

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. 41[Community Health Treatment Act]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 41 which establishes a Community Mental Health Treatment Act. SCPD endorses the proposed legislation subject to the following amendments: 1) insertion of “, Protection and Advocacy Agency” after “office” in line 143; and 2) substitution of the following for Par. (21) (lines 107-109): “(21) Every patient eligible to vote in primary and general elections shall be entitled to assistance to facilitate voter registration, and, if applicable, obtain an absentee ballot.” Council also has the following observations.

There was not a fiscal note on the predecessor bill (H.B. 419 in the 144th General Assembly). There is a fiscal note on the proposed legislation and therefore SCPD questions the need for a fiscal note.

As background, the Division of Substance Abuse and Mental Health (DSAMH) supported bill of rights statute applicable to residential and non-residential patients of substance abuse treatment facilities which is codified at Title 16 Del.C. §2220. The substance abuse bill of rights applies to both adults and children. There is no analogous bill of rights applicable to non-residential patients of mental health facilities. At the same time, with the movement towards more community-based programs, there are more individuals with mental illness participating in non-residential programs. The proposed legislation bill fills this void.

The bill covers facilities which provide care, supportive lodging, or treatment to individuals with mental illness (lines 7-15). It applies to both adults and children. It excludes mental health hospitals covered by the hospital-based “Mental Health Patients’ Bill of Rights Act”. It also excludes shelters or leased premises in which only housing is provided without mental health provider services. Finally, it excludes private offices of mental health practitioners.

The bill of rights is generally patterned on the substance abuse bill of rights [Title 16 Del.C. §2220] and clarifies that the enumerated rights are minimums (lines 33-34). There is a mandatory abuse/neglect reporting requirement (lines 128-139) patterned on Title 16 Del.C. §1132. Retaliation against a “reporter” is prohibited (lines 138-139).

The Disabilities Law Program DLP is authorized to complement the State’s quality assurance and complaint investigation system (lines 147-149). The DLP is authorized to receive abuse/neglect reports, access facilities, conduct interviews, and investigate allegations (lines 147-153). Enforcement of rights would be available through the Court of Chancery similar to analogous provisions in the Mental Health Patients’ Bill of Rights Act (Title 16 Del.C. §5162).

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

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

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