

MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Mental Health Grievance Procedure Regulation

Date: September 7, 2011

I am providing the following critique as an addendum/supplement to my September 6, 2011 memorandum.

16. DSAMH Prop. Mental Health Grievance Procedure Regulation [15 DE Reg. 283 (9/1/2011)]

As background, I drafted legislation (H.B. No. 37) amending the Mental Health Patients' Bill of Rights which was enacted and signed by the Governor on July 15, 2010. The legislation resulted in the attached Title 16 Del.C. §5161(b)(15) which requires DHSS to establish a grievance system for the Delaware Psychiatric Center, through regulation, which includes certain features. The new statute requires the availability of an appeal to an impartial review officer selected from an approved list compiled by the SCPD. Consistent with the attached emails, the SCPD issued a reminder about the need for regulations in July which prompted the issuance of the current proposal. The SCPD also asked for statistics and other information on the current grievance system to facilitate decision-making on the number and qualifications of hearing officer candidates.

I have the following observations on the proposed regulation.

First and foremost, the regulation makes no sense. Section 3.0 contains fifty-three (53) definitions of terms. Of the fifty-three (53) definitions, only two (2) are used in the text of the regulation, i.e., "facility" and "protection and advocacy agency".

Second, the statute requiring the establishment of a conforming grievance procedure only applies to the DPC. In contrast, the definitions in §3.0 often refer to drug/alcohol facilities which have nothing to do with the Mental Health Patients' Bill of Rights Act, much less Subsection (b)(15) of that law. See, e.g., definitions of "applicant", "license", "provisional license", and "treatment". There is a separate Bill of Rights for drug/alcohol patients which was co-authored by the DLP and DPC Deputy Director (Title 16 Del.C. §2220). Moreover, the regulation refers to the DSCY&F (definition of "Department") and implicitly DDDS (definition of "Treatment" referring to admissions to Stockley pursuant to Chapter 55).

Third, §4.1 essentially recites that each patient in DPC, Stockley, Rockford, Meadowood, or Dover Behavioral Health shall have "the rights listed below." There is also a reference to posting "rights set forth in this subsection" There is then no list of rights provided with the exception of the grievance system. Apart from the omission of the "list", the grievance

procedure required by H.B. No. 37 does not apply to Stockley, Rockford, Meadowood or Dover Behavioral Health.

Fourth, §4.2.1 does not establish grievance standards. It is written in precatory terms. Instead of defining the grievance system components and procedures, this section merely “parrots” the statute by reciting that “(t)he Department shall establish the grievance system for the Delaware Psychiatric Center through regulation which shall include the following features:...” The Department must adopt substantive standards in this regulation, not simply reiterate the statutory mandate that it adopt standards. I suspect that no attorney reviewed this proposed regulation.

I recommend sharing the above observations with DSAMH, the DHSS Secretary, and Debbie Gottschalk with the suggestion that the proposed regulation be withdrawn as improvidently published. The SCPD may also wish to resolicit the information contained in its August 12 email.

Attachments

8g:legreg/911dpcgrievancereg