

MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Legislative & Regulatory Initiatives

Date: September 10, 2007

I am providing my analysis of fourteen (14) legislative and regulatory initiatives in anticipation of the September 13 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DMMA Final Medicaid Fraud Education Regulation [11 DE Reg. 319 (September 1, 2007)]

This regulation is intended to implement a December 13, 2006 CMS policy letter which clarifies expectations to implement Section 6032 of the Deficit Reduction Act of 2005. In a nutshell, State Medicaid agencies are required to adopt State Plan amendments mandating that Medicaid providers adopt practices and policies to educate employees about Medicaid fraud. DMMA used a CMS template to prepare the proposed regulation.

The SCPD and GACEC commented on the proposed version of these regulations in May, 2007. The “gist” of the commentary is reproduced at 11 DE Reg. 321. The Councils endorsed the regulation subject to including some specific references to State law provisions dealing with whistleblowers, fraud, waste, and abuse. In the meantime, DMMA submitted its Plan Amendment to CMS, edited it based on CMS input, and obtained CMS approval on July 6, 2007. DMMA did not include any references to State law. Instead, it adopted a “minimalist” approach, commenting as follows:

The DRA nor CMS provide any guidance regarding the level of detail of an entity’s employee handbook and policy requirement. It is up to the entity in consultation with their legal counsel as long as their policy complies with DRA provisions.

At 321.

I infer that DMMA was under pressure to quickly adopt a standard. The December 13, 2006 CMS policy letter mandated that states amend their respective plans by March 31, 2007. DMMA

was therefore tardy in compliance. According to the CMS letter, DMMA could have prepared a model policy: “The Centers for Medicare & Medicaid Services (CMS) is not providing model language, though States may elect to do so”. Such a model, with specific Delaware citations, would have enhanced the quality and comprehensiveness of provider submissions.

Since the regulation is final, and CMS has already approved the Plan amendment, I recommend no further action.

2. DMMA Final LTC Promissory Note & Life Estate Reg. [11 DE Reg. 314 (September 1, 2007)]

In February, 2007, the Division of Medicaid & Medical Assistance issued proposed regulations covering valuation of promissory notes and life estates in the context of the LTC Medicaid program. In April, DMMA adopted final regulations which incorporated all SCPD recommendations with one exception, i.e., it deleted an authorization for a note holder to demonstrate that a note’s value is less than its outstanding principal balance. The Council solicited reconsideration by the Medicaid Director who agreed with the Council’s concern. A conforming proposed regulation was then published [11 DE Reg. 20 (July 1, 2007)].

The SCPD endorsed the July version of the regulation subject to two amendments to §20330.3.1. First, it recommended insertion of “or” between “loan,” and “mortgage”. Second, it recommended substitution of “instrument” for “agreement”. DMMA agreed with both suggestions and incorporated the changes into the final regulations. DMMA also effected some other non-substantive amendments to clarify intent.

Since the regulations are final, I recommend issuing a “thank-you” letter to the Division for favorably considering the Council’s recommendations.

3. DMMA Final Pediatric Nursing Facility Reimbursement Reg. [11 DE Reg. 312 (9/1/07)]

The SCPD, DDC, and GACEC commented on the proposed version of these regulations in June, 2007. The gist of the commentary is reproduced at pp. 313-314.

First, the Councils confirmed their preference for serving children outside of nursing homes whenever possible. DMMA responded that “Medicaid will make every effort to support a child’s needs in a community setting if they can be met.” DMMA also observed that it was pleased that it could offer pediatric nursing services in-state since “(p)reviously, Delaware children who required these services had to be placed out-of-state.”

Second, the Councils recommended “rebasin” at least every three years. DMMA declined to adopt such a definite standard while noting that “Medicaid has every intention of indexing rates regularly.” Obviously, this undermines prospects for fair compensation to pediatric nursing home providers.

Third, the Councils recommended establishing 2007 as the initial “base year” since adopting

a prior year would artificially depress the reimbursement rate. While not amending the actual text, DMMA responded that “(i)n establishing the rates, Delaware Medicaid utilizes the most current available information at the time”. This is helpful since it clarifies that DMMA would adopt the most recent data in establishing the rate.

Fourth, the Councils endorsed a “special case” authorization which authorizes individual consideration of need apart from skilled or super-skilled services eligibility. DMMA acknowledged the endorsement and added the following comment: “Medicaid recognizes that some children may need special care beyond their assessment levels and Medicaid will address these issues and needs as they arise to ensure that appropriate care is given.”

Since the regulations are final, I recommend no further action.

4. DMMA Final Chronic Renal Disease Program Referral Reg. [11 DE Reg. 318 (9/1/07)]

The SCPD and GACEC commented on the proposed version of these regulations in July, 2007. This initiative was intended to “facilitate and ease the referral process for the Chronic Renal Disease Program” [11 DE Reg. At 318]. The Councils endorsed the standards with one recommendation, i.e., to consider including the application form on the DMMA website.

The Division has now adopted final regulations with no amendments. It responded positively to the Councils’ recommendation:

DMMA agrees that it would be beneficial to include the CRDP application on the agency website and will research the possibility. Thank you for the endorsement.

Since the regulations are final, and DMMA responded positively to the Councils’ recommendation, no further action is required.

5. DSS Final Food Stamp “Household” Regulation [11 DE Reg. 332 (September 1, 2007)]

This is an information item.

The SCPD, DDC, and GACEC commented on the proposed version of these regulations in July, 2007. The Councils endorsed the standards which authorize a “severely disabled” applicant to qualify as a separate “household” under the Food Stamp program if the applicant arranges for another (even co-habiting) individual to purchase and prepare the applicant’s food. The Division of Social Services acknowledged the endorsement and adopted final regulations with no amendments.

6. DMMA Prop. LTC Annuity Regulation [11 DE Reg. 274 (September 1, 2007)]

In June, the Division of Medicaid and Medical Assistance published a proposed 1-sentence amendment to its regulations covering treatment of annuities in the Medicaid LTC program. The SCPD and GACEC endorsed the concept of the standards which ostensibly eliminated a requirement that annuities be sold by applicants for Medicaid LTC services.

Rather than adopting final regulations, the Division has now republished a comprehensive revision to its annuity regulation. The impetus behind the new proposal is issuance of the attached

July 23, 2007 CMS policy letter (p. 275); recognition that the version of the regulation published in June was incomplete (p. 274); and further review by DMMA staff.

I have the following observations.

First, the proposed regulation generally conforms to the CMS guidance and often incorporates language from the letters verbatim.

Second, §20330.10D1 merits amendment. It recites as follows: “The issuer of any annuity will be notified of the State’s rights as a preferred remainder beneficiary”. The use of passive voice in this sentence makes it unclear if the State or the applicant provides the requisite notice to the issuer of the annuity. Compare DMMA Final LTC Promissory Note & Life Estate Reg. [11 DE Reg. 314, 315 (September 1, 2007) [substituting active for passive voice for clarity]. The July 27, 2006 CMS policy letter contemplates that the State will issue notice to the issuer of the annuity:

The State must also notify the issuer of any annuity disclosed for purposes of section 1917(c)1)(F) of the State’s rights as a preferred remainder beneficiary.

At §I.B.

Under the new section 1917(c)(see section I.B above) the State must notify the issuer of the annuity of the State’s right as the preferred remainder beneficiary.

At §II.B. For these reasons, it would be preferable to affirmatively recite that the State will issue the requisite notice.

I recommend that the Council share the above observations with the Division..

7. DSS Final Food Stamp Non-discrimination Reg. [11 DE Reg. 325 (September 1, 2007)]

The SCPD, DDC, and GACEC commented on the proposed version of these regulations in July. The Councils submitted five (5) recommendations which are reproduced in the final regulation at p. 326. The Division of Social Services has now adopted final regulations with no revisions prompted by the Councils’ observations. Instead, the Division lists the five (5) recommendations and then characterizes them as “important” and notes that it “will consider (your) comments in the future when this section is under revision again.” At p. 327.

I have two observations.

First, the Division’s treatment of the Council’s commentary is ostensibly deficient under the APA. The APA contemplates that the Division will provide “a brief summary of its findings of fact with respect to the evidence and information” and its decision to adopt or not adopt amendments must be “supported by its findings on the evidence and information received.” See attached Title 29 Del.C. §10118(2)(3). Simply reciting that comments are important and will be considered at some uncertain point in the future does not conform to the above APA standards.

Second, the Councils may wish to pursue communication with the Federal Department of

Agriculture's Civil Rights Division. Contact information is attached. If such communication is pursued, I recommend focusing on one (1) significant deficiency, i.e., the Division's treatment of "retaliation". Literally, the DSS regulation makes no sense. It recites that "(w)e will not discriminate against any applicant or participant ...for reasons of retaliation". In contrast, the Councils' commentary included an analogous USDA reprisal standard and recommended that DSS adopt a variation of that standard.

8. DPH Proposed Cancer Treatment Program Regulation [11 DE Reg. 278 (September 1, 2007)]

The Division of Public Health proposed to revise its cancer treatment program regulations. This program provides limited funding for cancer treatment to adults with no health insurance if the patient is currently a Delaware resident and was a Delaware resident when the cancer was diagnosed. The program began in 2004 and the SCPD submitted comments on the overall regulations in May and December of 2004.

The proposed amendments have the following effects.

First, treatment coverage is extended from 12 months to 24 months after initiation of cancer treatment.

Second, although recurrence of a previously treated cancer in remission does not "trigger" a new 24-month eligibility period, treatment for a different cancer would be covered. The determination that a new primary cancer has appeared is made by the treating physician.

The revisions are generally understandable and favorable (e.g. extending eligibility to 24 months and deferring to judgment of treating physician). I have only one (1) suggestion. Section 11.9 refers to "(e)nrollees receiving treatment for cancer as defined in 4.1.1". The attached §4.1.1 does not really define cancer treatment. The Division may wish to simply substitute "through the CTP" for "as defined in 4.1.1". In the same line, the comma after "2007" could also be deleted.

I recommend that the Council share the above observations with the Division.

9. DPH Lead Paint Hazards Regulation [11 DE Reg. 280 (September 1, 2007)]

The Division of Public Health is proposing to adopt many discrete amendments to its lengthy lead based paint abatement standards. The standards comprehensively cover testing, training of abatement personnel, and abatement methodology.

I have the following observations.

First, the regulations are inferably derived from Federal or model standards which contain multiple references to "Tribal" authorities. See, e.g., §§2.6.4.1, 2.6.4.2, and 4.5.4.1. The Division may wish to consider deletion of some of these references since Delaware lacks Indian reservations and corresponding tribal governmental authorities. .

Second, there is a "disconnect" between the regulation's standards for "play areas" and both

actual practice and standards issued by other governmental agencies. The definition of “play area” in §1.4 is as follows:

“Play area” means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g. sandboxes, swing sets, and sliding boards), toys, or other children’s possessions of play patterns, or information provided by parents, residents, care givers, or property owners.

[emphasis supplied]

This definition limits “play areas” to those with a soil base. Moreover, the abatement standards for play areas are limited to soil sampling:

4.1.4.4. A soil-lead hazard is present:

4.1.4.4.1. In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

4.1.4.4.2 In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e. non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

I did not identify any standards contemplating assessment of play areas for lead-based paint, dust, or other non-soil based surfaces or substrate.

In contrast, the attached DSCY&F day care regulations [9 DE Admin. Code 101] contemplate “no soil” play areas:

33.7 A licensee shall ensure that the protective surface of the outdoor play area beneath and in the fall zones of climbing equipment, slides, swings and similar equipment is of approved resilient material which absorbs falls.

33.7.1 The fall zones shall be between six (6) to twelve (12) inches deep as determined by the height of the highest climbing surface of the equipment and consist of wood chips, mulch, engineered wood fibers, sand, pea gravel, safety-tested shredded or unitary rubber or rubber like materials, or rubber mats; or

33.7.2.1 The use of shredded tires shall be permitted if the licensee obtains a guarantee from the supplier that the materials are free from steel wires or other contaminants and follows specific instructions from the supplier to determine the appropriate depth.

Apart from the State day care regulations, the federal Architectural and Transportation

Access Compliance Board has issued ADA regulations contemplating non-soil based substrate in play areas. See attached excerpts from www.access-board.gov.

The Division should consider the risks of lead in play area surfaces and substrate other than soil and adopt standards which not limited to soil assessment in play areas.

I recommend that the Council share the above observations and recommendations with the Division.

10. DOE Proposed Immunization Regulation [11 DE Reg. 250 (September 1, 2007)]

The Department of Education proposes to adopt a single amendment to its immunization standards covering the vaccine for Varicella (chickenpox). The current regulation (last amended in June, 2007) provides as follows:

Beginning in the 2007-2008 school year new enterers into the affected grades shall be required to have two doses of the Varicella vaccine.

The Department proposes to defer the effective date of the 2-dose requirement until the 2008-2009 school year since “(b)eginning in the 2007-2008 school year does not give districts and parents adequate notice.” At 250. Since this deadline was only recently established by the amended regulation [10 DE Reg. 1808 (June 1, 2007)], this is ostensibly an accurate observation. Delaware is actually in the forefront in requiring two (2) doses of the vaccine. Consistent with the attached CDC compilation, most states required only one dose as of the 2005-2006 school year. The impetus behind requiring a second dose may be attributable to recent research. The attached CDC summary provides the following information:

In 2006, the Advisory Committee on Immunization Practices (ACIP) voted to recommend routine two-dose varicella vaccination for children. In one study, children who received two doses of the chickenpox vaccine were three times less likely to get chickenpox than individuals who have had only one dose.

The SCPD may wish to express its support for the 2-dose standard and its lack of opposition to a 1-year deferral of implementation given the short notice available to parents.

11. DOE Proposed Substitute Teacher Regulation [11 DE Reg. 248 (September 1, 2007)]

The Department of Education proposes to repeal its regulation (14 Admin Code 385) which establishes a permit system for substitute teachers.

As background, I attach the statutes [Title 14 Del.C. §§1230 and 1326] as they existed in June, 2007. Section 1230 required the Department to maintain regulations relative to certification of substitute teachers which included at least three (3) classifications. The Legislature deleted Section 1230 through the attached Section 345 of the epilog to the budget bill. The Legislature also amended Section 1326 as reflected in the epilog. The rationale for the changes is not clear.

I have the following observations.

First, the Department has been incrementally repealing all of the certification regulations compiled at 14 DE Admin. Code Ch. 300. See attachment. It has contemporaneously been expanding certification and permit regulations compiled at 14 DE Admin. Code Ch. 1500. See attachment.

Second, even if the Legislature does not specifically require a certification or permit system for substitute teachers through the repeal of Title 14 Del.C. §1230, the Department may nevertheless be mandated to maintain such standards under other statutes. For example, Title 14 Del.C. §122(b)(6) recites as follows:

(b) The Department shall prescribe rules and regulations:

...(6) Governing the qualifications and certification of educators in all of the public schools of the State. Rules and regulations on this subject shall be proposed by the Secretary subject to approval by the State Board of Education. The Secretary shall, in consultation with the State Board, establish a Professional Standards Council to provide advice to the Department and the State Board regarding standards that assure professional competence, and rules and regulations concerning teacher, specialist and administrator education in Delaware, as well as ways to implement those standards through the licensing, certification and professional development of educators;...

[emphasis supplied]

Third, apart from legal mandate, it makes sense to maintain substitute teacher standards. For example, the Federal No Child Left Behind Act requires that even paraeducators meet certain standards. The Delaware DOE has implemented this requirement through a comprehensive permit system codified at 14 DE Admin. Code 1517. See attachment. Substitute teachers, who may serve as primary instructors for several months as long-term substitutes, can have more effect on student education than paraeducators. The Department should therefore be encouraged to adopt a substitute teacher permit or certification regulation under 14 DE Admin. Code Ch. 1500. Otherwise, the Department simply creates a vacuum of no standards for substitute teachers except for their compensation. The SCPD or GACEC may wish to share the above recommendation with members of the House and Senate Education committees.

12. DOE Prop. Early Childhood Teacher Certification Reg. [11 DE Reg. 255 (September 1, 2007)]

The Department proposes to adopt “Early Childhood Teacher” certification standards. The rationale is as follows: “It is necessary to amend this regulation given that the existing regulation reverted to 14 DE Admin. Code 1505 Standard Certificate in June, 2006.” At 255.

I have the following observations.

First, the attached current version of the “Early Childhood Teacher” regulation does include the following provision:

4.0 Applicability

This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an Early Childhood Teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1505.

Section 1505 is the general “Standard Certificate” regulation. In effect, someone applying for Early Childhood Teacher certification after June 30, 2006 would only have to meet the general requirements of a Standard Certificate. Therefore, assuming it is appropriate to have an “Early Childhood Teacher” regulation, the Department should adopt revised standards.

Second, I question the logic behind maintaining a discrete “Early Childhood Teacher” certification. Consistent with §1.1 of the proposed regulation, the certification covers instructors of students from birth to grade 2. The only students in the public education system between birth and kindergarten would be special education students. See Title 14 Del.C. §§ 202(a), 1703(l)(m)(n), and 3101(5). Educators of such students should logically be certified under 14 DE Admin. Code §1570 (Early Childhood Special Education Teacher) which covers the identical age range of birth to grade 2. For students between grades K-2, 14 DE Admin Code §1521 (Elementary Teacher) already covers grades K-6. Moreover, for applicants for initial certification, there are no additional qualifications for obtaining an “Early Childhood Teacher” certification apart from qualifications for a Standard Certificate. See §4.0. The “Early Childhood Teacher” certification is ostensibly superfluous. By analogy, there is no “Early Middle School” teacher certification covering only grade 6. There is a “Middle Level Teacher” certification (14 DE Admin Code §1530) covering grades 6-8.

Third, if the Department retains a discrete “Early Childhood Teacher” regulation, it should consider amending §1.1 to reduce the age range to K-2.

Fourth, §4.1 contemplates that a renewal applicant for an “Early Childhood Teacher” certification complete 15 credits in Early Childhood Education “selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.” This categorical requirement is inconsistent with other DOE regulations which authorize an unemployed applicant to obtain certification. See, e.g., 14 DE Admin Code 1505 (Standard Certificate) and 14 DE Admin Code 1521 (Elementary Teacher), both of which define “Certification” as follows:

“Certification” means the issuance of a certificate, which may occur regardless of a recipient’s assignment or employment status.

In contrast, the proposed regulation imposes course requirements which require the applicant to have a current or prospective employer who has approved the applicant’s choice of courses.

I recommend that the above observations be shared with the Department, SBE, and Professional Standard Board.

13. DOE Prop. Exc. Children Special Education Teacher Reg. [11 DE Reg. 266 & 269 (9/1/07)]

The Department of Education proposes to repeal the existing regulations which compile separate eligibility standards for secondary special education teachers [14 DE Admin Code 1576] and primary special education teachers [14 DE Admin Code. 1571]. In their place, the Department substitutes an abbreviated regulation for “exceptional children special education teacher” which simply cross references the standard certificate regulation, 14 Admin Code 1505.

I have the following observations.

First, in some respects the proposal results in a “watering down” of the standards for special education teacher certification. The current regulations authorize issuance of a standard certificate based on the following: 1) acquiring a Bachelor’s degree; and 2) either completing a teacher education program in the area of the standard certificate sought (e.g. special education) or completion of specific courses. In contrast, the cross referenced §1505 (attached) does not explicitly require a Bachelor’s degree for a standard certificate. Section 1505 does require a passing grade on the Praxis II exam. It then authorizes certification based on any of the following: 1) obtaining NBPTS certification; 2) graduating from a NCATE recognized program; 3) completing alternative routes to licensure; or 4) holding a Bachelor’s degree plus 15 credits related to the area of certification. Contrary to Title 14 Del.C. §1260(a)(1), the Alternate Routes to Teacher Licensure & Certification regulation [14 DE Admin. Code 1500, Section 3.1], does not categorically require a Bachelor’s degree as long as an applicant has “the equivalent” (e.g. course work) of a Bachelor’s degree.

Second, the GACEC previously opposed establishment of a generic special education teacher certification. See attached November 30, 2006 GACEC letter commenting on 10 DE Reg 790 (November 1, 2006). As the Council noted, the skills and background related to teaching an elementary level class are quite different than those used in teaching a high school class. This concept is embodied in the Department’s “regular” education certification standards which differentiate between elementary teachers (14 DE Admin. Code 1521), middle level teachers (14 DE Admin Code 1530), and secondary teachers (14 DE Admin. Code 1540-1544). The Department’s rationale for creating a single K-12 special education teacher certification regulation is that there is a single PRAXIS II test. At 266-267. Conceptually, this could be perceived as the “tail wagging the dog”. If a national test does not differentiate between early and secondary teachers, Delaware will simply conform to the test and treat primary and secondary special education teachers as fungible. It would be preferable to maintain discrete certification standards for primary and secondary level special education teachers.

The Council may wish to share the above observations with the DOE, Professional Standards Board, and SBE.

14. NCC Property Tax Abatement Ordinance [07-114]

On September 7, I forwarded the memorandum to the SCPD recommending submission of comments on a proposed NCC property tax abatement ordinance scheduled for a vote on September 11, i.e., prior to the September 13 P&L meeting. I am supplementing that memo with the attached September 11 article and fact sheet

MEMORANDUM

To: SCPD, DDC, & GACEC

From: Brian Hartman

Re: NCC Real Property Tax Exemption (Ordinance 07-114)

Date: September 7, 2007

I write in advance of the September 13 P&L Committee meeting to provide commentary on a New Castle County Ordinance on the agenda for the September 11 New Castle County Council. If the Councils wish to influence this initiative, prompt action would be appropriate.

NCC Real Property Tax Exemption (Ordinance 07-114)

This ordinance would revise the current exemptions from real estate taxes for seniors and individuals with disabilities in New Castle County. It would also affect sewer bills for seniors and individuals with disabilities.

As background, the Delaware Code [Title 16 Del.C. §§8131-8141] requires counties to grant an exemption of \$5,000 to seniors with incomes up to \$3,000 (\$6,000 for couple). These statutes are very old and these amounts were adopted in the 1970s.

Over the years New Castle County has maintained a property exemption program which exceeds the State standards. The current ordinances (attached) reflect the following standards:

	Income Cap (excludes Social Security & RR Retirement)	Property Tax Assessed Value Exemption	Cap on “Expensive” Real Property
Elderly	\$50,000 individual \$50,000 couple	\$50,000	None
Persons with Disability	\$40,000 individual \$40,000 couple	\$40,000	None

According to the attached August 7, 2007 News Journal article, the income cap for the elderly was increased in 2004 from \$40,000 to \$50,000. Both Kent and Sussex Counties also maintain tax exemptions for the elderly and persons with disabilities. However, they are less generous. For example, consistent with the above article, Kent County exempts \$25,000 in assessed value for the elderly and persons with disabilities with income caps (exclusive of Social Security and RR Retirement) of \$12,700 (individual) and \$25,000 (couple).

The new ordinance, and the article, recite that persons currently qualifying for the above exemptions would be unaffected, i.e. grandfathered. For new applicants, the following standards would apply:

	Income Cap (excludes Social Security & RR Retirement)	Property Tax Assessed Value Exemption	Cap on “Expensive” Real Property
Elderly	\$22,500 individual \$27,500 couple	\$32,000	\$125,000 Assessment (equates to \$400,000 market value per article)
Persons with Disability	\$22,500 individual \$27,500 couple	\$32,000	\$125,000 Assessment (equates to \$400,000 market value per article)

The above income caps are higher than those originally proposed. The article refers to \$15,000 (individual) and \$19,000 (couple) income caps.

Sewer bills would also be affected. The current ordinance would “grandfather” the elderly and persons with disabilities qualifying for the property tax exemption to “a fee adopted by ordinance”. See Ordinance 07-114, Section 3, Par. F. According to the article, this is currently a flat fee of \$36.00 annually. For persons qualifying for the property tax exemption in 2008 forward, the sewer fee would be 50% of total charges or the minimum bill, whichever is greater. See Ordinance 07-114, Section 3, Par. G.

I have the following observations.

First, the “grandfather” provision merits endorsement. The elderly and persons with disabilities are often on fixed incomes who have grown to reasonably rely on the current exemptions.

Second, the new ordinance restores equity by adopting the same standards for the elderly and persons with disabilities. This equity had been displaced by the 2004 ordinance. This restoration merits endorsement.

Third, it should be recognized that the property tax exemption for persons with disabilities is particularly beneficial to minorities. See Jack Markell, Delaware State Treasurer, “Delaware Facing Forward: A Look at Delaware’s Demographic Future” (2007). (available at www.Treasurer.Delaware.gov). The report notes that minorities are significantly overrepresented among persons with disabilities:

Delaware’s increasing proportion of racial and ethnic minorities, particularly African Americans and Hispanics, will have effects on the state’s health care system. African Americans in Delaware are more likely than whites to experience adverse health outcomes as infants and children ...and as senior citizens (such as heart disease, cancer, stroke, and diabetes). ...The increased incidence of chronic diseases may be one reason why African Americans require home health and nursing home care at earlier ages than whites. And African Americans are more than three times as likely as whites to be hospitalized. ...Delaware African Americans are three times more likely than whites to be enrolled in the Medicaid program...

At 29.

Fourth, the income caps (\$22,500 individual; \$27,500 couple) should be placed in perspective. Consistent with the attachment, a couple qualifying as elderly or disabled with \$22,596 (\$1,883 monthly) in annual income is in such financial distress as to qualify for Food Stamps. Likewise, the State recognizes the financial straits of the elderly and Social Security disability beneficiaries by providing prescription drug benefits to single individuals with income of \$20,424 (200% of the Federal Poverty level). See Title 16 Del.C. §3004B. It would be preferable to adopt caps which do not exclude individuals and couples with marginal income. It would also be preferable to establish an inflationary index so the cap keeps pace with inflation. To fulfill both considerations, the County should favorably consider adoption of a 250% of the Federal Poverty level standard. This would equate to \$25,530 (individual) and \$34,230 (couple).

I recommend that the Council share the above observations and recommendations with County Council on an expedited basis to ensure consideration at Council's September 11 meeting.

Attachments

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F:pub/bjh/legis/2007p&l/907bils