



STATE OF DELAWARE
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MEMORANDUM

DATE: April 29, 2015

TO: Mr. Thomas Murray, Deputy Director
Division of Long Term Care Residents Protection

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

RE: 18 DE Reg. 761 (DLTCRP Financial Capability Reporting Regulation)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Long Term Care Residents Protection's (DLTCRPs) proposal to establish regulations regarding financial capability reporting. As background, the attached Title 16 Del.C. §1104, which covers licensing of long-term care facilities, requires applicants for a new or renewed license to submit evidence of "financial capability". The statute also authorizes the Division of Long-term Care Residents Protection to issue regulations defining the scope and timetable of submissions of financial information. The Division is now issuing regulations implementing §1104. The proposed regulation was published as 18 DE Reg. 761 in the April 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

First, the standards only apply to facilities with 4 or more residents. Given the comprehensive requirements in the regulations, this appears appropriate. Facilities with 3 or fewer residents would be subject to less prescriptive obligations. See §2.2.

Second, there is some "tension" between the statute and regulation in the context of the "look-back" period. Title 16 Del.C. §1104(d) contains a 5-year "look-back" for a "satisfactory compliance history" from operations in other states:

(d) In making the evaluation described in subsection (c) of this section, the Department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the Department to substantiate a satisfactory compliance history and any other information required by the Department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility at any time during the 5 year period preceding the date on which the application is made.

Assuming a “satisfactory compliance history” would include a lack of financial problems (e.g. bankruptcy; insolvency; judgments), the statute envisions a 5-year “look-back”. In contrast, the regulation does not contemplate submission of information dating back 5 years. The Division may wish to reassess its proposed standards in this context.

Third, §5.3.5 refers to a “local financial institution”. The term is undefined. SCPD surmises it would include an Artisans Bank or some credit unions which only operate in Delaware. However, it’s unclear if it would cover a national entity with a branch in Delaware (e.g. Bank of America). Moreover, query whether a financial institution with an office location in Elkton, Salisbury, or West Chester is “local”. It would be preferable to clarify the term.

Fourth, SCPD assumes the State of Delaware has financial safeguards and auditing protocols in place to cover State-owned long-term care facilities (e.g. Stockley; DHCI; Bissell; Governor Bacon). Literally, they would be required to comply with all of the requirements in the regulations. Some of the requirements may not “match” OMB or other auditing timetables and standards. The Division may wish to assess whether to exempt State or DHSS-owned facilities from the regulations, in whole or part.

Fifth, in §14.2, the Division could consider adding a second supporting citation, i.e., to Title 16 Del.C. §1104(e).

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

cc: Ms. Mary Peterson
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

18reg761 dlcrp-financial capability reporting 4-29-15

§ 1104 License and renewal application.

(a) An application for a license or renewal of a license shall be submitted to the Division on forms provided by the Division and must be accompanied by the applicable license fee.

(b) In addition to the general information requested on the application forms, the applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:

(1) Minimum standards of medical care, and/or nursing care, as applicable by type of facility;

(2) Financial capability; and

(3) Any other applicable state and federal laws and regulations for that category of facility.

(c) The Department shall consider the background and qualifications of the applicant or license holder and it may also consider the background and qualifications of the following:

(1) Any partner, officer, director or managing employee of the applicant or license holder;

(2) Any person who owns or controls the physical plant in which the facility operates or is to operate; and

(3) Any controlling person with respect to the facility for which a license or license renewal is requested.

(d) In making the evaluation described in subsection (c) of this section, the Department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the Department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility any time during the 5 year period preceding the date on which the application is made. The Department by regulation shall define what constitutes a satisfactory compliance history. The Department may also require the applicant to file information relating to its financial condition during the 5 year period preceding the date on which the application is made. The Department may also request any of the above-described information about any other person described by subsection (c) of this section.

(e) Financial Disclosure Requirement. As part of the license and annual renewal application, or when the Department determines that conditions exist which threaten the health or safety of a resident or residents, each facility licensed under this chapter shall disclose the following financial information notwithstanding Chapter 100 of Title 29, the Department may promulgate regulations identifying which, if any, part of such financial information shall be available to the public:

(1) Audited annual financial statements;

(2) Annual financial reports;

(3) Other financial reports regularly filed with state or federal agencies;

(4) Any other information relative to the financial health of the facility.

(f) The license shall terminate if and when there is a transfer of a nursing facility or similar facility to another person or controlling person or the business ceases legal existence or discontinues operation. No license granted by the Department shall be assigned or otherwise transferred to another person or controlling person except upon such conditions as the Department may specifically designate and then only pursuant to written consent from the Department. Application for transfer of a license shall be submitted at least 90 days before the proposed transfer and shall contain the same information and be subject to the same criteria for approval as contained in this section.

(g) The Department shall grant a provisional license to any newly established or newly transferred nursing facility or related facility, provided that the requirements of this section are met. The term of such provisional license shall be 90 days, and thereafter the nursing facility or similar facility shall be entitled to an annual license, provided that the requirements of this section are met.

71 Del. Laws, c. 488, § 2; 72 Del. Laws, c. 305, § 1.;