

February 24, 2010

Susan Del Pesco, Director
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

RE: DLTCRP Skilled & Intermediate Care Facility Reg. [13 DE Reg. 1013 (February 1, 2010)]

Dear Ms. Del Pesco,

The Developmental Disabilities Council understands that the Division of Long-term Care Residents Protection proposes to adopt amendments to its regulations covering skilled and intermediate care facilities.

We offer the following comments.

First, the notice recites that comments are due by February 28, 2010. At 1013. This violates the APA which requires a minimum 30-day comment period. See Title 29 Del.C. 10118.

Second, the Division proposes to delete many regulations which benefit residents. For example, it proposes to delete the following requirement:

6.1.1. The nursing facility shall provide to all residents the care necessary for their comfort, safety and general well being, and shall meet their medical, nursing, nutritional, and psychosocial needs.

Likewise, it proposes to delete the following:

- standards protecting resident funds (§6.2);
- a requirement that facilities comply with physician orders for specialized services (§6.4);
- a requirement that facilities schedule activities which enhance quality of life and promote choice (§6.6);
- a requirement of 3 meals/day (§6.85);
- a requirement that resident areas be maintained in a range of 71 to 81 degrees (§7.3.2);
- a maximum cap of 4 residents per bedroom (§7.4.2); and
- a requirement that each facility maintain a quality assessment and assurance committee (§9.0).

We infer that some of these deletions may be based on the belief that 42 C.F.R. Part 483, which is incorporated by reference, may provide equivalent standards. See §1.2.

Third, the Councils submitted a set of 23 comments to the DLTCRP on the same regulations approximately 16 months ago. See attached November 26, 2008 SCPD memo. In Par. 10, the Council objected to a standard authorizing facilities to operate with no nurse whatsoever on the third shift. The current proposal weakens patient well-being further by deleting the following standard:

5.4.2.7. At a minimum, in the absence of a nurse on the third shift, at least one certified nursing assistant shall be qualified to assist with self administration of medication (AWSAM) and to provide basic first aid.

Fourth, the Division proposes the following amendment to existing §6.5.9:

6.5.9. The facility shall ensure that each nursing and ancillary staff member providing care to a resident under ~~16~~ 8 years of age meets the standards as defined in regulations for nursing facilities admitting pediatric residents.

This is an ostensibly odd amendment since the pediatric nursing home standards apply to residents under age 18. See 16 DE Admin Code 3210, §2.1. Indeed, §§5.4 and 5.4 of the pediatric nursing home regulations require nursing staff with specialized pediatric expertise to be present with no cap of age 8 or age 16.

Fifth, the Division should consider adding a regulation as required by recently-amended Title 16 Del.C. §1131C(b) which recites as follows:

(b) The Department shall include in its regulations for all facilities licensed under this chapter a requirement of full cooperation with the protection and advocacy agency in fulfilling functions authorized by this chapter. Without limiting the protection and advocacy agency's pursuit of other legal remedies, the Department shall enforce violations of such regulations consistent with §§1109 and 1113 of this title.

The Developmental Disabilities Council thanks you in advance for your sincere consideration of these remarks. Should you have questions regarding these please contact our office at 739-3333.

Sincerely,

Diann Jones
Chair

cc. The Honorable Rita Landgraf, DHSS