

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF HEALTH CARE QUALITY**

Statutory Authority: 16 Delaware Code, Sections 1124 and 1127, and 29 Delaware Code, Section 10113(b)(4) (16 **Del.C.** §§1124 & 1127, & 29 **Del.C.** §10113(b)(4))  
16 **DE Admin. Code** 3102

**FINAL**

**FINAL EXEMPT ORDER**

**3102 Long Term Care Transfer, Discharge and Readmission Procedures**

**Date of Issuance:** September 1, 2012

**Effective Date of the Amendment:** September 11, 2020

Under the authority vested in the Secretary of the Delaware Department of Health and Social Services ("Department") / Division of Health Care Quality (DHCQ), pursuant to 16 Del.C. §1124 and 29 Del.C. §10113(b)(4), DHSS hereby revises Section 3102 of Title 16 of the Delaware Administrative Code to correct clerical errors found subsequent to the final adoption of this regulation as set forth previously in the Final Order, September 1, 2012.

**Findings of Fact**

Based on Delaware law and the record as reflected in the prior Final Order referenced above, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law; and
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

**Decision and Order Concerning the Regulation**

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 16 DE Admin. Code 3102: Long Term Care Transfer, Discharge and Readmission Procedures, be adopted and promulgated as follows, to wit:

1. Section 1.0 shall be modified by changing "regulation" to "regulations";
2. Section 2.0, definition "Division" shall be modified by changing "Long Term Care Residents Protection" to "Health Care Quality";
3. Section 2.0, definition "Legal representative" shall be modified by changing "representative" to "authorized representative";
4. Section 2.0, definition "Legal representative" shall be modified by changing "includes" to "means";
5. Section 2.0, definition "Legal representative" shall be modified by changing "Title 16 Del.C. §§1121(34) and 1122" to "16 Del.C. §1122";
6. Section 2.0, definition "Party" shall be modified by adding "legal or authorized" before "representative";
7. Section 2.0, definition "Transfer and discharge" shall be modified by striking "'Transfer and discharge' is defined separately in Section 3.0 and 4.0.";
8. Subsection 3.1 shall be modified by changing "—" to "·";
9. Subsection 3.2 shall be modified by changing "paragraphs" to "subsections";
10. Subsection 3.2 shall be modified by changing "section" to "regulation";
11. Subsection 3.2 shall be modified by changing "·" to "·";
12. Subsection 3.2.1 shall be modified by changing "under paragraph" to "in subsection";
13. Subsection 3.2.1 shall be modified by changing "paragraph" to "subsection";
14. Subsection 3.2.1 shall be modified by changing "section" to "regulation";
15. Subsection 3.2.2 shall be modified by changing "under paragraph" to "in subsection";
16. Subsection 3.2.2 shall be modified by changing "section" to "regulation";
17. Subsection 3.3 shall be modified by changing "—" to "·";
18. Subsection 3.3.1 shall be modified by changing "·" to "·";
19. Subsection 3.3.2 shall be modified by changing "LTC ombudsman" to "Long-Term Care (LTC) Ombudsman";
20. Subsection 3.3.2 shall be modified by changing "APS" to "Adult Protective Services (APS)";
21. Subsection 3.3.2 shall be modified by changing "Title 16 Del.C. §1102" to "16 Del.C. §1102(7)";
22. Subsection 3.3.2 shall be modified by changing "·" to "·";
23. Subsection 3.3.4 shall be modified by changing "paragraph" to "subsection";

24. Subsection 3.3.4 shall be modified by changing "section" to "regulation";
25. Subsection 3.4.1 shall be modified by changing "paragraphs" to "subsections";
26. Subsection 3.4.1 shall be modified by changing "section" to "regulation";
27. Subsection 3.4.1 shall be modified by changing "under paragraph" to "in subsection";
28. Subsection 3.4.1 shall be modified by changing "section" to "regulation";
29. Subsection 3.4.2.1 shall be modified by changing "under paragraph" to "in subsection";
30. Subsection 3.4.2.1 shall be modified by changing "section" to "regulation";
31. Subsection 3.4.2.2 shall be modified by changing "under paragraph" to "in subsection";
32. Subsection 3.4.2.2 shall be modified by changing "section" to "regulation";
33. Subsection 3.4.2.3 shall be modified by changing "under paragraph" to "in subsection";
34. Subsection 3.4.2.3 shall be modified by changing "section" to "regulation; or";
35. Subsection 3.4.2.4 shall be modified by changing "under paragraph" to "in subsection";
36. Subsection 3.4.2.4 shall be modified by changing "section" to "regulation";
37. Subsection 3.5 shall be modified by changing "paragraph" to "subsection";
38. Subsection 3.5 shall be modified by changing "section" to "regulation";
39. Subsection 3.5.1 shall be modified by changing "reason(s)" to "reason or reasons";
40. Subsection 3.5.1.2 shall be modified by changing "." to "; and";
41. Subsection 3.5.6 shall be modified by changing "." to "; and";
42. Subsection 3.5.7 shall be modified by changing "long term care ombudsman" to "LTC Ombudsman";
43. Subsection 3.7 shall be modified by changing "ombudsman" to "Ombudsman";
44. Subsection 3.8 shall be modified by changing "Title 16 Del.C. §§121 (13) and (28)" to "16 Del.C. §1121(b)(34)";
45. Subsection 3.9.1.2 shall be modified by changing "paragraph" to "subsection";
46. Subsection 3.9.1.2 shall be modified by changing "section" to "regulation";
47. Subsection 3.9.2 shall be modified by changing "paragraph" to "subsection";
48. Subsection 3.9.2 shall be modified by changing "section" to "regulation";
49. Subsection 3.9.3.3 shall be modified by changing "16 Del.C. §1121 (18)" to "16 Del.C. §1127(h).";
50. Section 4.0 shall be modified by changing "Nursing Facility or Similar Facility as defined in 16 Del.C. 1102(4). See 16 Del.C. 1121" to "Long-Term Care Facility as defined in 16 Del.C. §1102(b)(4). See 16 Del.C. §1127";
51. Subsection 4.2.4 shall be modified by adding "or" at the end of the existing sentence: "Nonpayment of justified charges, after appropriate notice;";
52. Subsection 4.3 shall be modified by changing "paragraphs 4.1.1 or 4.1.2 of this section" to "subsection 4.2.1 or 4.2.2 of this regulation";
53. Subsection 4.3.1 shall be modified by changing "under paragraph 4.1.1 or paragraph 4.1.2 of this section" to "in subsection 4.2.1 or 4.2.2 of this regulation";
54. Subsection 4.3.2 shall be modified by changing "under paragraph 4.1.3 of this section" to "in subsection 4.2.3 of this regulation";
55. Subsection 4.4.3 shall be modified by changing "paragraph 4.5 of this section" to "subsection 4.6 of this regulation";
56. Subsection 4.5 shall be modified by striking "(i)";
57. Subsection 4.5 shall be modified by changing "paragraphs 4.4.2 and 4.8 of this section" to "subsections 4.5.1 and 4.9 of this regulation";
58. Subsection 4.5 shall be modified by changing "under paragraph 4.3 of this section" to "in subsection 4.4 of this regulation";
59. Subsection 4.5.1.1 shall be modified by changing "under paragraph 3.1.3 of this section" to "in subsection 4.2.3 of this regulation; or";
60. Subsection 4.5.1.2 shall be modified by changing "under paragraph 3.1.1 of this section" to "in subsection 4.2.1 of this regulation";
61. Subsection 4.5.1.2 shall be modified by striking "or" at the end of the modified sentence: "An immediate transfer or discharge is required by the resident's urgent medical needs, ~~under paragraph 3.1.1 of this section~~ in subsection 4.2.1 of this regulation,";
62. Subsection 4.6 shall be modified by changing "paragraph 3.3 of this section" to "subsection 4.4 of this regulation";
63. Subsection 4.6.1 shall be modified by changing "," to ".";
64. Subsection 4.6.1 shall be modified by changing "reason(s)" to "reason or reasons";
65. Subsection 4.6.5 shall be modified by changing "long term care ombudsman" to "LTC Ombudsman";
66. Subsection 4.6.5 shall be modified by adding "and" at the end of the modified sentence: "The name, address and telephone number of the State ~~long term care ombudsman~~ LTC Ombudsman,";
67. Subsection 4.6.6 shall be modified by changing "Title 16 Del.C. §1102" to "16 Del.C. §1102(7)";
68. Subsection 4.8 shall be modified by changing "ombudsman" to "Ombudsman";
69. Subsection 4.9.1 shall be modified by changing "Title 16 Del.C. §§1121(13) and (28)" to "16 Del.C. §1121(b)(34)";
70. Subsection 4.10 shall be modified by changing "," to ".";
71. Section 5.0 shall be modified by changing "under" to "in";

72. Subsection 5.1.1.2 shall be modified by adding "and" at the end of the existing sentence: "Be received by the facility within 30 days from the date that the discharge notice is received by the resident or the resident's legal representative;"

73. Subsection 5.1.1.3 shall be modified by changing "ombudsman" to "Ombudsman";

74. Subsection 5.3.3 shall be modified by adding "and" at the end of the existing sentence: "By an impartial fact-finder who has not been directly involved in the initial determination of the action in question;"

75. Subsection 5.5.6 shall be modified by changing "Residents" to "Exercise additional rights for residents";

76. Subsection 5.5.6 shall be modified by adding "Section" prior to "3.0";

77. Subsection 5.5.6 shall be modified by striking "have additional rights to";

78. Subsection 5.5.6 shall be modified by changing "16 Del.C. §1121(19)" to "16 Del.C. §1121(b)(21)";

79. Subsection 5.9.1 shall be modified by striking "and";

80. Subsection 5.9.2 shall be modified by changing "and/or" to "or";

81. Subsection 5.9.2 shall be modified by adding ";" at the end of the modified sentence: "Identify the statutes ~~and/or~~ or regulations pertinent to the decision".

The effective date of this Order is 10 days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Molly K. Magarik  
Cabinet Secretary

## 3102 Long Term Care Transfer, Discharge and Readmission Procedures

### 1.0 Purpose

This regulation applies to decisions by licensed facilities to transfer or discharge a resident. It prescribes the process for providing an impartial hearing to a resident.

This regulation does not extend to decisions of DHSS, or any of its Divisions, to deny, suspend, delay, reduce, or terminate benefits. The ~~regulation~~ regulations governing appeals related to benefit eligibility are found at 16 **DE Admin. Code** §5000. Be aware that the appeal requirements are different from the requirements in this regulation.

### 2.0 Definitions

"**DHSS**" means the Department of Health and Social Services

"**Division**" means the Division of ~~Long Term Care Residents Protection~~ Health Care Quality.

"**Legal representative**" or "~~representative~~" includes "authorized representative" means a resident's: guardian; agent pursuant to a power of attorney, advanced health care directive, or similar document; or authorized representative pursuant to ~~Title 16 Del.C. §§1121(34) and 1122~~ 16 Del.C. §1122.

"**Party**" means the resident or resident's legal or authorized representative and the facility.

"**Resident**" means resident or patient.

~~"Transfer and discharge"~~ is defined separately in Section 3.0 and 4.0.

### 3.0 Transfer, discharge and readmission rights of residents in a certified skilled nursing facility or a certified nursing facility as defined in 42 CFR §483.5 or an Intermediate Care facility (ICF/MR) as defined in 42 CFR §440.150.

3.1 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility ~~unless—~~ unless:

3.1.1 The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility. If the resident appeals a notice of discharge based on this section, the facility will not be cited during the pendency of the appeal for housing a resident whose needs exceed the permitted level of care in that facility.

3.1.2 The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

3.1.3 The safety of individuals in the facility is endangered;

3.1.4 The health of individuals in the facility would otherwise be endangered;

3.1.5 The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

3.1.6 The facility ceases to operate.

- 3.2 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in ~~paragraphs subsections~~ 3.1.1 through 3.1.5 of this ~~section regulation~~, the resident's clinical record must be documented. The documentation must be made ~~by~~; by:
- 3.2.1 The resident's physician when transfer or discharge is necessary ~~under paragraph in subsection~~ 3.1.1 or ~~paragraph subsection~~ 3.1.2 of this ~~section regulation~~; and
  - 3.2.2 A physician when transfer or discharge is necessary ~~under paragraph in subsection~~ 3.1.4 of this ~~section regulation~~.
- 3.3 Notice before transfer. Before a facility transfers or discharges a resident, the facility ~~must~~— must:
- 3.3.1 Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they ~~understand~~. understand;
  - 3.3.2 Provide a copy of the notice to the Division; the State ~~LTC ombudsman~~ Long-Term Care (LTC) Ombudsman; the resident's Delaware Medicaid managed care organization (MCO), if any; any DHSS agency involved in the resident's placement in the facility, including APS Adult Protective Services (APS); and the protection and advocacy agency as defined in ~~Title 16 Del.C. §1102~~ 16 Del.C. §1102(7) if the resident is an individual with a developmental disability or mental ~~illness~~. illness;
  - 3.3.3 Record the reasons in the resident's clinical record; and
  - 3.3.4 Include in the notice the items described in ~~paragraph subsection~~ 3.5 of this ~~section regulation~~.
- 3.4 Timing of the notice.
- 3.4.1 Except as specified in ~~paragraphs subsections~~ 3.4.2 and 3.8 of this ~~section regulation~~, the notice of transfer or discharge required ~~under paragraph in subsection~~ 3.3 of this ~~section regulation~~ must be made by the facility at least 30 days before the resident is transferred or discharged.
  - 3.4.2 Notice may be made as soon as practicable before transfer or discharge when:
    - 3.4.2.1 The safety of individuals in the facility would be endangered ~~under paragraph in subsection~~ 3.1.3 of this ~~section regulation~~;
    - 3.4.2.2 The health of individuals in the facility would be endangered, ~~under paragraph in subsection~~ 3.1.4 of this ~~section regulation~~;
    - 3.4.2.3 The resident's health improves sufficiently to allow a more immediate transfer or discharge, ~~under paragraph in subsection~~ 3.1.2 of this ~~section regulation~~; or
    - 3.4.2.4 An immediate transfer or discharge is required by the resident's urgent medical needs ~~under paragraph in subsection~~ 3.1.1 of this ~~section regulation~~.
- 3.5 Contents of the notice. The written notice specified in ~~paragraph subsection~~ 3.3 of this ~~section regulation~~ must include the following:
- 3.5.1 A detailed individualized explanation of the ~~reason(s)~~ reason or reasons for the action being taken which includes, in terms understandable to the resident:
    - 3.5.1.1 A statement of what action the agency intends to take;
    - 3.5.1.2 The reasons for the intended action, including any information needed for the resident to determine from the notice alone the accuracy of the facility's intended action. When the reason is non-payment, an itemized statement of the resident's account for the preceding 12 ~~months~~. months; and
    - 3.5.1.3 The specific policy or regulation supporting such action.
  - 3.5.2 The effective date of transfer or discharge;
  - 3.5.3 The location to which the resident will be transferred or discharged;
  - 3.5.4 A statement of the resident's right to a fair hearing as provided in this section;
  - 3.5.5 The method by which the resident may request a fair hearing;
  - 3.5.6 A statement that the resident may represent him or herself or may be represented by counsel or by another ~~person~~. person; and
  - 3.5.7 The name, address and telephone number of the State ~~long term care ombudsman~~ LTC Ombudsman;
- 3.6 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 3.7 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the Secretary, the State LTC ~~ombudsman~~ Ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at 42 CFR §483.75(r).

- 3.8 Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in 42 CFR §483.5(c)) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations. A facility's discretion to transfer residents to another room is limited by ~~Title 16 Del.C. §§121 (13) and (28)~~ 16 Del.C. §1121(b)(34).
- 3.9 Notice of bed-hold policy and readmission.
- 3.9.1 Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies;
- 3.9.1.1 Notice of State bed-hold. The duration of the bed-hold policy under the State plan, if any during which the resident is permitted to return and resume residence in the nursing facility, See DHSS Long Term Care Institutional Provider Specific Policy Manual at Section 4.5; and
- 3.9.1.2 Facility policies. The nursing facility's policies regarding bed-hold periods, which must be consistent with ~~paragraph subsection~~ 3.9.3 of this section regulation, permitting a resident to return.
- 3.9.2 Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which explains the bed-hold policy described in ~~paragraph subsection~~ 3.9.1.1 of this section regulation.
- 3.9.3 Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:
- 3.9.3.1 Requires the services provided by the facility; and
- 3.9.3.2 Is eligible for Medicaid nursing facility services.
- 3.9.3.3 Additional protection for readmission is found at ~~16 Del.C. §1121 (18)~~ 16 Del.C. §1127(h).
- 3.10 Readmission to a composite distinct part. When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in 42 CFR§483.5(c)), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

**4.0 ~~Transfer, discharge and readmission rights of residents of a Nursing Facility and Similar Facility as defined in 16 Del.C. 1102(4). See 16 Del.C. 1121 Long-Term Care Facility as defined in 16 Del.C §1102(b)(4). See 16 Del.C. §1127.~~**

- 4.1 "Transfer and discharge" includes movement of a resident to a location outside of the licensed facility.
- 4.2 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility except for:
- 4.2.1 Medical needs which cannot be met in the facility;
- 4.2.2 The resident's own welfare;
- 4.2.3 The welfare of the other individuals in the facility;
- 4.2.4 Nonpayment of justified charges, after appropriate notice; or
- 4.2.5 Termination of facility operation.
- 4.3 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in ~~paragraphs 4.1.1 or 4.1.2 of this section~~ subsection 4.2.1 or 4.2.2 of this regulation, the resident's clinical record must be documented. The documentation must be made by:
- 4.3.1 The resident's physician when transfer or discharge is necessary ~~under paragraph 4.1.1 or paragraph 4.1.2 of this section~~ in subsection 4.2.1 or 4.2.2 of this regulation; and
- 4.3.2 A physician when transfer or discharge is necessary ~~under paragraph 4.1.3 of this section~~ in subsection 4.2.3 of this regulation.
- 4.4 Notice before transfer. Before a facility transfers or discharges a resident, the facility must:
- 4.4.1 Notify the resident and, if known, a family member or legal representative, of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
- 4.4.2 Record the reasons in the resident's clinical record; and
- 4.4.3 Include in the notice the items described in ~~paragraph 4.5~~ subsection 4.6 of this section regulation.

- 4.5 Timing of the notice. ~~(†)~~ Except as specified in ~~paragraphs 4.4.2 and 4.8~~ subsections 4.5.1 and 4.9 of this ~~section regulation~~, the notice of transfer or discharge required ~~under paragraph 4.3 in subsection 4.4~~ of this ~~section regulation~~ must be made by the facility at least 30 days before the resident is transferred or discharged.
- 4.5.1 Notice may be made as soon as practicable before or after transfer or discharge when:
- 4.5.1.1 The welfare of individuals in the facility would be endangered ~~under paragraph 3.1.3 in subsection 4.2.3~~ of this ~~section regulation~~; or
- 4.5.1.2 An immediate transfer or discharge is required by the resident's urgent medical needs, ~~under paragraph 3.1.1. in subsection 4.2.1~~ of this ~~section regulation~~; or
- 4.6 Contents of the notice. The written notice specified in ~~paragraph 3.3 subsection 4.4~~ of this ~~section regulation~~ must include the following:
- 4.6.1 The reason for transfer or ~~discharge; discharge~~. A detailed individualized explanation of the ~~reason(s)~~ reason or reasons for the action being taken which includes, in terms understandable to the resident:
- 4.6.1.1 A statement of what action the agency intends to take;
- 4.6.1.2 The reasons for the intended action, including any information needed for the resident to determine from the notice alone the accuracy of the facilities intended action. When the reason is non-payment, an itemized statement of the resident's account for the preceding 12 months; and
- 4.6.1.3 The specific policy or regulation supporting such action.
- 4.6.2 The effective date of transfer or discharge;
- 4.6.3 The location to which the resident will be transferred or discharged;
- 4.6.4 A statement of the resident's right to a fair hearing as provided in this section:
- 4.6.4.1 The method by which the resident may request a fair hearing; and
- 4.6.4.2 A statement that the resident may represent him or herself or may be represented by counsel or by another person.
- 4.6.5 The name, address and telephone number of the State ~~long term care ombudsman~~ LTC Ombudsman; and
- 4.6.6 For nursing facility residents with a developmental disability or mental illness, the mailing address and telephone number of the Delaware protection and advocacy agency as defined in ~~Title 16 Del.C. §1102 16 Del.C. §1102(7)~~.
- 4.7 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 4.8 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to Division, the State LTC ~~ombudsman~~ Ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents. The notice shall be provided as far in advance of closure as possible.
- 4.9 Room changes.
- 4.9.1 Room changes in a facility must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another location. A facility's discretion to transfer residents to another room is limited by ~~Title 16 Del.C. §§1121 (13) and (28) 16 Del.C. §1121(b)(34)~~.
- 4.9.2 The facility must give reasonable notice before the resident's room or roommate is changed, except in emergencies.
- 4.9.3 The facility shall endeavor to honor roommate requests whenever possible.
- 4.10 Notice of bed-hold policy and ~~readmission~~: readmission.
- 4.10.1 Notice before transfer. When a nursing facility transfers a resident out of a facility to an acute care facility it must provide written information to the resident and a family member or legal representative that specifies that the facility must accept the patient or resident back into the facility when the resident no longer needs acute care and there is space available in the facility. If no space is available, the resident shall be accepted into the next available bed.
- 4.10.2 Permitting resident to return to facility. A nursing facility must establish and follow a written policy for implementing its obligation to immediately offer the first available bed to a resident who is entitled to be readmitted to the facility when acute care is no longer required.

**5.0 Fair Hearing Practice and Procedures which pertain to grievances ~~under~~ in either Section 3.0 or 4.0 of this regulation.**

- 5.1 Right to hearing. An impartial hearing may be requested by a resident who believes a facility has erroneously determined that he or she must be transferred or discharged.
  - 5.1.1 The hearing request must:
    - 5.1.1.1 Be in writing;
    - 5.1.1.2 Be received by the facility within 30 days from the date that the discharge notice is received by the resident or the resident's legal representative; and
    - 5.1.1.3 Be copied to the Division and the State LTC ombudsman Ombudsman.
- 5.2 DHSS may deny or dismiss a request for a hearing if:
  - 5.2.1 The resident withdraws the request in writing; or
  - 5.2.2 The resident or his or her legal representative fails to appear at a scheduled hearing without good cause.
- 5.3 Impartial hearing must be conducted:
  - 5.3.1 At a reasonable time, date and place;
  - 5.3.2 After adequate written notice of the hearing;
  - 5.3.3 By an impartial fact-finder who has not been directly involved in the initial determination of the action in question; and
  - 5.3.4 With appropriate translation services available to parties or witnesses as needed to be provided at State expense.
- 5.4 If the hearing involves medical issues as the basis for the transfer or discharge and if the impartial fact finder considers it necessary to have a medical assessment other than that of the facility involved in making the transfer or discharge decision, such a medical assessment must be obtained at State expense and made part of the record.
- 5.5 Procedural rights. The parties must be given the opportunity to:
  - 5.5.1 Examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used by either party at the hearing;
  - 5.5.2 Bring witnesses;
  - 5.5.3 Establish all pertinent facts and circumstances;
  - 5.5.4 Present an argument without undue interference; and
  - 5.5.5 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
  - 5.5.6 Residents Exercise additional rights for residents within the scope of ~~3.0~~ have additional rights to Section 3.0, as provided in 42 CFR §483.10(b)(2). All residents have additional rights under ~~16 Del.C. §1121(19)~~ 16 Del.C. §1121(b)(21).
- 5.6 Hearing decisions must be based exclusively on evidence introduced at the hearing.
- 5.7 The record must consist only of:
  - 5.7.1 The transcript or recording of testimony and exhibits;
  - 5.7.2 All papers and requests filed in the proceeding; and
  - 5.7.3 The decision of the hearing officer.
- 5.8 The parties must have the access to the record at a convenient place and time in order to review or to secure a transcript at the party's expense.
- 5.9 The impartial decision must:
  - 5.9.1 Summarize the facts; ~~and~~
  - 5.9.2 Identify the statutes ~~and/or~~ or regulations pertinent to the ~~decision~~ decision;
  - 5.9.3 Specify the reasons for the decisions; and
  - 5.9.4 Identify the supporting evidence and apply the relevant legal principles.
- 5.10 The impartial fact-finder must:
  - 5.10.1 Notify the parties of the decision, in writing.
  - 5.10.2 Notify the parties that this is the final decision of DHSS with the right to an appeal pursuant to the Administrative Procedures Act, Title 29, Chapter 101.

**16 DE Reg. 296 (09/01/12)**

**24 DE Reg. 275 (09/01/20) (Final)**