



STATE OF DELAWARE  
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**MEMORANDUM**

DATE: September 29, 2011

TO: Ms. Susan Robinson, Deputy Director, DPC  
Division of Substance Abuse and Mental Health

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 15 DE Reg. 283 [DSAMH Proposed Mental Health Grievance Procedure Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Substance Abuse and Mental Health's (DSAMHs) proposal to amend its Mental Health Patient's Grievance Process published as 15 DE Reg. 283 in the September 1, 2011 issue of the Register of Regulations.

As background, H.B. 37 was enacted and signed by the Governor on July 15, 2010, and amends the Mental Health Patients' Bill of Rights. The legislation resulted in Title 16 Del.C. §5161(b)(15) which requires DHSS to establish a grievance system for the Delaware Psychiatric Center, through regulation, that 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. SCPD has requested statistics and other information on the current grievance system to facilitate decision-making on the number and qualifications of hearing officer candidates.

SCPD recommends that the proposed regulation be withdrawn as improvidently published and has the following observations.

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 DSCYF (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. 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.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our recommendation or observations on the proposed regulation.

cc: Ms. Rita Landgraf  
Ms. Kevin Huckshorn  
Ms. Debbie Gottschalk  
Mr. Roy Lafontaine  
Ms. Mary Kate McLaughlin  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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