
- 3.4 Inspections and monitoring by the Division shall be carried out in accordance with 16 **Delaware Code**, §1107.
- 3.5 Upon receipt of a report of any violation(s) of these regulations, the facility shall submit a written plan of action to correct cited deficiencies within 10 working days or such other time period as may be specified. The plan of action shall address corrective actions and include all measures and completion dates to prevent their recurrence as follows:
  - 3.5.1 How the corrective action will be accomplished for a resident(s) affected by the deficient practice;

- 3.5.2 How the facility will identify other residents having the potential to be affected by the same deficient practice;
- 3.5.3 What measures or systemic changes will be put in place to ensure that the deficient practice will not recur;
- 3.5.4 What program will be put into place to monitor the continued effectiveness of the corrective actions.
- 3.6 The Division shall be notified, in writing, upon any changes in the administrator, assistant administrator or director of nursing positions.
- 3.7 The nursing facility shall comply with 42 CFR 483.10, 483.12, 483.13, 483.15 and/or 16 **Delaware Code**, §1121 regarding the rights of residents. Those rights shall be made available in writing to residents, guardians, representatives or next of kin.
- 3.8 Each facility shall provide, in writing, the refund and prepayment policy at the time of admission, and in the case of residents admitted while awaiting approval of third-party payment, an exact statement of responsibility in the event of retroactive denial. The facility shall notify residents, in writing, at least 30 days prior to a rate increase.
- 3.9 A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract to provide for facility payment from the resident's income or resources. However, in doing so, the facility shall not require a third party to incur personal financial liability for the nursing facility expenses.
- 3.10 The nursing facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 **Del.C.** §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

### **3225 Assisted Living Facilities (Formerly Regulation No. 63)**

#### ***(Break in Continuity of Sections)***

## **5.0 General Requirements**

- 5.1 All written information provided by the assisted living facility including the written application process shall be accurate, precise, easily understood and readable by a resident, and in compliance with all applicable laws. If an applicant is rejected the facility shall provide clear reasons for the rejection in writing upon request.
- 5.2 All records maintained by the assisted living facility shall at all times be open to inspection and copying by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and regulations. Such records shall be made available in accordance with **16 Del.C. Ch. 11, Subchapter I.**, Licensing by the State.
- 5.3 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.
- 5.4 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.
- 5.5 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.
- 5.6 The assisted living facility shall arrange for emergency transportation and care.
- 5.7 Inspection summaries and compliance history information shall be posted by the facility in accordance with **16 Del.C. Ch. 11, Subchapter I.**, Licensing by the State.
- 5.8 An assisted living facility shall recognize the authority of a representative acting on the resident's behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority. The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.
- 5.9 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:
  - 5.9.1 Require care by a nurse that is more than intermittent or for more than a limited period of time;
  - 5.9.2 Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;
  - 5.9.3 Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;
  - 5.9.4 Are bedridden for more than 14 days;

- 5.9.5 Have developed stage three or four skin ulcers;
- 5.9.6 Require a ventilator;
- 5.9.7 Require treatment for a disease or condition which requires more than contact isolation;
- 5.9.8 Have an unstable tracheostomy or have a stable tracheostomy of less than 6 months' duration;
- 5.9.9 Have an unstable peg tube;
- 5.9.10 Require an IV or central line with an exception for a completely covered subcutaneously implanted venous port provided the assisted living facility meets the following standards:
  - 5.9.10.1 Facility records shall include the type, purpose and site of the port, the insertion date, and the last date medication was administered or the port flushed.
  - 5.9.10.2 The facility shall document the presence of the port on the Uniform Assessment Instrument, the service plan, interagency referrals and any facility reports,
  - 5.9.10.3 The facility shall not permit the provision of care to the port or surrounding area, the administration of medication or the flushing of the port or the surgical removal of the port within the facility by facility staff, physicians or third party providers;
- 5.9.11 Wander such that the assisted living facility would be unable to provide adequate supervision and/or security arrangements;
- 5.9.12 Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and
- 5.9.13 Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts such as clinical assessments and counseling for a period of no more than 60 days.
- 5.10 The provisions of section 5.9 above do not apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.
- 5.11 The Assisted Living facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

**8 DE Reg. 85 (7/1/04)**

**13 DE Reg. 1328 (04/01/10)**

### **3230 Rest (Residential) Home Regulations**

#### ***(Break in Continuity of Sections)***

#### **4.0 General Requirements**

- 4.1 All required records maintained by the institution shall be open to inspection by authorized representatives of the Division of Public Health.
- 4.2 The term "**Rest (Residential) Home**" shall not be used as a part of the name of any institution in this State, unless it has been so classified by the Division of Public Health.
- 4.3 An institution classified under these regulations shall not admit any person under the age of fifteen (15) as a resident unless approved by the Division of Public Health.
- 4.4 No rules shall be adopted by the licensee or administrator of any institution which are in conflict with these regulations.
- 4.5 The Division of Public Health shall be notified, in writing, of any changes in ownership or management personnel.
- 4.6 Each facility shall exhibit, with an admission agreement, to all residents or their sponsors a complete statement enumerating all charges for services, materials and equipment which may be furnished during the period of residency. A signed statement as to receipt of the statement of charges shall be retained by the facility and the resident.
- 4.7 Refund and Prepayment Policy
  - 4.7.1 Each facility shall make known, in writing, the refund and prepayment policy of the facility at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.
  - 4.7.2 All payments shall be receipted.

4.7.3 Any revocation of any part of the financial agreement shall require one (1) week's notice.

4.8 The facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

### **3301 Group Home Facilities for Persons with AIDS (Formerly Regulation No. 62)**

#### ***(Break in Continuity of Sections)***

#### **4.0 General Requirements**

- 4.1 All required records maintained by the group home for persons with AIDS shall be open to inspection by the authorized representatives of the Division.
- 4.2 The term "Group Home" shall not be used as part of the name of any facility in this State, unless it has been so classified by the Department of Health and Social Services.
- 4.3 No rules shall be adopted by the licensee or administrator which are in conflict with these regulations.
- 4.4 The Division shall be notified, in writing, of any changes in the Administrator.
- 4.5 The group home shall establish written policies regarding the rights and responsibilities of residents, and these policies and procedures are to be made available to sponsoring agency(ies), and authorized representatives of the Division.
- 4.6 Each facility shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of thirdparty payment, an exact statement of responsibility in the event of retroactive denial.
- 4.7 The group home shall provide safe storage for resident's valuables.
- 4.8 The group home provider shall assure emergency transportation and care through use of appropriate transfer agreements with local medical facilities
- 4.9 All residents shall be afforded all protections and privileges contained in the Delaware Patients Bill of Rights.
- 4.10 The facility shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

**5 DE Reg. 1079 (11/1/01)**

### **3305 Group Homes for Persons with Mental Illness (Formerly Regulation No. 61)**

#### **PART I - STATE APPROVAL**

#### ***(Break in Continuity of Sections)***

#### **4.0 Licensing by the Department**

- 4.1 The service provider shall maintain a license issued by the Department for each group home. The license shall be posted in a conspicuous place in the group home to which it applies. The license shall not be transferable directly or indirectly from one service provider to another.
- 4.2 Separate licenses are required for group homes maintained in separate locations, even though operated by the same service provider. A license shall not be transferable from one group home to another or from one location to another.
- 4.3 Application for a license for a group home shall be made on forms provided by the Department. The application shall bear the notice that false statements therein are punishable. The application shall be accompanied by:
  - 4.3.1 Certification that the service provider shall comply with all applicable state and federal laws including, but not limited to, non-discrimination based on age, sex, race, nationality, religion, sexual orientation, or disability, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act;
  - 4.3.2 A sworn affidavit of a satisfactory compliance history as defined in **16 Del.C., §1104(d)** and other information to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility any time during the five year period preceding the date on which the application is made.
  - 4.3.3 The applicable license fee;
  - 4.3.4 Training and staff development plans offered by the service provider to staff, required by Section 5.3.2.;

- 4.3.5 Written operations and personnel policies & procedures manual, and quality assurance plan required by Sections 5.0 and 7.10;
- 4.3.6 A set of program plans which describe the service provider's capacity to implement Section 7.2.5;
- 4.3.7 Written policies on periodic physical examinations, required by Section 9.3;
- 4.3.8 Evidence of the ability to transport residents on an as needed basis, including provisions for emergency transportation, required by Sections 12.10 and 12.11;
- 4.3.9 Written policies on medication maintenance and storage, required by Sections 10.;
- 4.3.10 A letter from the Fire Marshal having jurisdiction certifying compliance by the group home with the rules and regulations of the State Fire Prevention Commission, required by Section 14.1;
- 4.3.11 An evacuation plan required by Section 14.5;
- 4.3.12 A staffing and work schedule;
- 4.3.13 An identification of those persons and entities listed in **16 Del.C., §1104(c)**;
- 4.3.14 An outline of arrangements for the provision of primary medical, emergency medical and dental care, in addition to access to community support services such as employment and day programming;
- 4.3.15 An operating budget;
- 4.3.16 A blueprint (or similar plan) of the group home;
- 4.3.17 A specific plan for the safe and confidential storage of residents' records and medication including anticipated compliance with Section 8.1 and Section 10.0.
- 4.4 The Department shall grant a provisional license to any new applicant provided that the requirements of these regulations are met. The term of such provisional license shall be ninety (90) days, and thereafter, the applicant shall be entitled to an annual license, provided that the requirements of these regulations are met.
- 4.5 All applications for renewal of licenses shall be filed with the Department at least ninety (90) days prior to expiration and shall be accompanied by the attachments set forth in Section 4.3. Licenses may be issued for a period not to exceed one year (12 months) from the date of issuance.
- 4.6 The program will affirmatively notify the Department of any change in circumstances which precludes compliance with any of the regulations of this part.
- 4.7 The Department shall monitor compliance with its regulations and procedures. The service provider shall make all documentation and records deemed necessary by the Department available for the Department's review, and site visits shall be permitted at any time. The Department shall have the right of access to any information directly or indirectly related to the service provider's operation of the group home.
- 4.8 A service provider shall operate the group home in accordance with its application for licensure. A service provider shall immediately report any deviations from such operation to the Department.
- 4.9 The service provider shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

### **3310 Neighborhood Homes for Persons with Developmental Disabilities (Formerly Regulation No. 55)**

#### ***(Break in Continuity of Sections)***

### **3.0 Licensing and General Requirements**

- 3.1 When a Neighborhood Home pursuant to these regulations plans any structural alteration, one copy of properly prepared plans and specifications for the entire home shall be submitted to the Division of Long Term Care Residents Protection (DLTCRP). The Neighborhood Home shall receive written approval of the plans before any work is begun.
- 3.2 Separate licenses are required for separate homes, regardless of their proximity, even though operated by the same Neighborhood Home provider.  
A license shall not be transferred from one provider to another or from one location to another.
- 3.3 The license shall be conspicuously posted in the Neighborhood Home.
- 3.4 All applications for renewal of licenses shall be filed with DLTCRP at least thirty days prior to expiration. Licenses shall be issued by DLTCRP for a period not to exceed one year (12 months) from the date they are issued.
- 3.5 All required records maintained by the Neighborhood Home shall be open to inspection by the authorized representatives of DLTCRP and DDDS.
- 3.6 The term "Neighborhood Home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.

- 3.7 No Neighborhood Home provider shall adopt rules that conflict with these regulations.
- 3.8 DLTCRP shall be notified in writing of any changes in the ownership or management of a Neighborhood Home.
- 3.9 Each Neighborhood Home provider shall provide with the admission agreement, to all persons or their family member/guardian, a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the person during the period of residency.
- 3.10 Each Neighborhood Home provider shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.
- 3.11 Each Neighborhood Home provider shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

### **3315 Rest (Family) Care Homes**

#### ***(Break in Continuity of Sections)***

#### **4.0 General Requirements**

- 4.1 Each resident shall be given a physical/medical examination within ninety (90) days prior to placement and at least every three (3) years thereafter and/or more frequently as required by the Affiliated Social Agency/Program or the Division of Public Health.
- 4.2 A statement of level of care of the resident will be issued prior to placement and at least yearly thereafter. Determination of level of care will be done by a nursing representative of the Division of Public Health.
- 4.3 All required records maintained by the home shall be open to inspection by authorized representatives of the Division of Public Health and/or affiliated agency.
- 4.4 The term "Rest (Family Care) Home" shall not be used as a part of the name of any institution in this State unless it has been so classified by the Division of Public Health.
- 4.5 A home classified under these regulations shall not admit any person under the age of eighteen (18) as a resident unless approved by the State Board of Health.
- 4.6 The care provider family members shall not utilize the same sleeping quarters as the residents.
- 4.7 No rules shall be adopted by the licensure or care provider and/or Affiliated social Agency/Program of any home which are -in conflict with these regulations.
- 4.8 The Division of Public Health shall be notified in writing of any changes in ownership or care provider.
- 4.9 Each licensed home shall have a care provider and/or separate designee who will be responsible for the supervision of that home.
- 4.10 All Rest (Family Care) Homes will be under the supervision of a full-time care provider. The care provider will not leave the premises for a sustained period of time (greater than 12 hours) without delegating necessary duties to a responsible adult whose name is known on file. The Office of Health Facilities Licensing and Certification, Division of Public Health, is to be notified in case of extended absence (over one (1) week).
- 4.11 Each licensed home shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.

**14 DE Reg. 982 (04/01/11) (Prop.)**