

MEMORANDUM

DATE: June 16, 2008

TO: All Members of the Delaware State Senate
and House of Representatives

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

RE: H.B. 400 [Volunteer Physician Immunity]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 400 which is designed to encourage physicians to provide clinic service without compensation in an effort to provide some relief to those Delawareans who are without medical insurance and except for clinic service might be forced to seek medical attention at hospital emergency rooms. SCPD takes no position on the proposed legislation since there are pros and cons to this initiative. On one hand, it may expand access to health care. On the other hand, the existing statute already limits the redress available to injured patients and H.B. 400 may make it more difficult for injured patients to obtain redress.

As background, the Delaware Code already provides immunity to volunteer physicians, nurses, dentists, and dental hygienists serving without compensation in clinics. See attached Title 10 Del.C. §8135. Liability is limited to acts of gross negligence. If a covered person has malpractice insurance, liability is capped at the amount of the policy limit. Apart from §8135, persons providing free services to a non-profit or governmental entity are similarly immune from damages for simple negligence. See Title 10 Del.C. §8133. Cf. Title 16 Del.C. §9801 (limited liability for anyone providing emergency care).

H.B. 400 enhances the liability protections of §8135 to attract physicians to volunteer in health clinics. Consistent with the attached May 29, 2008 News Journal article, personal risk liability is a deterrent to physicians volunteering to provide health services. The bill essentially extends the protections applicable to public employees under the State Tort Claims Act to the physician volunteer. The extended protections will not apply to nurses, dentists, and dental hygienists. The physician would be eligible for indemnification for any liability as well as an attorney at State expense. There is no fiscal note based on the observation that claims against volunteer physicians are rare.

SCPD also wanted to offer the following alternatives to the approach adopted in H.B. No. 400. First,

similar to common legislation (e.g. H.B. 355) requiring health insurers to cover certain services, legislation could be introduced requiring malpractice insurers to cover physician volunteers in clinics. If desired, the Insurance Commissioner could be consulted to assess options for establishing premium limits. Compare H.B. 446 in 143rd General Assembly. Second, the sponsors could consider legislation establishing a State indemnity co-insurance system. Compare S.B. 6 in 144th General Assembly which would provide a State reinsurance fund to foster insurer participation in a health insurance program.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position, observations or recommendations on the proposed legislation.

cc: The Honorable Ruth Ann Minner
Insurance Commissioner Matthew Denn
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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