MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Legislative & Regulatory Initiatives

Date: March 8, 2009

I am providing my analysis of eleven (11) legislative and regulatory initiatives in anticipation of the March 12 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DOE Final Diversity Regulation [12 DE Reg. 1203 (March 1, 2009)]

The SCPD and GACEC commented on the proposed version of this regulation in January, 2009. The DOE has now adopted a final regulation incorporating both amendments recommended by the councils.

First, the Councils suggested a discrete amendment to correct a grammatical error. The DOE adopted the amendment.

Second, the Councils suggested that the following sentence not be deleted: “The Secretary of Education believes that students achieve best in classrooms where diversity is commonplace.”. The DOE agreed and reinstated the sentence in the final regulation.

Since the regulation is final, and the DOE adopted both changes recommended by the councils, a thank-you letter could be considered.

2. DSS Final Food Supp. Program Household Cooperation Reg. [12 DE Reg. 1225 (March 1, 2009)]

The SCPD and GACEC commented on the proposed version of this regulation in January, 2009. The Division of Social Services has now adopted a final regulation incorporating all changes recommended by the councils.

First, the councils endorsed a standard according the benefit of the doubt to beneficiaries in assessing the reasons for non-cooperation. DSS acknowledged the endorsement.

Second, the councils identified a grammatical error and offered a corrective amendment.

DSS adopted the amendment.

Third, the councils noted that the regulation would benefit from numerical subparts. DSS agreed and incorporated subparts for ease of reference.

Fourth, the councils recommended that DSS consider amending the last two sentences in the regulation for clarity. DSS agreed and significantly amended the provision.

Since the regulation is final, and DSS adopted amendments consistent with council recommendations, a thank-you letter could be considered.

3. DPH Final Home Health Agency Regulations [12 DE Reg. 1209 & 1217 (March 1, 2009)]

The Division of Public Health published proposed regulations covering home health agencies in October. Two sets of regulations were published, one designated "aide only" (Part 4406) and one designated "skilled" (Part 4410). The DPH is now adopting final regulations separately published at pages 1209 and 1217 of the March Registry. The SCPD, DDC, and GACEC commented on the proposed regulations. Since the councils submitted 55 comments conforming to my October critique, I have reproduced the critique below with the DPH response earmarked by italics. DPH adopted approximately 13 amendments based on the 55 comments.

SECTION 4406: HOME HEALTH AGENCIES - AIDE ONLY LICENSURE

1. In Section 1.0, definition of "home health aide", first sentence, I recommend insertion of "and/or patient" after the term "licensed nurse" to encompass patient-delegated services within the scope of Section 6.4 and Title 24 Del.C. §1921(a)(19)

DPH effected no amendment.

2. In Section 1.0, the Division may wish to consider a revision of the definition of "immediate jeopardy" to comport with the terminology used in Section 2.4.4.1 ("immediate and imminent danger"). Otherwise, a provider could argue that the standard in Section 2.4.4.1 is either undefined or narrower than "immediate jeopardy".

DPH agreed and inserted a conforming amendment.

3. In Section 1.0, definition of "parent agency", the requirement that the parent agency be located within 50 miles of any "branch" is difficult to justify. For example, if Easter Seal's main office is in Georgetown, it could not have a branch in Wilmington. Delaware is such a small state that the requirement that the parent agency be located in the State should suffice.

DPH declined to adopt an amendment based on the following rationale:

While Delaware is a small state, supervision cannot be properly provided from such a

distance as Georgetown and Wilmington. Therefore, each office would need to be a parent in order to maintain administrative functions.

4. Section 2.1.4 requires any agency which "undergoes a change in ownership" ...to "reapply as a new agency". This is "overbroad". If the agency were a stock corporation, the change of 1 share of stock would "trigger" the need to reapply for a new license. Section 2.2.2.3.4 implies that ownership interests of less than 5% are so unimportant that they do not have to be disclosed to DPH. Moreover, Section 2.5 defines "modification of ownership and control" as encompassing only significant changes in ownership. For consistency, DPH should consider amending Section 2.1.4 to read as follows: "An agency that anticipates a modification of ownership and control as defined in Section 2.5 is required to apply as a new agency."

DPH agreed and incorporated a conforming amendment.

5. In Section 2.3.1.1, I recommend the following amendment: "A probationary license shall be granted to every agency that completes the application process consistent with these regulations and whose policies and procedures ~~have demononstrated willingness to comply~~ <u>demonstrate compliance</u> with the rules and regulations..." The "willingness" reference suggests a subjective intent standard rather than an objective criterion. <u>Contrast</u> the DPH personal assistance services agencies regulations, Part 4469, Section 2.3.1.1: "A probationary license shall be granted for a period of ninety (90) calendar days to every agency that completes the application process consistent with these regulations."

DPH agreed and incorporated a conforming amendment.

6. In Section 2.3.2.1, I recommend substituting "may" for "shall". This is the approach adopted in the DPH personal assistance services agencies regulations, Part 4469, Section 2.3.2.1: "A provisional license may be granted to a period of less than one year to all personal assistance agencies that:...". Use of the term "may" provides DPH with more discretion.

DPH agreed and substituted "may" for "shall".

7. I recommend adding a reference to Section 2.4 prohibiting reprisal against any employee, contractor, patient, or patient's representative for cooperating with a Departmental disciplinary investigation or proceedings. Although there is a limited reference protecting patients and representatives in Section 5.4.2.5, it would be prudent to include an explicit reference in Section 2.4 as well. Moreover, there is no other provision protecting employees and contractors who cooperate with the Department in investigations and disciplinary proceedings.

DPH declined to adopt an amendment which will obviously have a "chilling effect" on prospects for employees and contractors providing information to DPH when investigating violations.

8. In Section 2.4.1.8, there is a lack of parallel form. All other subparts (Sections 2.4.1.1 through 2.4.1.9) begin with a verb. Consider the following amendment: "2.4.1.8. Committed a serious

violation of statutes..." Alternatively, the same section in the proposed skilled home health agency regulations (Part 4410) recites as follows: "Violated any statutes relating to Medicaid..."

DPH agreed and adopted a conforming amendment.

9. In Section 2.4.3.1.3, second sentence, consider deleting the comma between "based" and "shall". In addition, this Section states the same concepts that are stated in Sections 2.4.3.1.4 and 2.4.3.1.5 and could be considered redundant.

DPH deleted the redundant provision.

10. There is some "tension" between Section 2.4.4.1 and 2.4.4.2. The former section requires 24 advance oral or written notice of an emergency suspension of license. The latter section contemplates "forthwith" notice which must be in writing. The interrelationship between these notices is unclear. Moreover, if DPH envisions a single notice, the regulations are inconsistent since the first regulation allows "oral" notice while the second regulation requires notice "in writing". The Division may wish to clarify these sections to obviate any confusion.

DPH declined to effect an amendment based on the following rationale:

> *Section 2.4.4.1 is the immediate notice to the agency. Section 2.4.4.2 is the follow up "formal" written notice.*

11. In Section 2.4.4.5, second sentence, consider the following amendment: Upon a final decision of the Department, the order of temporary suspension ~~shall be vacated~~ may be vacated or superseded by disciplinary action ordered by the Department. This is more accurate since the Department could determine that its temporary suspension order was a mistake or was improvidently entered, justifying vacating of the order with no disciplinary action.

DPH agreed and incorporated a conforming amendment.

12. Section 2.7.1 contains no minimum frequency for inspection of home health agencies. DPH should consider adopting a standard requiring at least annual inspections.

DPH declined based on the following rationale:

> *The agency intentionally left this open by using the term "periodically" so as not to create a predictable pattern of inspections. It is the Agency's experience that this is the most effective way to evaluate real-time performance and compliance efforts.*

13. Section 3.7 requires the director or clinical director to be "available at all times during the operating hours of the home health agency". Since most agencies operate 24-hour shifts, this means

that either the director or clinical director are on duty 24 hours/day. As a practical matter, if the director were out-of-town on vacation, and the clinical director was sick, the clinical director would still have to work. In contrast, the corresponding DPH personal assistance services regulations, Part 4469, Section 3.9, recites as follows: "The director or a designee of any agency shall be available to consumers at all times during the operating hours of the personal assistance services agency." DPH could consider a compromise (e.g. "director, clinical director, or designee with full authority to act in their stead"). This would comport with Sections 5.1.4 and 5.2.4.

DPH declined to adopt any amendment.

14. There is some "tension" between Sections 4.2.9 and 5.2.1. The former section contemplates governing body appointment of the clinical director. The latter contemplates agency director appointment of the clinical director.

DPH declined to adopt an amendment based on the following rationale:

> *The Agency respectfully disagrees. The Governing Body has the ultimate responsibility for all appointments. The Director, however, is actually responsible for making the appointment.*

15. Section 5.2.3.1 literally requires the clinical director to be available 24 hours/day, 365 days/year, for agencies with 24 hour shifts. This is an impractical standard. <u>See</u> discussion in Par. 13 above.

DPH declined to adopt an amendment based on the following rationale:

> *The Agency respectfully disagrees. Section 5.2.4 clarifies this by allowing the appointment of a designee in the clinical director's absence.*

16. Section 5.4.2.5 disallows reprisal against patients and their representatives who complain to DHSS. Consistent with Par. 7 above, it would be preferable to include a similar provision protecting employees and contractors.

DPH declined to effect an amendment based on the following somewhat cryptic rationale:

> *The Agency respectfully disagrees. These regulations are written for the purpose of protecting the patients.*

17. I recommend deletion of Section 5.4.2.6 since the content of this standard is already addressed in Section 3.10.

DPH declined to effect an amendment.

18. Section 5.7.10 requires annual competency testing of all employees. It is unclear if this applies to the director, clinical director, and other licensed supervisory personnel apart from home health aides. DPH may wish to clarify whether the requirement only applies to aides.

DPH declined to effect amendment. It notes that testing applies to "anyone providing care to patients".

19. In Section 6.1.3.3 there is a lack of parallel form. Subsections 1-3 begin with a noun and are complete sentences. Subsection 4 is a clause. The next three subsections begin with a verb and are not sentences.

DPH effected no amendment.

20. In Section 6.4.1.1, I recommend substituting "Title 24 Del.C. §1921(a)(19)" for "Del.C.".

DPH effected no amendment.

21. In Section 6.4.2, I recommend substituting Title 24 Del.C. §1921(a)(9)" for "Del.C.".

DPH effected no amendment

22. In Section 6.5.1.6.3, at a minimum, consider adding a reference to "frequency". See Section 6.3.3.1. See also the proposed skilled home health agencies regulations, Part 4410, Section 6.5.5, which contemplates recording the following for "all medication and treatment": "date, time of day, type of medication/treatment, dose, route of self-administration/administration, by whom given and any reactions noted."

DPH effected no amendment.

23. In Section 6.6.3, authorizing 2 weeks notice of involuntary discharge of a patient by a provider is too short. Compare Title 16 Del.C. §1121(18). It may be very difficult for a consumer to obtain an alternative agency services plan within 2 weeks. A 30 day notice would be preferable and be consistent with Section 2.8.1 which requires 30 day notice of termination of services by agencies voluntarily going out of business.

DPH unfortunately effected no amendment based on the following rationale:

> *The Agency respectfully disagrees. The minimum 2 weeks notice is reasonable. The patient may negotiate a longer time frame if needed. The agency must inform the patient of the discharge and include the patient in the discharge planning.*

24. Section 6.6.3.2 authorizes a provider to discontinue services immediately upon its unilateral determination that the patient should have a higher level of care. No notice would be required,

leaving the consumer at great risk. In 2006, an assisted living agency unilaterally determined that a consumer (D.R.) exceeded the assisted living level of care and unilaterally terminated her services. The Division of Long-term Care Residents Protection conducted its own evaluation, determined the consumer eligible for assisted living services, and fined the provider who refused to reinstate services. Agencies make mistakes. If DPH allows abrupt, unilateral termination of services with no notice, this will create a huge "loophole" for agencies who simply wish to stop services with no notice. Moreover, if a consumer has decompensated to the point of needing more care, an orderly transition period to a higher level of care would be more logical than complete termination of services. The DPH approach is akin to a nurse home determining that a resident needs a hospital level of care and abruptly discharging the resident to the street!

DPH declined to effect an amendment based on the following rationale:

> *The agency is required to "transfer" the patient to a higher level of care after informing the patient of the discharge, allowing the patient to participate in the discharge planning and developing a written discharge plan. This was included, not to permit agencies to dump patients, but to prevent them from keeping patients whose needs they can no longer meet.*

25. The exception of notice for even minor, minuscule "non-compliance" with the plan of care or non-payment (§6.6.3.3) is also highly objectionable. Contrast Title 16 Del.C. §1121(18), requiring 30 day notice of termination from long-term care facility for even non-payment. A provider could discharge a patient simply for contesting a $10 charge that the patient feels is unjustified. Similarly, dispensing with notice "when care goals have been met" is subjective and objectionable. I recommend adoption of a 30 day notice period and deletion of exceptions (§§6.6.3.1-6.6.3.3) but for "emergency situations", akin to Title 16 Del.C. §1121(18). Apart from notice, I also recommend some authorization for patient appeal of the decision.

DPH declined to adopt an amendment based on the following rationale:

> *Agencies would be required to show documentation upholding a decision to discharge with less than 2 weeks notice. This requires prior communication with the patient and discharge planning.*

26. Section 9.1 requires home health agencies to have "appropriate insurance coverage in force to compensate patients for injuries and losses resulting from services provided by the agency." I recommend adding "or failure to provide services". Otherwise, the insurance may cover negligent services but not omitted services (e.g. failure to turn patient resulting in bedsores; failure to assist with medications resulting in missed doses). Moreover, "appropriate" insurance is a subjective term. Contrast the DPH personal assistance services regulation, Part 4469, Section 7.0:

> 7.1 The personal assistance services agency shall have appropriate insurance coverage in force to compensate consumers for injuries and losses resulting from services

provided by the agency.

7.2 The following types and minimum amounts of coverage shall be in effect at all times:

7.2.1 General liability insurance covering personal property damages, bodily injury, libel and slander;

7.2.1.1 $1 million comprehensive general liability per occurrence; and

7.2.1.2 $500,000single limit insurance.

DPH declined to effect an amendment.

27. Section 11.0, which covers "severability", contains overlapping and incomplete references. It would benefit from editing.

DPH declined to effect an amendment.

SECTION 4406: SKILLED HOME HEALTH AGENCIES (LICENSURE)

28. In Section 1.0, definition of "home health aide", first sentence, I recommend insertion of "and/or patient" after the term "licensed nurse" to encompass patient-delegated services within the scope of Section 6.4 and Title 24 Del.C. §1921(a)(19)

DPH effected no amendment.

29. In Section 1.0, the Division may wish to consider a revision of the definition of "immediate jeopardy" to comport with the terminology used in Section 2.4.4.1 ("immediate and imminent danger"). Otherwise, a provider could argue that the standard in Section 2.4.4.1 is either undefined or narrower than "immediate jeopardy".

DPH agreed and inserted a conforming amendment.

30. In Section 1.0, definition of "parent agency", the requirement that the parent agency be located within 50 miles of any "branch" is difficult to justify. For example, if Easter Seal's main office is in Georgetown, it could not have a branch in Wilmington. Delaware is such a small state that the requirement that the parent agency be located in the State should suffice.

DPH declined to adopt an amendment based on the following rationale:

While Delaware is a small state, supervision cannot be properly provided from such a distance as Georgetown and Wilmington. Therefore, each office would need to be a parent in order to maintain administrative functions.

31. In Section 1.0, there is some tension between the definitions of "professional" and "social worker". The definition of "professional" is limited to "licensed" persons. The definition of "social worker" does not require licensing. I recommend revision of the definition of social worker to only cover licensed social workers. See Title 24 Del.C. Ch. 39.

DPH declined to adopt an amendment.

32. In Section 1.0, there is no definition or reference to "advanced practice nurse", an individual who can maintain an independent practice with authority to issue prescriptions. See Title 24 Del.C. §1902(b). For example, there is no reference to "advanced practice nurse" in the definition of "professional". The Division should consider correcting this omission.

DPH declined to adopt an amendment.

33. Section 2.1.4 requires any agency which "undergoes a change in ownership" ...to "reapply as a new agency". This is "overbroad". If the agency were a stock corporation, the change of 1 share of stock would "trigger" the need to reapply for a new license. Section 2.2.2.3.4 implies that ownership interests of less than 5% are so unimportant that they do not have to be disclosed to DPH. Moreover, Section 2.5 defines "modification of ownership and control" as encompassing only significant changes in ownership. For consistency, DPH should consider amending Section 2.1.4 to read as follows: "An agency that anticipates a modification of ownership and control as defined in Section 2.5 is required to apply as a new agency."

DPH agreed and incorporated a conforming amendment.

34. In Section 2.3.1.1, I recommend the following amendment: "A probationary license shall be granted to every agency that completes the application process consistent with these regulations and whose policies and procedures ~~have demononstrated willingness to comply~~ demonstrate compliance with the rules and regulations..." The "willingness" reference suggests a subjective intent standard rather than an objective criterion. Contrast the DPH personal assistance services agencies regulations, Part 4469, Section 2.3.1.1: "A probationary license shall be granted for a period of ninety (90) calendar days to every agency that completes the application process consistent with these regulations."

DPH agreed and incorporated a conforming amendment.

35. In Section 2.3.2.1, I recommend substituting "may" for "shall". This is the approach adopted in the DPH personal assistance services agencies regulations, Part 4469, Section 2.3.2.1: "A provisional license may be granted to a period of less than one year to all personal assistance agencies that:...". Use of the term "may" provides DPH with more discretion.

DPH agreed and incorporated a conforming amendment.

36. I recommend adding a reference to Section 2.4 prohibiting reprisal against any employee, contractor, patient, or patient's representative for cooperating with a Departmental disciplinary investigation or proceedings. Although there is a limited reference protecting patients and representatives in Section 5.5.2.5, it would be prudent to include an explicit reference in Section 2.4 as well. Moreover, there is no other provision protecting employees and contractors who cooperate with the Department in investigations and disciplinary proceedings.

DPH declined to adopt an amendment which will obviously have a "chilling effect" on prospects for employees and contractors providing information to DPH when investigating violations.

37. In Section 2.4.3.1.3, second sentence, consider deleting the comma between "based" and "shall". In addition, this Section states the same concepts that are stated in Sections 2.4.3.1.4 and 2.4.3.1.5 and could be considered redundant.

DPH deleted the redundant provision.

38. There is some "tension" between Section 2.4.4.1 and 2.4.4.2. The former section requires 24 hour advance oral or written notice of an emergency suspension of license. The latter section contemplates "forthwith" notice which must be in writing. The interrelationship between these notices is unclear. Moreover, if DPH envisions a single notice, the regulations are inconsistent since the first regulation allows "oral" notice while the second regulation requires notice "in writing". The Division may wish to clarify these sections to obviate any confusion.

DPH declined to effect an amendment based on the following rationale:

> *Section 2.4.4.1 is the immediate notice to the agency. Section 2.4.4.2 is the follow up "formal" written notice.*

39. In Section 2.4.4.5, second sentence, consider the following amendment: Upon a final decision of the Department, the order of temporary suspension ~~shall be vacated~~ may be vacated or superseded by disciplinary action ordered by the Department. This is more accurate since the Department could determine that its temporary suspension order was a mistake or was improvidently entered, justifying vacating of the order with no disciplinary action.

DPH agreed and incorporated a conforming amendment.

40. Section 2.7.1 contains no minimum frequency for inspection of home health agencies. DPH should consider adopting a standard requiring at least annual inspections.

DPH declined based on the following rationale:

> *The agency intentionally left this open by using the term "periodically" so as not to create a predictable pattern of inspections. It is the Agency's experience that this is the most effective*

way to evaluate real-time performance and compliance efforts.

41. Section 3.7 requires the director or clinical director to be "available at all times during the operating hours of the home health agency". Since most agencies operate 24-hour shifts, this means that either the director or clinical director are on duty 24 hours/day. As a practical matter, if the director were out-of-town on vacation, and the clinical director was sick, the clinical director would still have to work. In contrast, the corresponding DPH personal assistance services regulations, Part 4469, Section 3.9, recites as follows: "The director or a designee of any agency shall be available to consumers at all times during the operating hours of the personal assistance services agency." DPH could consider a compromise (e.g. "director, clinical director, or designee with full authority to act in their stead"). This would comport with Sections 5.1.4 and 5.3.4.

DPH declined to adopt an amendment based on the following rationale:

> *The Agency respectfully disagrees. Section 5.1.4 and 5.2.4 clarify this.*

42. There is some "tension" between Sections 4.2.9 and 5.3.1. The former section contemplates governing body appointment of the clinical director. The latter contemplates agency director appointment of the clinical director.

DPH declined to adopt an amendment based on the following rationale:

> *The Agency respectfully disagrees. The Governing Body has the ultimate responsibility for all appointments. The Director, however, is actually responsible for making the appointment.*

43. Section 5.3.3.2 literally requires the clinical director to be available 24 hours/day, 365 days/year, for agencies with 24 hour shifts. This is an impractical standard. <u>See</u> discussion in Par. 41 above.

DPH declined to adopt an amendment based on the following rationale:

> *The Agency respectfully disagrees. Section 5.3.4 clarifies this by allowing the appointment of a designee in the clinical director's absence.*

44. Section 5.5.2.5 disallows reprisal against patients and their representatives who complain to DHSS. Consistent with Par. 36 above, it would be preferable to include a similar provision protecting employees and contractors.

DPH declined to effect an amendment based on the following somewhat cryptic rationale:

> *The Agency respectfully disagrees. These regulations are written for the purpose of protecting the patients.*

45. I recommend deletion of Section 5.5.2.6 since the content of this standard is already addressed in Section 3.10.

DPH declined to effect an amendment.

46. Sections 5.5.2..8.6 and 5.8.9 require annual competency testing of all employees. It is unclear if this applies to the director, clinical director, and other licensed supervisory personnel apart from unlicensed personnel. DPH may wish to clarify whether the requirement only applies to unlicensed personnel.

DPH declined to effect an amendment. It notes that testing applies to "anyone providing care to patients".

47. In Section 6.1.3.3 there is a lack of parallel form. Subsections 1-3 begin with a noun and are complete sentences. Subsection 4 is a clause. The next three subsections begin with a verb and are not sentences.

DPH effected no amendment.

48. In Section 6.6.1.1, I recommend substituting "Title 24 Del.C. §1921(a)(19)" for "Del.C.".

DPH effected no amendment.

49. In Section 6.6.7, I recommend substituting Title 24 Del.C. §1921(a)(9)" for "Del.C.".

DPH effected no amendment.

50. In Section 6.7.2, at a minimum, consider adding a reference to "frequency". It would also be preferable to adopt an equivalent standards for compilation of data as listed in §6.5.5 which contemplates recording the following for "all medication and treatment": "date, time of day, type of medication/treatment, dose, route of self-administration/administration, by whom given and any reactions noted."

DPH effected no amendment.

51.. In Section 6.6.3, authorizing 2 weeks notice of involuntary discharge of a patient by a provider is too short. Compare Title 16 Del.C. §1121(18). It may be very difficult for a consumer to obtain an alternative agency services plan within 2 weeks. A 30 day notice would be preferable and be consistent with Section 2.8.1 which requires 30 day notice of termination of services by agencies voluntarily going out of business.

DPH unfortunately effected no amendment based on the following rationale:

> *The Agency respectfully disagrees. The minimum 2 weeks notice is reasonable. The patient may negotiate a longer time frame if needed. The agency must inform the patient of the*

discharge and include the patient in the discharge planning.

52. Section 6.8.3 authorizes a provider to discontinue services immediately upon its unilateral determination that the patient should have a higher level of care. No notice would be required, leaving the consumer at great risk. In 2006, an assisted living agency unilaterally determined that a consumer (D.R.) exceeded the assisted living level of care and unilaterally terminated her services. The Division of Long-term Care Residents Protection conducted its own evaluation, determined the consumer eligible for assisted living services, and fined the provider who refused to reinstate services. Agencies make mistakes. If DPH allows abrupt, unilateral termination of services with no notice, this will create a huge "loophole for agencies who simply wish to stop services with no notice. Moreover, if a consumer has decompensated to the point of needing more care, an orderly transition period to a higher level of care would be more logical than complete termination of services. The DPH approach is akin to a nurse home determining that a resident needs a hospital level of care and abruptly discharging the resident to the street!

DPH declined to effect an amendment based on the following rationale:

> *The agency is required to "transfer" the patient to a higher level of care after informing the patient of the discharge, allowing the patient to participate in the discharge planning and developing a written discharge plan. This was included, not to permit agencies to dump patients, but to prevent them from keeping patients whose needs they can no longer meet.*

53. The exception of notice for even minor, minuscule "non-compliance" with the plan of care or non-payment (§6.8.3.3) is also highly objectionable. Contrast Title 16 Del.C. §1121(18), requiring 30 day notice of termination from long-term care facility for even non-payment. A provider could discharge a patient simply for contesting a $10 charge that the patient feels is unjustified. Similarly, dispensing with notice "when care goals have been met" is subjective and objectionable. I recommend adoption of a 30 day notice period and deletion of exceptions (§§6.8.3.1-6.8.3.3) but for "emergency situations", akin to Title 16 Del.C. §1121(18). Apart from notice, I also recommend some authorization for patient appeal of the decision.

DPH declined to adopt an amendment based on the following rationale:

> *Agencies would be required to show documentation upholding a decision to discharge with less than 2 weeks notice. This requires prior communication with the patient and discharge planning.*

54. Section 9.1 requires home health agencies to have "appropriate insurance coverage in force to compensate patients for injuries and losses resulting from services provided by the agency." I recommend adding "or failure to provide services". Otherwise, the insurance may cover negligent services but not omitted services (e.g. failure to turn patient resulting in bedsores; failure to assist with medications resulting in missed doses). Moreover, "appropriate" insurance is a subjective term. Contrast the DPH personal assistance services regulation, Part 4469, Section 7.0:

> 7.1 The personal assistance services agency shall have appropriate insurance coverage in

force to compensate consumers for injuries and losses resulting from services provided by the agency.

7.2 The following types and minimum amounts of coverage shall be in effect at all times:

7.2.1 General liability insurance covering personal property damages, bodily injury, libel and slander;

7.2.1.1 $1 million comprehensive general liability per occurrence; and
7.2.1.2 $500,000single limit insurance.

DPH declined to effect an amendment.

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

4. Violent Crimes Compensation Board Final Regulation [12 DE Reg. 1193 (March 1, 2009)]

The SCPD, DDC, and GACEC commented on the proposed version of this regulation in November, 2008. The VCCB has now adopted final regulations with many amendments. Unfortunately, the "summary of comments" section is general and does not include a response to each comment. I have therefore reproduced the November commentary below followed by my observation on the result in italics.

1. In Section 1.1, the reference to "States that do not have a funded Victim Compensation Program" is not entirely accurate. The relevant statute [Title 11 Del.C. §9005(6)b] authorizes Delaware awards for out-of-state occurrences even if the other state has a funded program. The key determinant is whether the other state's program offers equal benefits. At a minimum, the Board may wish to consider adding "offering equal benefits" after "Program".

The Board adopted the suggested change verbatim.

2. Section 1.1 was easier to understand in its superseded format using subparts rather than a 98-word "run-on" sentence. I recommend that the concepts embodied in Section 1.1 be divided into subparts.

The Board compromised by dividing the 98-word sentence into 2 sentences.

3. Section 2.0 is problematic. At the outset, Section 2.1 recites that the definitions in the enabling statute are incorporated into the regulations by reference followed by a colon and recapitulation of definitions compiled in Title 11 Del.C. §9002. Unfortunately, the regulatory definitions diverge significantly from the statutory definitions which "muddies the waters". The following are examples:

a. The definition of "crime" omits "driving under the influence of any alcohol or drug or driving with a prohibited blood alcohol concentration, or hit-and-run" and "any act of domestic

violence or abuse." Compare Title 11 Del.C. §§9002((3)f and 9002(3)g.

The Board added several crimes.

b. The definition of "personal injury" is manifestly narrower than the statute. The statute covers "mental, emotional, or psychological harm" while the regulation only covers "extreme mental suffering". [emphasis supplied] See Title 11 Del.C. §9002(8).

The Board added a conforming amendment.

c. The definition of "pecuniary loss" does not comport with Title 11 Del.C. §9002(7). For example, it omits crime scene cleanup, moving expenses, essential personal safety property, and insurance deductibles.

The Board expanded the definition to include the above and other forms of pecuniary loss.

It is misleading to recite that the statutory definitions are incorporated by reference and then to list definitions which are inconsistent with the statutory definitions.

4. In Section 2.0, definition of "permanent and total disability", substitute "or" for "of" between "working" and "functioning".

The Board substituted "or" for "of" as recommended.

5. In Section 7.1, delete the comma between "be" and "or". I also recommend that the section recite that the rules will be available on the Board's website.

The Board adopted both recommendations.

6. Section 10.4 recites that case files and records fall under the "open records provision of the Freedom of Information Act, 29 Del. Laws, c. 100. " There are multiple problems with this section. I assume the citation should be to 29 Del.C. Ch. 100. Unfortunately, that chapter has multiple sections dealing with records. It is unclear if the Board views its records as generally available to the public or generally excluded from public review. The "open meetings" statute (as juxtaposed to the "records" statute, authorizes the Board to close meetings for claims involving sex offenses, offenses involving children, or unadjudicated crimes. See Title 29 Del.C. §§10003 and 10004(h)(7)a. Does the Board intend the records filed in such cases to be open to the public? Does the Board wish to reserve discretion to bar access to other sensitive records (e.g. those related to victims of domestic violence)? The access to records provision merits clarification.

The Board amended the citation but did not clarify the application of the Chapter.

7. In Section 17.2, substitute "depositions" for "dispositions".

The Board substituted "depositions" for "dispositions" as recommended.

8. In Section 18.1, capitalize "special" at the beginning of the second sentence.

The Board effected the recommended amendment.

9. In Section 18.2, delete the commas after "evidence" and "material" AND substitute "are" for "is" after "finds".

The Board substituted "are" for "is" but kept the commas.

10. Section 18.6 attempts to track Title 29 Del.C. §10004(h). However, it is literally narrower since the statute contemplates closing the entire "meeting" for certain cases while the regulation only closes the Board deliberation part of the meeting/hearing. It would be preferable to adopt the statutory standard of closing the entire proceeding. Moreover, as noted above under Par. 6, the Board may wish to add an authorization retaining some discretion to close proceedings in other contexts (e.g. those involving domestic violence).

The Board effected no amendment.

11. In Section 18.8, there are two "typos". I assume "repoen" should be "reopen".

The Board corrected both "typos".

12. In Section 19.1, delete the comma after "attorney".

The Board effected no amendment.

13. In Section 20.4, the phrase "(h)ourly fee rate to be determined by the Board" lacks a predicate and is not a complete sentence.

The Board adopted a conforming amendment.

14. In Section 25.4, substitute "25.1" for "27.1".

The Board effected no amendment. The citation is obviously incorrect. Indeed, there is no Section 27.1.

I recommend that the Council(s) issue a thank-you letter to the Board with the caveat that the Board may wish to reconsider the failure to correct the citation as noted in Par. 14 above.

5. DMMA Prop. Census Income Exclusion Regulations [12 DE Reg. 1153 (March 1, 2009)]

The Division of Medicaid & Medical Assistance proposes to amend its regulations to

disregard income of temporary census workers.

As background, DMMA notes that income from temporary census workers is currently disregarded for purposes of the Food Supplement, TANF, and Child Subsidy programs. CMS is encouraging states to adopt a disregard for the Medicaid and CHIP programs.[1] DMMA is honoring the CMS solicitation by explicitly adopting regulations making income received by temporary census workers "non-countable".

Since the regulations promote employment, facilitate development of job skills, and favor Medicaid and CHIP eligibility, I recommend endorsement.

6. VCCB Prop. Mental Health & Funeral/Burial Reg. [12 DE Reg. 1150 (March 1, 2009)]

The Violent Crimes Compensation Board proposes to adopt new regulations covering mental health services and funeral/burial expenses.

I have the following observations.

First, the numbering of the new regulation is inconsistent with the numbering of final regulations adopted in the March issue of the Registry of Regulations, 12 DE Reg. 1193. The latter regulations include a §26.0 which covers burial awards. The proposed regulation does not repeal the existing §26.0 but creates a new §26.0 covering mental health counseling.

Second, in §26.1.2, the word "affect" should be "effect".

Third, §26.1.1 imposes a cap on mental health counseling of $7,500. Moreover, §26.1.4 recites that the "Board pays mental health provider claims at 80% of charges." There is arguably some "tension" between these limitation and the enabling statutes.

A. Title 11 Del.C. §9002(7) defines "pecuniary loss" as "expenses actually and necessarily incurred", not 50%, 60% or 80% of the actual expenses. Moreover, to the extent that an "80%" limit is not applied to "physical health" claims, the regulation may violate the ADA and Section 504 of the Rehabilitation Act.

B. The Board can establish a maximum cap on mental health expenses pursuant to Title 11 Del.C. §9020 for children. Apart from the general $25,000 and $50,000 caps in Title 11 Del. 9007, there is no explicit authorization to impose a cap on mental health services for adults. Indeed, the absence of a cap in Title 11 Del.C. §9002(7) suggests that the Legislature envisioned no cap on mental health services other than the overall $25,000 and $50,000 caps. See also Title 11 Del.C. §9002(7)f which explicitly excludes "counseling" from a $1,000 cap on reasonable expenses for secondary victims.

Fourth, §26.2.1 is misnumbered as "23.2.1. It contains a definition of "victim". I

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[1]The federal CHIP initiative is implemented through the "Delaware Healthy Children Program" (DHCP).

recommend deletion since §2.0 already contains a definition of "victim" applicable to the entire Part 301 regulation. Moreover, the definition in §23.2.1 is not co-terminus with the definition in §2.0. The former section defines a victim as someone injured or killed during the commission of any crime while §2.0 and Title 11 Del.C. §9002(10) limit a "victim" to someone injured or killed by a crime "as defined in this chapter".

Fifth, §26.2.2 contains a definition of "secondary victim". I recommend deletion since §2.0 already contains a definition of "secondary victim" applicable to the entire Part 301 regulation and the definition in §26.2.2 is not co-terminus with the definition in §2.0. The former section includes a "latch-key child" which is omitted from the latter section and Title 11 Del.C. §9002(9).

Sixth, §26.2.3 contains a definition of "child". It should be deleted since §2.0 already contains a definition of "child" applicable to the entire Part 301 regulation. See also §26.4.1 which cross references the definition of "child" in §2.0.

Seventh, in §26.3.2, substitute "its" for "their" to correct use of a plural pronoun with a singular antecedent.

Eighth, in §26.6.4, second sentence, substitute "are" for "is".

Ninth, §26.4 is inconsistent with §25.1 of the regulations adopted at 12 DE Reg. 1193 (March 1, 2009) since the latter omits "Licensed Mental Health Counselor". The Board may wish to prospectively amend §25.1 to include a reference to "mental health counseling".

Tenth, §29.1 imposes an $8,500 cap on funeral and burial expenses. I question the Board's authority to impose such a cap. The enabling statute [Title 11 Del.C. §9002(7)] defines pecuniary loss as including "funeral and burial expenses" and, while caps are legislatively imposed on certain expenses, they are not imposed on" funeral and burial expenses." See Title 11 Del.C. §9002(7)a-I. The legislative intent is ostensibly to impose no arbitrary cap but only the general $25,000 cap [Title 11 Del.C. §9007(d)].

Eleventh, §29.1.4.1 is odd. It suggests that mental health counseling is considered part of funeral/burial expenses for secondary victims. However, mental health counseling is not included in the list of "permitted expenses" in §29.1.2. Moreover, the enabling statute ostensibly rejects imposition of a cap on counseling services for secondary victims where the primary victim has been killed. See Title 11 Del.C. §9002(7)f. By including such expenses in §29, they would be subject to the $8,500 cap imposed by §29.1.1.

I recommend sharing the above observations with the VCCB and Victim Rights Task Force.

7. H.B. No. 75 (Hospital & LTC Facility Visitation)

This bill was introduced on February 18, 2009. It remained in the House Health & Human

Development Committee as of March 6, 2009. It has 29 sponsors and co-sponsors.

The bill is similar to H.B. No. 167 from the 144th General Assembly. H.B. No. 75 reflects the following changes: 1) addition of word "competent" in line 5; 2) addition of phrase "as well as protective orders issued by a Court" in line 8; and 3) addition of Section 2 at lines 18-20. The SCPD and GACEC opposed the predecessor bill for several reasons. See, e.g., attached June 22, 2007 GACEC letter. All of the concerns compiled in the June 22 letter are still apt. The new Section 2 actually "muddies the waters" further. Existing Title 16 Del.C. §1121(11) already contains the following liberal visitation entitlement:

> (11) Every patient and resident may associate and communicate privately and without restriction with persons and groups of the patient's or resident's own choice (on the patient's or resident's own or their initiative) at any reasonable hour;...

H.B. No. 75, rather than embellishing this subsection, adds a competing standard in the same section which "guts" the liberal entitlement. While the existing subsection does not allow restrictions, H.B. No. 75 authorizes facilities to simply adopt restrictions through a "visitation policy" (lines 7-8).

There is technical flaw in the bill. The title of the bill only recites that it amends Title 16 Ch. 10. With the addition of Section 2, it would also amend Title 16, Ch. 11. If Section 2 is retained, the title of the bill should be amended to include a reference to Title 16 Ch. 11.

The bill could be improved through the following amendment:

HOUSE OF REPRESENTATIVES
145TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1
TO
HOUSE BILL NO. 75

AMEND House Bill No. 75 by striking the term "CHAPTER 10" as it appears in the title and substituting the words "CHAPTERS 10 AND 11" in lieu thereof.

FURTHER AMEND House Bill No. 75 by striking Paragraph "(c)" as it appears in lines 13-17 and substituting in lieu thereof the following new Paragraph "(c)":

"(c) The duties and rights conferred by this section are in addition to, and not in derogation of, duties and rights otherwise conferred by law, including Sections 2508 and 5161of Title 16 of the Delaware Code."

FURTHER AMEND House Bill No. 75 by striking lines 18-20 and substituting in lieu thereof the following:

"Section 2. Amend §1121, Title 16 of the Delaware Code by redesignating existing Paragraph "(33)" as Paragraph "(34)" and inserting a new Paragraph "(33)" as follows:

(33) Every patient and resident shall have the right to compliance with the patient's or resident's advance health care directive, power of attorney, or similar document in accordance with and subject to Chapter 49, Title 12 and Chapter 25, Title 16 of the Delaware Code."

SYNOPSIS

This amendment clarifies that hospital visitation rights created by this section do not supplant rights otherwise conferred by law. It also eliminates any inconsistency with existing visitation rights in licensed long-term care facilities while explicitly requiring adherence to advance health care directives and powers of attorney.

I recommend reiterating the Council's concerns and sharing the above observations and proposed amendment with policymakers.

8. H.B. No. 58 (Misdemeanor: Speeding >95MPH)

This bill was introduced on January 29, 2009. As of March 1, 2009, it remained in the House Public Safety & Homeland Security Committee. The bill would amend the attached Title 21 Del.C. §4169(c) by adding a subsection mandating that drivers who exceed a speed of 95 mph shall be guilty of a class A misdemeanor and have their license revoked.

Preliminarily, the SCPD generally supports vehicular traffic safety legislation since it reduces accidents resulting in disability. However, H.B. No. 58 raises the following concerns:

First, a fundamental principle in criminal law is that a penalty should be commensurate with the offense. This concept is incorporated into Delaware's criminal code. See, e.g., Title 11 Del.C. §201(4). This bill ostensibly violates this principle. Consider the following:

A. Title 21 Del.C. §§4168-4177M regulate many motor vehicle offenses, including reckless driving, aggressive driving, and driving while intoxicated. There is only one offense which qualifies as a misdemeanor - operating a vehicle causing death. [Title 21 Del.C. §4176A]. Moreover, operating a vehicle causing death is an "unclassified" misdemeanor, a much lower category than a class A misdemeanor. See Title 11 Del.C. §4206. Even first and second offense DUIs are not misdemeanors. Third and subsequent DUIs are low level felonies. See Title 21 Del.C. §4177(d).

B. Conceptually, the most analogous activity to speeding in excess of 95 mph would be "speed exhibitions" or drag racing. See Title 21 Del.C. §4172. Such activity would be more dangerous than simply speeding since it ordinarily involves multiple speeding vehicles. For a first

offense, the maximum penalty is a $200 fine and 30 days of incarceration. In contrast, the maximum penalty for a class A misdemeanor is more than 10 times the penalty for "speed exhibitions", i.e., $2,300 fine and 365 days of incarceration. See Title 11 Del.C. §4206(a).

Second, H.B. No. 58 directs the automatic revocation of a license. This is probably unnecessary. DMV already enjoys the discretion to revoke or suspend a license even prior to conviction of traffic offenses. See Title 21 Del.C. §2733. Moreover, under DMV standards, actual conviction of driving 50 mph over the speed limit or 100 mph on a highway automatically results in a 1 year license suspension. See attached DMV Drivers Manual, p. 23.

Third, since H.B. No. 58 creates a new crime which would ostensibly be prosecuted by lower courts, it may require a 2/3 vote. See, e.g., Article IV, §28 of the Delaware Constitution. Compare S.B. No. 174 from 144th General Assembly. The bill lacks the customary "2/3 vote" recital.

In conclusion, H.B. No. 58 raises multiple concerns. The sponsors may wish to reconsider the merits of the bill based on above observations. The Council may wish to share its analysis with DMV and the Office of Highway Safety.

9. H.B. No. 29 (NCC Workforce Development Ordinance Moratorium)

This bill was introduced on January 14, 2009. As of March 6, it had been reported out of the Housing & Community Affairs Committee.

As background, New Castle County identified a shortage of affordable housing it its 2007 Comprehensive Development Plan. Consistent with the attached NCC Questions & Answers About Workforce Housing document, The Council concluded that many County residents have been priced out of the housing market. The County identified 12 remedial strategies to provide homeownership opportunities to low and moderate income households. One of the strategies was to establish a "workforce housing program" which is described at page 2 of the above Q. & A. document. It essentially provides developers density bonuses for including certain percentages of affordably priced units in applications and authorizes some reduced County fees.

Consistent with the attachments, NCC adopted an ordinance in February, 2008 adopting a workforce development program. Implementation was stayed in December, 2008 pursuant to another ordinance. H.B. No. 29 was then introduced to indefinitely stay any implementation of the NCC Workforce Development program as applied to new applications. The "dynamics" of this conflict are described in the attached January 22, 2009 News Journal article. Proponents of a "stay" argue that higher density units may impose greater stresses on public schools and roads.

On January 21, 2009, the Housing & Community Affairs Committee allowed the bill to leave committee. However, the vote was 1 on the merits and 8 unfavorable. The Committee report

is attached.

Consistent with the attached March 6, 2009 News Journal article, NCC adopted a new ordinance addressing some of the detractors' concerns. The prime sponsor of H.B. No. 29 is quoted as follows:

> Jaques called the county's amendments "a great step forward on their part", and he said that "the county and the state are working really close now on these work-force housing issues." He added that further legislation dealing with transportation needs is in the works.

A companion bill (H.B. No. 30) is pending which would increase the school assessment fee paid by developers

Given the on-going discussions among stakeholders, I suspect that H.B. No. 29 may not be scheduled for a vote soon. Moreover, as the March 6 article recites, not a single new developer application has been filed under the workforce development program given the poor housing market. There is thus little pressure to enact a State moratorium.

At the same time, there is considerable "NIMBY" sentiment in opposition to the program. See, e.g., the attached comments on the March 6 News Journal article. Given its interest in promoting accessible housing options, the Council may wish to oppose H.B. No. 29 while encouraging the stakeholders to continue constructive dialog to resolve differences.

10. H.B. No. 69 (Direct Care Advanced Training Program)

This bill was introduced on February 18, 2009.

The bill recites that it is modeled after a similar act in Pennsylvania. It is intended to promote long-term care employee recruitment, training, and retention (lines 7-9). It establishes an advanced care training program within the Department of Education (lines 35-37). Trainees would obtain certification in any of three categories: behavioral care, restorative care, and leadership (lines 33-48). Certification would require 30 hours of classroom training (line 60); 30 hours of practical training (line 61); and a passing score on a competency test (lines 71-74).

An employing provider pays the tuition (line 81). The DOE then reimburses the employer if the employee successfully secures certification for ½ the costs of tuition, books, materials, and "staff replacement expenses incurred...while the direct care employee is receiving the training" (lines 86-93). The provider is then required to pay $600 to the employee upon successfully obtaining a certificate (lines 101-103).

I have the following observations.

First, there is ostensibly no fiscal note on the bill. This is odd since the DOE would have to

establish a training program, develop a curriculum and test, have funds to reimburse providers, and prepare an annual report to the Legislature. The Department's costs may be limited by only permitting a small number of trainees (lines 75-76). Moreover, tuition reimbursement is only paid "as long as funds are available through the department" (lines 98-99). The bottom line is that the bill would require some State funds to implement.

Second, the cost of the training tn providers would be substantial. Since the DOE only reimburses ½ costs for successful trainees (line 89), and the employer must "front" costs (line 81), the employer would have to absorb all costs for an employee who fails the competency test or otherwise fails to obtain certification. Moreover, if the DOE "runs out of program funds" (line 98), the employer would have to pay all costs. A successful trainee is entitled to a $600 bonus from the employer (with no DOE subsidy). The employer must pay an employee to "cover" for the trainee for 60 days and then only receives a maximum of 50% of the costs of the replacement employee. Finally, there is significant turnover among direct care workers which would undermine any employer incentive to invest significant sums in training. My prediction is that few, if any, providers would opt to participate in this program. It would be expensive and there is no clear benefit to the certification. There is no licensing or regulatory advantage to having an employee certified under this program.

Third, perhaps because the bill is modeled on a Pennsylvania act, it does not "integrate" well with existing Delaware law. For example, the definitions of "facility" (lines 16-17) and "provider" (lines 28-30) use terminology inconsistent with Delaware law. Delaware has licensing for "personal assistance services agencies (Title 16 Del.C. §122x; 16 DE Admin Code 4469) and regulates an "attendant services" program (Title 16 Del.C. Ch. 94). The long-term care licensing statute [Title 16 Del.C. §1102(4)] covers "neighborhood homes", "family care homes", "rest residential facilities", "assisted living facilities" while the bill uses different terms. The bill treats "home health care agencies" as "long-term care" (lines 16-17) while Delaware law does not treat home health agencies under long-term care standards (Title 16 Del.C. §122o; 16 DE Admin Code 4406). This will create confusion concerning application of the bill to many types of facilities and employers.

Fourth, there is some obvious "tension" between the establishment of the certifications in the bill and the extensive requirements in the Delaware Code for certified nursing assistants (CNAs). Title 16 Del.C. Ch. 30A and 16 DE Admin Code 3220 contain extensive training and competency standards to obtain CNA certification. In turn, the long-term care facility minimum staffing statute [Title 16 Del.C. §1161] refers to CNAs and not persons who would be certified under the bill. Employers and employees have some incentive to secure CNA certification. There is no such incentive to obtain the certifications listed in the bill.

Fifth, there is some "tension" between the training components of the bill and training requirements in existing regulations for home health aides (16 DE Admin Code 4406) and personal assistants (16 DE Admin Code 4469). The training in the bill could be viewed as redundant.

I recommend that the Council share the above observations with at least the sponsors of the bill, the DOE, and DHSS. The Council should thank the sponsors for their interest in promoting training of direct care workers while suggesting that this particular bill may not be the best vehicle to achieve better-trained workers.

11. H.R. 868 (Direct Support Professionals Fairness & Security Act of 2009)

This federal bill was introduced on February 4, 2009. It has 1 Democratic sponsor and 2 Republican sponsors. The bill is a reintroduction of legislation (H.R. 1279) which failed to pass during the 110th Congress. The predecessor bill had 130 House co-sponsors. The SCPD forwarded a letter to Congressman Castle unsuccessfully encouraging him to join in co-sponsoring the predecessor bill. I attach background materials on the current bill and the predecessor bill.

I have the following observations.

The purpose of the bill is to promote wage/benefit parity between private sector direct support professionals with equivalent professionals working for the government agencies in the Medicaid program. The "findings" section recites that 780,000 additional direct support professionals will be needed nationwide by 2010. "Direct support services" personnel include nurses aides, home health aides, personal care aides, in-home support workers, etc who provide personal care services, consumer-directed personal assistance services, rehabilitation services, habilitation services, and respite care. See Section 1943(I)

The bill would offer states an enhanced Medicaid match for 5 years upon approval of a State plan designed to achieve parity. States would also be required to provide assurances of sufficient State funding upon the expiration of the 5-year federal subsidy to maintain parity. See Section 1942(c)(9).

A GAO study would be required in the third and fifth years of implementation. See Section 1942(h).

It is unclear how the enhanced Medicaid match in the stimulus bill would interact with the projected enhanced 5-year Medicaid match in this legislation.

Consistent with the attached 2008 Direct Support Professional Wage Study, the wage differential in Delaware is a modest 6-7%. Assuming this is accurate, there is less urgency to enactment of the federal bill for Delawareans. My prediction is also that the Legislature may not be comfortable with providing assurances of parity upon expiration of the 5-year enhanced subsidy period.

Advocacy agencies are promoting efforts to obtain more co-sponsors, The Council may wish to generally endorse the bill and encourage Rep. Castle to consider co-sponsorship.

Attachments

F:pub/bjh/legis/1009p&l/309bils.