

February 24, 2010

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

RE: DLTCRP Prop. Assisted Living Regulation [13 DE Reg. 1018 (February 1, 2010)]

Dear Ms. Del Pesco,

The Developmental Disabilities Council understands that the Division of Long-term Care Residents Protection proposes to adopt some discrete amendments to its Assisted Living regulation summarized at p. 1019. We offer the following observations.

First, the requirement that the “prescribing practitioner and phone number” be included in the medication log is deleted from the definition in §3.0. The resulting protocol is roughly equivalent to that of nursing facilities. See 16 DE Admin Code 3201, §10.1.7. However, we could not locate a standard in the Assisted Living regulation equivalent to §10.1.4 of the nursing facility regulation in which records of physician orders are maintained by the facility. In the absence of a standard requiring the assisted living provider to maintain a record of physician orders, it may be preferable to at least retain the requirement that the medication log identify the prescribing practitioner and phone number.

Second, the requirement that a facility provide clear reasons for rejection of an applicant in §5.1 merits endorsement.

Third, in §8.4, the Division may wish to consider amending the first sentence to read “...lockable container or cabinet” to allow a facility to meet the requirement by offering a lockable medicine cabinet. Medications are less likely to be misplaced if kept in the medicine cabinet.

Moreover, the Division may wish to consider adding exceptions to the “locked container” or “locked room” expectation for emergency medications such as epipens and inhalers which residents may prefer to keep in a purse or near their person. Finally, the Division may wish to consider an exception to the “locked container” or “locked room” expectation for non-prescription medications. Compare 16 DE Admin Code 3201, §6.11.2.1 which suggests that non-prescription medications such as antacids and aspirin need not be locked in nursing facilities.

Fourth, the Division is deleting a requirement of at least semi-annual resident satisfaction surveys. We recommend retention of the requirement.

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.

Thank you in advance for your consideration of our remarks. Should you have any questions regarding these please contact our office at 739-3333.

Sincerely,

Diann Jones
Chair

