

MEMORANDUM

DATE: March 13, 2009

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. 75 [Hospital & LTC Facility Visitation]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 75 which would require hospitals and licensed long-term care facilities to allow adult patients to receive visitors subject to certain restrictions, and require such facilities to honor powers of attorney, advance health care directives, and similar documents. SCPD believes the intent of the bill is good. However, Council believes there are unintended consequences and has the following concerns.

The bill is similar to H.B. 167 from the 144th General Assembly. H.B. No. 75 reflects the following changes: 1) addition of the 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. SCPD opposed the predecessor bill for several reasons. See attached June 18, 2007 letter. All of the concerns compiled in the June 18 letter are still apt. In addition, 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. 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. 75 authorizes facilities to simply adopt restrictions through a “visitation policy” (lines 6-8).

There is also a 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.

SCPD believes 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 5161 of 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.

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

cc: The Honorable Jack Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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