



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: April 30, 2013

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: S.S. 1 for S.B. 13 [Long Term Care Ombudsman]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 13 and S.S. 1 for S.B. 13. As background, Delaware's statutory advance health care directive (AHCD) law requires execution of an AHCD by a resident of a long-term care facility to be witnessed by a representative of the Division of Aging & Physical Disabilities (DSAAPD) or the Public Guardian. Historically, representatives of the Long-term Care Ombudsman's Office (part of DSAAPD) generally witnessed the execution of AHCDs by covered residents. However, the Office of the Long-Term Care Ombudsman was transferred from the Division of Aging & Adults with Disabilities to the DHSS Secretary's Office in 2011 through enactment of S.B. 102. As a result, the references to "DSAAPD" in the AHCD law need to be changed since DSAAPD is not involved in witnessing execution of AHCDs.

SCPD endorses the substitute bill given that it corrects the following concerns with S.B. 13 and its amendments.

First, in the amendment, the reference to "Delaware Health and Social Services" should be "Delaware Department of Health and Social Services". Compare Title 16 Del.C. §1150.

Second, the amendment contemplates either DHSS or the Public Guardian designating a "patient advocate or ombudsman". The Public Guardian does not designate patient advocates or ombudsmen.

Third, another statute [Title 16 Del.C. §1121(15)] still refers to "DSAAPD" in the context of traditional Ombudsman duties. The term "Department of Health and Social Services" should be substituted through this bill or prospective legislation.

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

cc: Mr. Brian Hartman, Esq.
Ms. Lexie McFassel, Esq.
Ms. Deborah Gottschalk, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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