

## MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Regulatory Initiatives

Date: August 4, 2008

I am providing my analysis of sixteen (16) regulatory initiatives in anticipation of the August 7 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DOE Final Charter School Regulation [12 DE Reg. 211 (August 1, 2008)]

The SCPD and GACEC commented on the proposed version of this regulation in June, 2008. The Councils endorsed the standards subject to correction of one error. The Councils also suggested that the DOE consider clarification of whether the term “second school year” referred to 2009 or 2010.

The DOE has now adopted a final regulation. It corrected the error but declined to add clarifying language concerning the term “second school year”.

Since the regulation is final, I recommend no further action.

2. DOE Final Federal Program Complaint Process Regulation [12 DE Reg. 208 (August 1, 2008)]

The SCPD and GACEC commented on the proposed version of this regulation in June, 2008.

First, the Councils recommended deletion of the word “disabled”. The Department agreed and deleted it.

Second, the Councils recommended adding references to Section 504 and the ADA. The Department declined based on its view that enforcement of these laws is a matter for local districts.

Third, the Councils suggested that the Department consider deletion of an extraneous “note”. The Department did not address the suggestion and effected no amendment.

I recommend no further action.

3. DOE Final Accountability Regulation [12 DE Reg. 202 (August 1, 2008)]

The SCPD and GACEC commented on the proposed version of this regulation in June, 2008. The Councils endorsed the proposed standards. The Department has now adopted the regulation with no changes.

I recommend no further action.

4. DOE Final Content Standards Alignment Regulation [12 DE Reg. 216 (August 1, 2008)]

The SCPD and GACEC commented on the proposed version of this regulation in June, 2008. The Councils endorsed the proposed standards subject to correction of a citation. The DOE has now adopted a final regulation which incorporates a revised citation.

I recommend no further action.

5. DOE Final Student Rights Regulation [12 DE Reg. 219 (August 1, 2008)]

This is an important regulation. The SCPD and GACEC commented on the proposed version in June, 2008. The standards require districts and charter schools to adopt policies implementing certain federal and State laws and to post those policies on their websites. The Councils endorsed the regulation subject to two (2) amendments.

First, the Councils recommended that Section 504 and the ADA be added to the list of covered statutes. The DOE agreed and added them to the list.

Second, the Councils recommended adoption of a more current reference to Title IX. The DOE agreed and adopted the Councils' suggested reference.

I recommended issuing a "thank you" to the Department for adopting our recommendations with the observation that there is a minor error insofar as the abbreviation for the Americans with Disabilities Act is listed as "ACD" rather than "ADA".

6. DMMA Final LTC Couples Regulation [12 DE Reg. 224 (August 1, 2008)]

The SCPD and GACEC commented on the proposed version of this regulation in June, 2008.

First, the Councils objected to a standard suggesting that spousal impoverishment protections would not apply to a community spouse who has applied for LTC but is still living at home. DMMA did not change its standard but clarified that the spousal impoverishment protections would apply to the community spouse until admitted to a LTC facility.

Second, the Councils suggested deletion of a “6-month” standard which is absent from the applicable federal regulation. The Division declined since it appears in statute.

Third, the Councils recommended modifying a reference to “nursing facility” as “underinclusive” of covered facilities. The Division agreed and deleted the word “nursing”.

Since the regulation is final, I recommend no further action.

7. DMMA Final Medicaid Integrity Assurance Regulation [12 DE Reg. 226 (August 1, 2008)]

The SCPD and GACEC commented on the proposed version of this regulation in June, 2008. The Councils endorsed the standards. The Division has acknowledged the endorsements and adopted a final regulation with no changes.

I recommend no further action.

8. DMMA Final School-Based Transportation Regulation [12 DE Reg. 228 (August 1 2008)]

This is an important regulation.

The SCPD and GACEC commented on the proposed version of this regulation in June, 2008. The Division of Medicaid and Medical Assistance has now a adopted final regulation incorporating some changes recommended by the Councils.

First, the Councils noted that there were several references to the DOE and LEAs which could be construed as excluding charter schools and specialized private schools. The DMMA responded that it does not limit the schools that may participate in the Medicaid program. Unfortunately, DMMA did not modify the regulation which literally makes the provisions inapplicable to most charter schools and all private schools.

Second, the Councils observed that the adverse effect of federal limits could be attenuated by defining “school age children” as age 5 and not age 3. DMMA agreed and incorporated that standard.

Third, the Councils recommended the addition of a provision clarifying that Medicaid reimbursement for transportation to and from hospital-based school sites (e.g. First State School) would not be precluded. DMMA added a well-written conforming provision. At p. 233.

Fourth, the Councils noted that CMS regulatory commentary still allows Medicaid reimbursement for personal care attendants and medical services during transport. The Councils recommended adding a clarifying provision. DMMA agreed and incorporated a clarifying provision. At p. 233.

Fifth, the Councils identified a typographical error (remdial) which DMMA corrected.

Sixth, the Councils objected to adoption of a medical necessity standard limited to “medical improvement”. DMMA agreed that the language was inadvertently narrow and expanded the standard to include treatments “designed to reasonably ameliorate, improve, or prevent the worsening of the student’s physical or mental condition....”.

Since the Division responded favorably to all of the Councils’ recommendations, a “thank-you” letter or email would be appropriate.

9. DMMA Prop. Medicaid Acute Care Program Regulation [12 DE Reg. 123 (August 1, 2008)]

The Division of Medicaid & Medical Assistance proposes to amend its eligibility standards for 30-day hospitalization/rehabilitation and out-of-state rehabilitation.

Under the regulation, an individual may be eligible for Medicaid coverage in an acute care hospital or rehabilitation facility if both medical and financial criteria are met.

Financially, there is a \$2,000 countable resource limit. In general, income cannot exceed 100% of the Federal SSI standard.. If an applicant is expected to enter a nursing home directly from the hospital or rehabilitation facility, countable income can be higher (250% of the Federal SSI standard).

The medical eligibility standards are more detailed. Moreover, the medical eligibility standards for out-of-state rehabilitation are stricter than for in-state rehabilitation.

I have the following observations and recommendations.

First, in the “Income Guidelines” section, it is anomalous to adopt a more liberal income test for persons opting for nursing home placement directly from the hospital. Consistent with Olmstead and similar precedents, the State Medicaid program is expected to encourage alternatives to institutionalization. See attached January 14, 2000 CMS letter to State Medicaid Directors. It would therefore be preferable to authorize the higher income cap if an applicant were expected to enter a Medicaid waiver program. The superseded regulation (Section 20800.1) contemplated patients being discharged to the community with HCBS services. For example, a patient could be discharged to an assisted living facility and benefit from Medicaid assisted living waiver services. Eligibility for such waiver requires the applicant to meet a nursing level of care. See 16 DE Admin Code 20700.

Second, I question the categorical requirement that a participant in an out-of-state rehabilitation facility participate in “at least 3 hours of physical and/or occupational therapy per day”. The preceding standards are more flexible in justifying eligibility based on intensive speech therapy, psychological services, or prosthetic-orthotic services. Someone recovering from a traumatic brain injury could conceivably focus on speech language therapy, cognitive retraining, and other sophisticated supports apart from OT and PT. I recommend deletion of the categorical eligibility requirement that the individual participate in 3 hours of OT and PT. It would be

preferable to simply condense the standard as follows: “The individual must be able to tolerate and participate in required therapies and services.” Since eligibility is reviewed on a “bi-weekly basis”, there is ample scrutiny of active treatment.

I recommend sharing the above observations and recommendations with the Division, the BIA, and, in the Council’s discretion, select medical facilities (e.g. Bryn Mawr hospital).

10. DSS Final Fair Hearing Practice & Procedure Regulation [12 DE Reg. 242 (August 1, 2008)]

The SCPD and GACEC commented on the proposed version of this regulation in June, 2008. The Division of Social Services has now adopted a final regulation with one amendment prompted by the Councils’ commentary.

First, the Councils expressed concern that DSS was deleting its regulation authorizing it to process nursing home discharge hearings. The rationale, that DLTCRP would handle such hearings, was deemed problematic since the DLTCRP has no hearing regulations in this context and contemplates DPH handling hearings. The Councils also asked if DSS would cover a hearing if a nursing home resident was being discharged from a Medicaid “bed”. DSS effected no change, suggesting that DMMA will work with the DLTCRP to assure that its hearing process for nursing home discharges conforms to federal requirements.

Second, the Councils recommended an amended reference to the DDDS waiver to ensure “people-first” language. DSS agreed and effected the change.

Third, the Councils recommended adding a reference to DPH since it is involved in the AIDS waiver. DSS declined to effect any amendment.

I recommend that the SCPD write to Secretary Meconi with a copy to the DMMA, DLTCRP, and DPH division directors, to request a copy of the current regulations that will be applied to hearings contesting discharge from LTC facilities under Title 16 Del.C. §1121(18). It is still unclear which division will process such hearings since the DLTCRP standards defer to DPH in this context. See, e.g. June 23, 2008 GACEC letter. I suspect that there are no standards whatsoever.

11. DSS Prop. Food Stamp Regulation [12 DE Reg. 135 (August 1, 2008)]

The Division of Social Services proposes to amend its Food Stamp regulations.

First, federal law currently imposes a cap on the amount of the deduction for child and dependent care expenses in determining Food Stamp eligibility. On June 18, federal law was amended to remove the cap effective October 1, 2008. This is explained in the attached USDA policy letter. DSS is implementing this provision by deleting the cap.

Second, the federal law authorizes simplified reporting for households with seniors and persons with disabilities. Consistent with the attached July 1 summary from the Center on Budget and Policy Priorities, Section 4105 of the new federal law has the following result:

Reduces paperwork burdens on households with seniors and people with disabilities by allowing states to extend the "simplified reporting" option to them. Under the option, households in which all members are elderly or have a disability (and where no one has earnings) will be allowed to participate for 12-month periods; the only change in circumstances they will be required to report over the year will be if their household income rises above 130 percent of the poverty level. (Almost every state has adopted this policy for six-month periods for other households, as allowed under the 2002 farm bill.) *CBO 9-yr cost: \$285 million*

Delaware already had a 12-month reporting period for households in which all members were elderly or persons with disabilities with no earned income. This will not change. See strike-out language and second bullet at the bottom of p 138. Otherwise, the amendments "track" the new federal law by requiring such households to report an increase in income only if it exceeds 130% of the poverty income guideline for the household.

I did not identify any concerns with the proposed revisions. The Council may wish to issue an endorsement.

## 12. DOE Education of Homeless Children & Youth Regulation [12 DE Reg. 119 (August 1, 2008)]

The Department of Education proposes to amend its standards implementing the federal McKinney-Vento Homeless Assistance Act.

First, to conform to a State statute [Title 14 Del.C. §202(c)], DOE adds a provision clarifying that all children in foster care are considered "homeless" for purposes of the regulation. This is unobjectionable.

Second, the McKinney Act requires states to adopt procedures for prompt resolution of disputes. I attach an overview from the National Center for Homeless Education (Rev. Winter, 2008) and an excerpt from guidance issued by the U.S. Department of Education. The current DOE regulation contains specific disputes standards (Section 4.0). The only proposed change is to extend "calendar days" to "business days" in several contexts, therefore extending the time period for processing disputes. Reasonable persons could differ on whether this change is reasonable. However, given the federal encouragement of prompt resolution, the Council may wish to support retention of the "calendar day" standard.

Third, there is some "tension" between the regulation and Title 14 Del.C. §1058. Local districts will typically adopt standards to implement federal and State homeless student education requirements. This would include development of a dispute resolution process (Section 4.3.1). The regulation (Section 4.5.1) authorizes parents to appeal adverse district decisions to the Secretary whose decision is deemed final (Section 4.5.9). This ostensibly conflicts with Title 14 Del.C. §1058. This statute authorizes any party aggrieved by a local school board decision to appeal to the State Board of Education. The State Board's decision is final. The Department cannot, by regulation, divest parents of their statutory right to appeal a district decision to the State Board of Education. The DOE may wish to add a caveat that the regulation is not intended to limit

any right to challenge district decisions otherwise available under law, including Title 14 Del.C. §1058.

I recommend sharing the above observations with the DOE and SBE.

13. DOE Prop. Public/Private/Nonpublic School Definitions Reg[12 DE Reg. 108 (August 1, 2008)]

The Department of Education adopted a regulation in 2003 with definitions of “public school”, “private school”, and “nonpublic school”. The DOE now proposes to readopt the same regulation with no changes. It is therefore instructive to revisit my 2003 analysis (which is reproduced below in italics) and the DOE’s attached commentary upon adoption of final regulations in 2003 [7 DE Reg. 618-619 (November 1, 2008)]:

*DOE Proposed “Non-public School” Regulation [7 DE Reg. 254 (September 1, 2003)]*

*The DOE previously had regulatory definitions of “public” schools and “private” schools. The status of “home schools” was not well defined.*

*On June 30, 2003 the Governor signed S.B. No. 103 which clarified that “a homeschool shall be considered a non-public school” and defined three types of homeschools. The DOE is now proposing to amend its regulation by adding a definition of “non-public school” to include 1) private schools; and 2) homeschools.*

*My primary concern with this approach is its interaction with the IDEA and AMSES “private school” regulations. The “Childfind” duty and some special education services are available to “private school” students. See 34 C.F.R. §§300.450-462. By differentiating homeschools from private schools in the regulation, is the DOE mandating that the private school regulations are categorically inapplicable to homeschooled children? This would mean that a parent could not even ask a district to screen a homeschooled child for special education purposes. My impression is that the DOE has not previously clarified the application of the private school regulations to homeschooled students. The GACEC and SCPD may wish to solicit clarification of the intended consequences of the proposed regulation in interaction with the IDEA and AMSES. My preference would be to allow homeschooled students to qualify under the federal private school student regulations to permit access to at least evaluation.*

*DOE Final “Non-public School” Regulation [7 DE Reg. 618 (November 1, 2003)]*

*The GACEC and SCPD submitted comments on the proposed version of these regulations in September, 2003.*

*In a nutshell, the Councils expressed concern that differentiating “homeschools” from “private schools” could be construed as disallowing homeschooled student access to IDEA-authorized private school assessment and services. The DOE clarified that the Childfind duty applies to homeschooled students. Indeed, the DOE confirmed its intention to issue a clarifying*

*document to districts upon adoption of the final regulation. However, the DOE did not address the balance of the regulations cited by the Councils, i.e., 34 C.F.R. §§300.452-300.461. For example, are districts expected to include homeschool representatives in consultations required by 34 C.F.R. §300.454(b)? Are homeschooled children eligible for “service plans” within the purview of 34 C.F.R. §300.454 (c) and 300.455? I attach copies of the regulations for facilitated reference.*

*The Councils should consider issuing a “thank you” letter to the DOE for confirming that homeschooled students are eligible for Childfind assessment and volunteering to issue clarification to school districts. At the same time, the Councils may wish to solicit clarification that the balance of the private school regulations (including the above consultation and service plan standards) also apply to homeschooled students.*

The numbering of the IDEIA regulations has changed since 2003. However, districts are still required to extend “child find” to private school students [34 C.F.R. 300.131]; develop service plans for some private school students [34 C.F.R. 300.132]; and consult with parents and representatives of private school students to design the system for providing special education and related services to private school students [34 C.F.R. 300.134]. Parents can also invoke district and State due process remedies to resolve “child find” disputes [34 C.F.R. 300.140].

As reflected in the attached DOE commentary to the 2003 final regulation, the Department interpreted its “private school student” regulations as encompassing homeschooled students and volunteered to issue clarification to school districts. However, my concern remains apt. There is no clarification in the AMSES (14 DE Admin Code 923, Sections 29 to 44) that “private school student” encompasses a homeschooled student. Under Section 3.0 of Regulation 255, a homeschool is literally not a private school. Indeed, Section 2.0 categorically requires a “private school” to have a “board of trustees” and “faculty” in contrast to State statute [Title 14 Del.C. §2703A] which authorizes the operation of homeschools with no board of trustees and no faculty. The lack of clarity in the DOE regulations may result in a barrier to participation of homeschooled students in the “child find” and service delivery system established by the AMSES (14 DE Admin Code 923, Sections 29-44).

I recommend that the DOE revise Regulation 255 and/or the AMSES to explicitly clarify that homeschooled students are covered by AMSES Sections 29-44.

#### 14. DOE Prop. Career Technical Education Program Reg. [12 DE Reg. 113 (August 1, 2008)]

The Department of Education proposes to amend its standards implementing the Carl D. Perkins Career and Technical Education Act of 2006. That Act provides funds for the education of students in career and technical trades.

I have the following observations.

First, there are some salutary provisions, including a requirement that districts and charters schools “make provisions for meeting the unique needs of all students” (Sec. 2.45).

Second, the Councils had prompted adoption of regulatory provisions in the 2006 regulations authorizing students with disabilities to participate in programs usually restricted to juniors and seniors irrespective of age to comport with IEPs. See attached 9 DE Reg. 1070-1072 (January 1, 2006). The Department now proposes to expand the authorization to also cover students with Section 504 plans. See proposed Sections 3.4 and 4.4. This is ostensibly prompted by 2006 changes in the Perkins Act. Consistent with the attached excerpts from the Act, “the term ‘individual with a disability’ “means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).” “Individuals with disabilities” are then included in the overall definition of “special populations”. The Act requires grantees to include levels of performance of “special populations”. Unfortunately, the proposed DOE regulations reflect confusion in the context of IDEIA-eligible students and students covered by Section 504 or the ADA. The relevant provisions are as follows:

3.4. Students whose education plans are guided by an Individualized Education Plan (IEP) or a 504 plan through the Americans with Disabilities Act (ADA) may participate in Cooperative Education programs without senior year status if participation is necessary to provide the student a free appropriate public education and if approved by the IEP team and Career Education Teacher Coordinator.

4.4. Students whose education plans are guided by an Individualized Education Plan (IEP) or a 504 plan through the Americans with Disabilities Act (ADA) may participate in Cooperative Education programs without junior or senior year status if participation is necessary to provide the student a free appropriate public education and if approved by the IEP team and Career Education Teacher Coordinator.

A student with a Section 504 plan will not have an IEP team. Moreover, referring to “a 504 plan through the Americans with Disabilities Act (ADA)” makes no sense. All students covered by the IDEIA will be covered by Section 504 and the ADA. Joint OSEP/OCR Policy Letter to M. Williams, 21 IDELR 73, 76 (June 14, 1994)”[that a child is eligible for services under Part B but is not covered by Section 504 is difficult to imagine”]. All Section 504 students are also covered by the ADA. Cf. OCR Policy Letter to P. Zirkel, 20 IDELR 134, 138 (August 23, 1993); Region III OCR LOF to Fredericksburg City (VA) Public School, 20 IDELR 924 (July 23, 1993). However, Section 504 and ADA covered students may not qualify under the IDEIA. Joint OSEP/OCR Policy Letter to M. Williams, 21 IDELR 73, 76 (June 14, 1994).

I recommend the following substitute:

Students whose education is guided by an individual education program (IEP), or a Section 504 or ADA accommodation plan, may participate in Cooperative Extension programs without (senior)(junior or senior) year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.

This sentence recognizes that Section 504 plans are typically developed by a “multidisciplinary team” Cf. 34 C.F.R. Section 104.34©. It recognizes that the decisions by IEP and multidisciplinary teams cannot be “trumped” by a single administrator or coordinator. It also

recognizes that the exclusive basis for authorization is not fulfillment of a FAPE. Finally, it recognizes that the team should consult the Career and Technical Education Teacher to promote collaborative decision-making.

I recommend sharing the above observations and recommendations with the DOE and SBE.

15. DOL Prop. Emp. Discrimination Complaint Processing Reg. [12 DE Reg. 158 (August 1, 2008)]

The Department of Labor proposes to adopt standards for the processing of complaints of employment discrimination by its Office of Anti-Discrimination. The standards include procedural standards applicable to complaints of employment discrimination based on disability.

In general, the proposed regulations are comprehensive and logical. I have only a few observations and recommendations.

First, it appears that a complaint can only be filed in person at the DOL office in Wilmington or Milford. See Sections 2.3.1 and 2.4.1 and attached Delaware DOL website Q&A entitled “How to File a Charge of Employment”. Although this may promote “better” complaints by pro se applicants, a categorical requirement that an applicant appear in person to fill out the complaint is ostensibly too rigid. In contrast, an aggrieved party can file an employment discrimination complaint with the federal EEOC without a personal appearance. Moreover, the EEOC posts its “intake questionnaire” on its website which can be filled out in question and answer format on-line. See attachments The Delaware DOL does not post its interview questionnaire or complaint form on its website. Thus, an aggrieved party could easily appear at a DOL office to file a complaint without important information. I recommend: 1) the DOL amend its proposed regulation to allow the filing of a complaint without a personal appearance under certain circumstances (e.g. filing by attorney) and 2) provide more complaint-related information (e.g. forms; interview questionnaire) on its website.

Second, Section 3.1.3 authorizes an ex parte application for an extension of time to file an answer. It would be preferable to adopt the following amendment: “A request for extension of time shall be in writing and addressed to the administrator *with a copy to the charging party.*” Compare Section 9.2.1 for an analog.

Third, Section 3.2.3.4 authorizes the redaction of the “identity of witnesses respondent intends to produce” from its answer served on the charging party”. I do not understand the rationale for such an exclusion. The other exclusions (Sections 3.2.3.1 -3.2.3.3) relate to confidential trade secrets or privacy rights of other employees. There is no analogous privacy interest in a witness list submitted to the DOL.

I recommend sharing the above observations and recommendations with the DOL.

16. HRC Prop. Equal Accommodations & Fair Housing Regs. [12 DE Reg. 179 (August 1 2008)]

The SCPD and GACEC submitted extensive comments on an earlier version of these proposed regulations in April, 2008. I attach a copy of the April 22 GACEC letter. The Human Relations Commission is now issuing a 16-page set of revised proposed regulations.

I have the following observations and recommendations.

### EQUAL ACCOMMODATIONS REGULATIONS

1. Consistent with the “First” GACEC comment, in the “Introduction” section, first sentence, the word “under” has been deleted along with the citation to the APA. This is unobjectionable.
2. Consistent with the “Second” GACEC comment, the Councils shared a concern with the proposed effective date of the regulations. However, the revised proposed regulation recites that they apply to all causes of action arising on or after July 1, 1996. This could be problematic since pending cases being processed under the “old” regulations will be subject to new standards in the middle of proceedings. For example, if a hearing has been scheduled in 12 days, a party still has time to file a motion under the 10 business day standard in Section 8.9. The new regulation [Section 8.10] shortens the time to 10 calendar days. Therefore, if the regulation were applied to the pending case, the party would precipitously lose the right to file a motion since the time period has been retroactively shortened..
3. Consistent with the “Third” GACEC comment, a period has been inserted at the end of §1.2, definition of “minor”.
4. Consistent with the “Fourth” GACEC comment, the definition of “Persons Entitled to Protection” in §1.2 has been deleted.
5. In its “Fifth” paragraph, the GACEC noted that the reference in §2.6.3 is “underinclusive” since it omits statutory references to director, supervisor, agent and employee. The reference has not been changed and the comment should be reiterated.
6. Consistent with the GACEC’s “Sixth” paragraph, § 2.8 refers to “12.2” of these Regulations. There is no such section. The regulations end at §11.6. This has not been corrected and the comment should be repeated.
7. Consistent with the GACEC’s “Seventh” paragraph, the word “attorney” should be substituted for “attorneys” in §4.3. Typically, a party will have only 1 attorney. Moreover, even if a party has more than 1 attorney from the same firm, it is acceptable to only include a signature of 1 attorney on pleadings. This has not been corrected and the comment should be reiterated.
8. Consistent with the GACEC’s “Eighth” paragraph, the Council identified a grammatical error in §4.3. The HRC reworded the entire section and the error has been eliminated.
9. In its “Ninth” paragraph, the GACEC recommended a specific amendment to §5.1.10. The HRC adopted the recommended language verbatim.

10. In its “Tenth” paragraph, the GACEC recommended retention of the word “conciliation” rather than substituting “fact-finding” in §7.1, third sentence. The HRC effected the change in the revised proposed regulations.

11. In its “Eleventh” paragraph, the GACEC expressed concern with changing the time period for requesting a subpoena from 10 calendar days to 20 business days prior to hearing in §8.5. The Council suggested a compromise of 15 business days. The HRC is now proposing a “20 calendar day” standard” which is acceptable.

12. In its “Twelfth” paragraph, the GACEC noted that §8.6 authorizes “another person who is not a Party” to serve a subpoena. The Council observed that this conflicts with Title 6 Del.C. §4510(a), first sentence. No change has been effected in the revised proposed regulations and the comment should be repeated.

13. In its “Thirteenth” paragraph, the GACEC recommended adoption of the same time period for disclosure of witnesses and exhibits under §§8.8 and 8.10. The HRC has now adopted a 10 day standard for both sections. This is acceptable.

14. In its “Fourteenth” paragraph, the GACEC objected to a categorical prohibition on consideration of a motion not filed 10 business days prior to hearing. The Council observed that the provision was unduly rigid and conflicted with another regulation. The Council encouraged allowing some Panel discretion. The HRC has now changed §8.9 to refer to a “10 day” standard and given the Panel some discretion in addressing motions filed within 10 days of hearing. This is acceptable.

15. In its “Fifteenth” paragraph, the GACEC recommended the addition of authorization for a panel to inspect or view the location involved in the case. The HRC added a conforming sentence to §10.1 which is identical to a sentence in its Fair Housing regulation. This merits endorsement.

16. In its “Sixteenth” paragraph, the GACEC noted that some words were missing from §9.3, first sentence. The words are still missing and the comment should be reiterated.

#### FAIR HOUSING REGULATIONS

17. In its “Seventeenth” paragraph, the GACEC recommended moving “Special Administration Fund” to appear after “Respondent” to match Title 6 Del.C. §4602. This has not been changed. This list is alphabetical and the result is a reference beginning with an “s” appearing after references beginning with a “t”.

18. In its “Eighteenth” paragraph, the GACEC recommended substituting “occupancy” for “tenancy” in §1.0, definition of “direct threat”. No change has been made and the comment should be reiterated.

19. In its “Nineteenth” paragraph, the GACEC objected to a categorical prohibition on consideration of a motion not filed 10 business days prior to hearing. The Council observed that

the provision was unduly rigid and conflicted with another regulation. The Council encouraged allowing some Panel discretion. The HRC has now changed §10.3 to refer to a “10 day” standard and given the Panel some discretion in addressing motions filed within 10 days of hearing. This is acceptable.

20. In its “Twentieth” paragraph, the GACEC expressed concern with changing the time period for requesting a subpoena from 10 calendar days to 20 business days prior to hearing in §11.5. The Council suggested a compromise of 15 business days. The HRC is now proposing a “20 calendar day” standard” which is acceptable.

21. In its “Twenty-first” paragraph, the GACEC noted a missing period at the end of §14.1.2. The period is still missing and the comment should be repeated.

22. In its “Twenty-second” paragraph, the GACEC observed that §15.0 only addresses two of the three means of qualifying as “housing for older persons in Title 6 Del.C. §4202(16). The Council recommended consideration of an amendment to address Title 6 Del.C. §4602(16)a. No change has been made and the comment should be repeated.

I recommend thanking the HRC for incorporating some amendments suggested by the Councils in the revised set of proposed regulations accompanied by the above observations and recommendations.

## Attachments

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