



STATE OF DELAWARE
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MEMORANDUM

DATE: May 30, 2013

TO: Ms. Dara Schumaier, Community Relations Officer
Division of Substance Abuse & Mental Health

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 16 DE Reg. 1148 [DSAMH Proposed MH Screener & Voluntary Admission
Payment Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Substance Abuse and Mental Health's (DSAMHs) proposal to amend its mental health commitment screening regulation. The proposed regulation was published as 16 DE Reg. 1148 in the May 1, 2013 issue of the Register of Regulations.

The rationale is that, effective July 1, only credentialed mental health screeners can authorize a mental health commitment-related detention. See Title 16 Del.C. §§5121A and 5122. However, the current mental health screener training curriculum does not address children. Therefore, on an interim basis, DSAMH and the Division of Prevention and Behavioral Health Services (DPBHS) would like to authorize psychiatrists and credentialed physicians (but not non-physician screeners) to authorize commitment-related detention of children. This will provide some time to modify the screener curriculum to address children. An April 26, 2013 email from DHSS summarizes this intended approach:

Concerns were also raised about how the changes enacted by HB 311 affect youth, particularly regarding the requirement that only credentialed mental health screeners can decide if someone should be held involuntarily for evaluation. Under current law, youth are evaluated under the same law as adults, thus, the new screener requirement will apply to youth as well. Because the screener curriculum did not anticipate youth, DHSS is publishing a proposed amendment to the HB 311 regulations on May 1. The amendment will allow psychiatrists and credentialed physicians to evaluate people under age 18, but other credentialed screeners may only evaluate adults. This way, if the physicians who are currently doing these evaluations for juveniles get credentialed by June 30th, we will

essentially preserve the status quo for juveniles until any new process/requirements are thought through and enacted.

SCPD endorses this approach subject to revised language in the proposed regulation.

First, in §3.1.3, insert “Delaware-licensed” between “A” and “psychiatrist”. This would clarify, consistent with Title 16 Del.C. §5122(a)(1)a, that the authorization of a “psychiatrist” to authorize a commitment-related mental health detention does not extend to psychiatrists lacking a Delaware license.

Second, in §§3.1.3, 3.2.4, 3.3.4, 3.43, and 3.5.2, SCPD recommends revised language.

A. The statutory term is “detention”, not detainment. See Title 16 Del.C. §5122.

B. Literally, the regulation states that the screener “detains” the individual. This is not accurate. In general, the screener authorizes detention but does not personally physically detain the individual. The screener’s certification authorizes designated transport personnel, including police, to “detain” and transport the individual. See Title 16 Del.C. §5122(d) and 5122(a)(6).

C. The relevant statutes do not authorize a screener to “abrogate” a detention or detainment. Once the authorized screener completes the detention form, designated transport personnel promptly take the person to a treatment facility. See Title 16 Del.C. §5122(d). Once there, an independent psychiatrist assesses the patient within 24-72 hours and either discharges the patient forthwith or initiates the involuntary commitment process. See Title 16 Del.C. §5122(f)(g). Indeed, in the case of minors, a DSCY&F designated psychiatrist is authorized to independently determine if a detained minor meets admission criteria. See Title 16 Del.C. §5122(h). Contrary to the proposed regulation, the “screener” cannot rescind a form after formal issuance. This could result in conflicts between the screener and the facility psychiatrist. For example, if the screener “abrogates a detainment” after an individual has arrived at a facility, and the facility staff disagree, whose view controls?

Therefore, SCPD recommends that the above references be changed to “may authorize detention for a psychiatric evaluation”.

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

cc: The Honorable Rita Landgraf
Ms. Kevin Huckshorn
Ms. Susan Cyclic
Ms. Deborah Gottschalk
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council