

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 31 Delaware Code, Section 1124; 29 Delaware Code Section 7971(d)(1))  
(31 Del.C. §1124; 29 Del.C. §7971(d)(1))

**PROPOSED**

**PUBLIC NOTICE**

The Division of Long Term Care Residents Protection (DLTCRP) is proposing the implementation of Regulation 3102, Long Term Care Discharge and Impartial Hearing Regulations.

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 by Tuesday May, 1, 2012.

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**

**Background**

DLTCRP has a statutory obligation to implement regulations governing impartial hearings on discharge matters, 16 Del.C. §1121(18).

**Summary of Proposal**

This regulatory proposal implements regulations on the governance of impartial hearings on contested discharges from long term care facilities.

**Statutory Authority**

16 Del.C. §1124, "Staff training; issuance of regulations."

29 Del.C. §7971(d)(1), "Division of Long Term Care Residents Protection."

**3102 Long Term Care Discharge and Impartial Hearing Procedures**

**1.0 Appeals to challenge a discharge from a licensed facility**

1.1 Impartial Hearings of appeals by patients or residents to challenge a discharge from a licensed facility shall be governed by these regulations.

1.1.1 A patient or resident may appeal by sending a notice of appeal in writing to the Division with a copy to the facility. The notice of appeal may be filed by the patient or resident, his/her guardian or power of attorney (POA). The notice must be postmarked no later than 10 days before the effective date of discharge provided in the facility notice. The notice must also include the name of any person who will be representing the patient or resident at the hearing.

1.1.2 Within 5 days of the receipt of a notice of appeal the Division shall notify the facility that an appeal has been filed and that the patient or resident is not to be discharged during the time the appeal is underway.

1.1.3 The Division shall schedule the impartial hearing and notify all parties in writing. The impartial hearing officer shall conduct the hearing and issue a decision 30 days from the end of the actual impartial hearing.

1.1.4 The hearing shall be conducted by an impartial hearing officer assigned by the Division. Once assigned the hearing officer shall be responsible for:

1.1.4.1 Requests for postponement;

1.1.4.2 Requests for documents and the exchange of evidentiary material;

1.1.4.3 Rulings on pre-hearing matters brought forth by either party.

1.1.5 The hearing shall be conducted on a date, time and location that shall mutually agreed upon by the parties.

1.1.6 The hearing shall be conducted in an orderly manner

**2.0 Definitions**

"Date of Discharge" means the date of proposed discharge cited on the discharge notice by the facility.

“Discharge” means the movement of a patient or resident to a bed in a separately licensed facility.

“Division” means the Division of Long Term Care Residents Protection of the Delaware Department of Health and Social Services.

“Party” means each person or agency named or joined in an agency proceeding as a party, or properly seeking and entitled as of right to be admitted as a party to the agency proceeding.

### **3.0 Notice of Discharge**

- 3.1 When a facility intends to discharge a patient or resident the patient or resident shall receive at least 30 days notice of the proposed action. A copy of the notice is to be mailed or e-mailed to the Division and to the State Long Term Care Ombudsperson (16 Del.C. §1134). The notice shall include:
  - 3.1.1 The reason for the discharge;
  - 3.1.2 The effective date of the discharge;
  - 3.1.3 The location to which the patient or resident is to be discharged;
  - 3.1.4 A statement that the patient or resident has the right to appeal the action;
  - 3.1.5 The name and address of the Division to which the appeal must be filed;
  - 3.1.6 The name and address of the State Long Term Care Ombudsperson;
  - 3.1.7 A discharge plan that contains how the patient or resident’s physical and mental conditions will be managed following discharge;
  - 3.1.8 If the facility is for patients or residents with developmental disabilities, the mailing address and of the agency responsible for the protection and advocacy of individuals with developmental established under Part C of the Developmentally Disabilities Assistance and Bill of Rights Act;
  - 3.1.9 If the facility is for patients or residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of persons with mental illness established under the Protection and Advocacy for Individual with Mental Illness Act.

### **4.0 Opportunities of Parties**

- 4.1 Each party shall have the opportunity for the following:
  - 4.1.1 To examine all documents submitted prior to the hearing;
  - 4.1.2 To present the case by him/herself or with /the aid of an attorney or representative;
  - 4.1.3 To introduce and question witnesses;
  - 4.1.4 To submit evidence;
  - 4.1.5 To advance arguments w/o interference;
  - 4.1.6 To question or refute testimony or evidence;
  - 4.1.7 To be provided with interpreters or mechanical devices to overcome language or communication challenges;
  - 4.1.8 To withdraw the hearing request at any time.

### **5.0 Manner of Proceedings**

- 5.1 The facility shall present first, the patient or resident second;
- 5.2 Each party shall be given the opportunity for rebuttal;
- 5.3 Each party shall have the opportunity to make closing remarks without rebuttal;
- 5.4 Electronic audio recordings shall be made of the hearings. Written transcriptions of the recordings shall be produced at the expense of the requesting party.

### **6.0 Role of Hearing Officer**

- 6.1 Runs the hearing;
- 6.2 Make all rulings on the admissibility of evidence;
- 6.3 May question witnesses;
- 6.4 Limit unduly lengthy remarks;
- 6.5 Direct parties to produce evidence;
- 6.6 Make judgments on the relevance, reliability, and competence of evidence introduced;
- 6.7 May seek an outside medical evaluation
- 6.8 The decision of the hearing officer is the final ruling by the Department.

**7.0 Standard of Proof**

The facility shall have the burden of proof by a preponderance of evidence.

**8.0 Confidentiality of Proceedings and decision**

8.1 Dissemination of hearing officer decisions and information presented at the hearing shall be limited as follows:

8.1.1 The parties involved in the hearing, including the hearing officer and staff:

8.1.2 The Long Term Care Ombudsman

8.1.3 The Medicaid Fraud Control Unit of the Department of Justice.

8.1.4 Rights protection agencies otherwise entitled under applicable federal or state law

**9.0 Appeal of decision**

The decision of the hearing officer may be appealed on the record to Superior Court. Appeals of hearing officer decisions are governed by the Administrative Procedures Act, Title 29, Chapter 101.

**15 DE Reg. 1405 (04/01/12) (Prop.)**