

## MEMORANDUM

DATE: March 9, 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. 37 [Mental Health Patients' Bill of Rights]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 37 which enhances the current Mental Health Patients' Bill of Rights Act that applies to the Delaware Psychiatric Center (DPC), mental hospitals certified to accept involuntary commitments, and the Stockley Center. The bill adds specific procedural protections covering administration of "restraint" (lines 17-28). The protections include specificity in orders, medical exam within an hour of initiation of restraint, close monitoring during restraint, and interactive clinical assessment with a patient subsequent to restraint. The bill also expands the existing provisions covering grievances at DPC only (lines 39-45). The bill contemplates the offer of assistance in patient preparation of a grievance, right to present a grievance in person or with assistance of representative, right to decision of routine grievance within 15 calendar days, availability of expedited processing for time-sensitive grievances, and an appeal/review process. The appellate review officer would be appointed by DHSS from a list of nominees compiled by the State Council for Persons with Disabilities (SCPD). This is based on the special education panel model, Title 14 Del.C. §3137(d)(3).

SCPD endorses the proposed legislation subject to deletion of Section 8 which represents the amendment added to the predecessor bill (H.B. 407 in the 144<sup>th</sup> General Assembly) in the House. Section 8 recites as follows: "The provisions of Section 4 of this Act shall not apply to hospitals or residential centers that are licensed or registered by the Office of Child Care Licensing."

This provision is ostensibly unnecessary and should be stricken based on the following rationale. The entire Section 5161 only applies to the Delaware Psychiatric Center, the Stockley Center, and mental hospitals certified by DHSS or the DSCY&F to treat persons with mental illness, i.e. Rockford, Meadowood, and Dover Behavioral Health. See Title 16 Del.C. §§5001(4), 5101(2) and 5161(b). Rockford and Dover Behavioral Health accept adolescents.

In contrast, the Division of Services for Children, Youth and Their Families (DSCYF) website describes the scope of licensing by the Office of Child Care Licensing as follows:

The Office of Child Care Licensing is responsible for licensing Family Child Care, Large Family Child Care, Early Care and Education and School-Age Centers, Child Placing Agencies, Residential Child Care Facilities and Day Treatment Programs for children and youth.

See also 7 DE Admin Code Part 100. The Residential Child Care Facilities regulation, Part 105, Section 1.3, recites as follows: “A Psychiatric hospital or a foster home in which children have been placed by a licensed or authorized child placing agency are not residential child care facilities.”

The Office has no jurisdiction over hospitals and none of the facilities that it licenses is covered by Section 5161. Please find attached email from the Office of Child Care Licensing confirming our position. Section 5161 only applies to mental hospitals and the Stockley Center [formerly known as the Hospital for the Mentally Retarded (“HMR”)].

Finally, there was not a fiscal note on the predecessor bill. There is a fiscal note on the proposed legislation and therefore SCPD questions the need for a fiscal note.

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

cc: The Honorable Jack Markell  
The Honorable Rita Landgraf  
The Honorable Vivian Rapposelli  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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