

CHAPTER 382
FORMERLY
SENATE BILL NO. 303

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29, Delaware Code, §7970(a) by inserting a new paragraph “(3)” to read as follows:

“(3) To ensure that training programs for certified nursing assistants comply with state and federal statutes and regulations, that such programs are regularly monitored for compliance, and that they are subject to sanctions for violations.”

Section 2. Amend 29 Del. C. Chapter 79, Subchapter VI, § 7971(d) by deleting paragraph (14) and inserting a new paragraph (14) to read as follows;

“(14) Regulate the certification of Nursing Assistants, by:

a. Certifying nursing assistants pursuant to 16 Del. C. Chapter 30A. and certifying nursing assistants from out of state who meet Delaware requirements.

b. Suspending or revoking the certificate of a certified nursing assistant for cause. Cause to suspend or revoke a certificate shall include, but is not limited to:

i. Placement of a finding of abuse, neglect or mistreatment against a certified nurse assistant on the Delaware Certified Nurse Assistant Registry.

ii. The suspension or revocation of the certified nursing assistant’s certificate by another state; and

iii. Circumstances where the certificate was obtained using false information.”

Section 3. Amend 29 Del. C. Chapter 79, Subchapter VI, § 7971(d) by inserting the following new paragraphs (15), (16), and (17), to read as follows:

“(15) Regulate Nurse Assistant Training Programs, including to:

a. Approve curricula and develop criteria and standards for evaluating such training programs;

b. Provide for surveys of such programs at such times as it may deem necessary;

c. Ensure that such programs meet the requirements of 16 Del. C., Chapter 30A and 42 CFR Ch. IV, Subchapter G, Part 483;

d. Deny or withdraw approval from training programs for failure to meet approved curricula or other criteria;

e. Establish requirements for mandatory continuing education;

f. Provide public access through an online source to the pass rates of all approved training programs.

(15) The Division may impose civil penalties against any Nurse Assistant Training Program, whether approved or not, for violations of the provisions of this Chapter or of 16 Del. C., Chapter 30A, or the regulations adopted pursuant thereto. The maximum civil penalty shall be \$5,000 per violation.

a. In determining the amount of the penalty to be assessed, the Division shall consider:

i. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

ii. The history of violations committed by the person or the person’s affiliate(s), employee(s), or controlling person(s);

iii. The efforts made to correct the violation(s);

iv. The culpability of the person or persons who committed the violation(s);

v. Whether a misrepresentation was made to the Division or to another person regarding: the quality of services provided; the academic performance of the program; or the identity of an owner or controlling person of the program.

vi. Whether the program refused to allow a representative of the Division to inspect without notice at any time: any portion of the premises of the program; or any documents, records, or files required to be maintained by the program.

vii. Whether the program willfully interfered with the work of a representative of the Division or with the enforcement of any statute or regulation;

viii. Any other matter that affects the operating requirements of the program, or the educational experience of its students.

b. Each day of a continuing violation constitutes a separate violation.

c. All civil penalties collected under this chapter shall be remitted to the State Civil Penalty Trust Fund Trust Fund.

d. The Division may add the amount of the civil penalty to the licensing fee for the program. If the licensee refuses to make the payment at the time of the application for renewal of its license, its license shall not be renewed.

e. The Division may also proceed for the collection of the civil money penalty in an action brought in the name of the Department in any court of competent jurisdiction.

f. Any entity upon which a penalty is imposed may request an administrative hearing pursuant to Department of Health and Social Services regulations before such penalty becomes final. The hearing officer for the administrative hearing shall have the power to compel the attendance of witnesses and the production of evidence. The finding by the hearing officer shall constitute the final decision of the Department of Health and Social Services and shall be appealable, on the record, by either party to Superior Court.”

Approved July 12, 2010