

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 31 Delaware Code, Chapter 51 (31 Del.C. Ch. 51)

PROPOSED

PUBLIC NOTICE

6002 Mental Health Patients' Grievance Procedure

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, Chapter 22, Delaware Health and Social Services (DHSS)/ Division of Substance Abuse and Mental Health (DSAMH) is proposing to establish by regulation a revised Mental Health Patients' Grievance Process.

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 Robinson, Deputy Director, Delaware Psychiatric Center, Division of Substance Abuse and Mental Health, Springer Building, 1901 North DuPont Highway, New Castle, Delaware 19720-0906 or by fax to (302) 255-4418 by September 30, 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 proposed change described below amends Standards for Substance and Abuse and Treatment Programs.

Statutory Authority

16 Del.C. Chapter 51.

Summary of Proposed Changes

This revision updates Delaware's Mental Health Bill of Rights by revising the grievance procedure for patients in hospitals.

6002 Mental Health Patients' Grievance Procedure

1.0 Purpose

The Department is issuing this regulation to add various protections to the Mental Health Patients' Bill of Rights Act, including an enhanced patient grievance system for DPC patients.

2.0 Authority and Applicability

House Bill 37, An Act to Amend Title 16 of the Delaware Code Relating to the Mental Health Patients' Bill of Rights was signed by the Governor and thereby enacted into law on July 15, 2010. One of the elements of this legislation was to amend 16 Del.C. §5161(b)(15) to require DHSS to establish the (enhanced) grievance system for Delaware Psychiatric Center.

3.0 Definitions

3.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Adjunct and alternative therapy" means a specific modality of therapy based on a specific valid body of knowledge, provision of which requires specific credentials. Examples include, but are not limited to, Psychodrama; Art Therapy; Music Therapy; Acupuncture; Massage Therapy; EMDR; etc.

"Administrator" means an individual who is authorized by the governing body to provide overall management of the agency.

"Admission" means the point in a client's relationship with a program when the intake process has been completed and the program begins to provide additional services.

"Advisory Council" means a group of individuals approved by the governing body, to provide community input and recommendations to the governing body.

“Agency” means any partnership, corporation, association, or legal entity except for an individual practitioner, that provides, is seeking to provide, or holds itself out as providing alcohol and/or other drug treatment or rehabilitation services. An agency may operate more than one program.

“Applicant” means any agency that has submitted a written application for a license to operate an alcohol and/or other drug abuse treatment or rehabilitation program in Delaware.

“Client” means an individual who receives, or has received services from an agency.

“Client Record” means the official legal written file for each client containing all the information required by these regulations, and maintained to demonstrate compliance with these regulations.

“Cultural Competence” means acceptance and respect for difference, continuing self-assessment regarding culture, careful attention to the dynamics of difference, continuous expansion of cultural knowledge and resources, and a variety of adaptations to service models in order to better meet the needs of minority populations. Culturally competent agencies work to hire unbiased employees, seek advice and consultation from the minority community, and actively decide what they are and are not capable of providing to minority clients. (March, 1989, Towards a Culturally Competent System of Care, Volume 1, National Technical Assistance Center for Children’s Mental Health, Georgetown University Child Development Center, p. 17.)

“Day” unless otherwise specified, one (1) day is a calendar day.

“Deemed status” means a licensure standing approved by DSAMH and bestowed upon programs that have been accredited by an accreditation body approved by DSAMH.

Programs that have been granted Deemed Status will be inspected in accordance with Section 4.3.2 of these standards.

“Department” means the Department of Health and Social Services, except that Department means the Department of Services for Children, Youth and Their Families for facilities certified under §§ 5135 and 5001(4) of this title.

“Designee” means the person who is delegated tasks, duties, and responsibilities when such designation is permitted by these regulations.

“Discharge” means the point at which a client’s active involvement with an agency is terminated.

“Division/DSAMH” means the Delaware Division of Substance Abuse and Mental Health within the Delaware Department of Health and Social Services.

“Division Director” means the Director of the Delaware Division of Substance Abuse and Mental Health within the Delaware Department of Health and Social Services, or his/her designee.

“Documentation” means a written record acceptable as evidence to substantiate compliance with these regulations.

“DSM” means the Diagnostic and Statistical Manual of Mental Disorders, most recent edition, as published by the American Psychiatric Association.

“Facility” means the physical area, grounds, building(s) or portions thereof, under direct program administrative control.

“Follow-up” means the process for determining the status of an individual who has been referred to an outside resource for services or who has been discharged from services OR the process for determining an agency’s compliance with these standards after an agency audit has been completed.

“Governing Body” means the individual or individuals responsible for the overall management of an agency, responsible for ensuring compliance with 5.0 of these regulations.

“Initial Recovery Plan” means the first recovery plan developed on the first day of treatment. The initial recovery plan is a working document created with input from the client and program staff.

“Intake” means the gathering of personally identifying and clinical data required to determine whether a client should be admitted to a program.

“Intern” means a student who performs counseling functions under the supervision of a Clinical supervisor.

“License” means the document issued by the Division that authorizes a program to provide alcohol and/or other drug treatment or rehabilitation.

“Licensed Nurse” means a Registered Nurse or a Licensed Practical Nurse.

“Licensed Practical Nurse” means a person licensed by the State of Delaware as a Practical Nurse or a person licensed by a state that participates in the National Licensure Compact (NLC).

“Licensure” means the process by which the Division determines whether or not a program is in compliance with these regulations.

“Medical history” means history of and any treatment of allergies, head injuries, nervous disease/disorders, seizure disorder, or delirium tremens, surgery, major accidents, fractures, venereal diseases, cardiovascular, respiratory, endocrine, gastrointestinal diseases or disorders, and gynecological-obstetrical history, including

current involvement in prenatal care and current medical treatment by a Primary Care Physician or other medical doctor.

“Needs Assessment” means a systematic evaluation of current system and programmatic operations and projected needs. This evaluation is performed as part of the Quality Assurance Plan and focuses on the changing needs of the community and population served.

“Nurse Practitioner” means a person licensed by the State of Delaware as a Nurse Practitioner or a person licensed by a state that participates in the National Licensure Compact (NLC).

“Periodic Recovery Plan Review/Revision” is a process whereby the clinical supervisor, and-counselor, review prior recovery plans and establish new goals based on the client’s progress and/or changing needs through out treatment.

“Physician” means a person licensed to practice medicine in the State of Delaware.

“Physician Assistant” means a person licensed by the State of Delaware as a Physician Assistant.

“Policy” means a statement of the principles that guide and govern the activities, procedures and operations of a program.

“Procedure” means a series of activities designed to implement the policies of a program.

“Program” means the location or facility where an agency provides or offers to provide any of the various modalities of service when such services are provided or offered on a regularly scheduled basis. Clinical participation records of clients are EITHER stored on-site OR readily available to staff in electronic format using computer hardware that is installed or regularly available on-site.

“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)).

“Protocols” means a written rule developed by an agency to govern specific procedures or certain activities.

“Provisional License” means the document issue by the Division that authorizes a program to provide alcohol and/or other drug treatment or rehabilitation for up to one hundred and eighty (180) days when the applicant is not in compliance with these regulations or is applying for licensure for the first time.

“Public place” means an area accessible to clients, employees or visitors; the main entry or hallway; the reception area or foyer; or the dining or multipurpose room.

“Qualified Medical Personnel” means a physician, physician’s assistant, or nurse practitioner, licensed by the State of Delaware.

“Qualified Psychiatric Practitioner” means a physician or nurse practitioner, licensed by the State of Delaware with specific clinical experience in the treatment of substance use disorders as well as mental health disorders. Qualified Psychiatric Practitioners must have specific training in the use of buprenorphine and Opioid antagonist medications as well as the use of psychotropic medications used with individuals who have a mental health diagnosis.

“Quality Assurance” means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of client care to identify and resolve identified issues.

“Readmission” means the point in a client’s relationship with an agency when a client has been discharged, subsequently reapplied for admission, intake has been completed, and the agency begins to provide services again.

“Registered Nurse” means a person licensed by the State of Delaware as a registered nurse or a person licensed by a state that participates in the National Licensure Compact (NLC).

“Shall” means a mandatory procedure, the only acceptable method under these regulations.

“Signature/Signed” means, at a minimum, the writers’ first initial, last name, title or credentials and date or an authentic digital signature OR the client or legal guardian’s first and last name and/or date when required.”

“Significant other” means an individual, whether or not related by blood or marriage, on which another individual relies for support.

“Staff” means full-time and part-time employees, consultants and volunteers, students/interns.

“Treatment” means the process a client undergoes to understand his or her alcohol or drug use and/or mental health diagnosis and choices made to change his or her behavior. For purposes of persons admitted pursuant to Chapter 55 of this title, the term "treatment" includes habilitation and the term "patient" means resident.

“Volunteer” means a person who, without direct financial compensation, provides services to a program.

“Waiver” means the exemption from compliance with a requirement of these regulations.

4.0 Grievance Procedures

4.1 Publication

- 4.1.1** Any hospital or residential center that admits persons pursuant to Chapter 50, 51, or 55 of this title shall prominently post in English and Spanish the list of patients rights set forth in this subsection. In addition to the posting, the Department shall distribute a copy of the list to each patient and to other persons, as provided in Department regulations. Each patient shall have the rights listed below, which shall be liberally construed to fulfill their beneficial purposes. Furthermore, in defining the scope or extent of any duty imposed by this section, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments as well as certification standards of accrediting agencies may be considered.

4.2 Process

- 4.2.1** Each patient, and, if the patient is a minor, the minor's parent or legal guardian, shall have the right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure provided for or by the facility. Without diminution of such right, the facility may also establish a supplemental mediation system to resolve grievances. The Department shall establish the grievance system for the Delaware Psychiatric Center, through regulation, which shall include the following features:
- 4.2.1.1** Availability of patient assistance in preparation and submission of grievance;
 - 4.2.1.2** Right to present grievance in person or with the assistance of a representative, including the protection and advocacy agency, to an individual or group impartial decision-maker;
 - 4.2.1.3** Right to decision on routine grievance within reasonable time not to exceed 15 calendar days;
 - 4.2.1.4** Availability of expedited processing for urgent or time-sensitive grievance; and
 - 4.2.1.5** Availability of patient appeal to impartial review officer selected by the Department from an approved list compiled by the State Council for Persons with Disabilities and submitted to the Department.

15 DE Reg. 283 (09/01/11) (Prop.)