



DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Legislative and Regulatory Initiatives

Date: February 6, 2013

I am providing my analysis of seventeen (17) legislative and regulatory initiatives in anticipation of the February 14, 2013 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DSS Withdrawal of Child Care Subsidy Purchase of Care Plus Phase Out Reg. [unpublished]

In December, the Division of Social Services proposed to eliminate a "Purchase of Care Plus" program which subsidizes child care expenses of qualifying individuals needing child care for employment. [16 DE Reg. 603 (12/1/12)]. The SCPD and GACEC adopted a DLP critique of the regulation which identified both "pros and cons" to the proposal and ultimately declined to endorse it. A copy of the SCPD's December 21 letter is attached for facilitated reference.

On January 8, 2013m DSS forwarded the attached letter confirming that DSS is withdrawing the initiative pending further study. The actual withdrawal has not yet been published in the Register or Regulations. The Purchase of Care Plus program has thus been preserved for now.

2. DSS Final Interpreter & Translation Services Reg. [16 DE Reg. 869 (2/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2012. A copy of the GACEC's December 28 letter is attached for facilitated reference. The Division of Social Services has now adopted a final regulation incorporating some amendments prompted by the commentary.

§1009

First, the Councils recommended substituting "limited English proficiency" for "non-English speaking". The Division substituted a close variation, i.e., "Limited English Proficient Clients".

Second, the Councils recommended including a definition of “Limited English Proficiency”. The Division responded that it will add a definition to the Definitions section of the policy manual.

Third, the Councils noted that authorizing interpreter services to only applicants and recipients was unduly narrow. DSS amended the regulation to cover “limited English proficient individuals who need an interpreter”.

Fourth, the Councils recommended clarification that individuals could opt to use their own interpreter. DSS responded as follows:

Interpreter services are offered to applicants/recipients and their representatives when they have a need for an interpreter. If an individual has his or her own interpreter, the services of a DSS interpreter is not needed.

At 871.

This approach is not consistent with HHS OCR guidance which indicates that individuals should be given the option of using their own interpreter or requesting an interpreter from the agency.

Fifth, the Councils recommended inclusion of a standard of “timely” provision of interpreter services. In response, the Division declined to adopt a standard, noting that it would be “rare” to not be able to accommodate a request for real time interpretation. At 871.

Sixth, the Councils recommended that the regulation address advance requests for interpreter services rather than exclusively relying on a receptionist assessment upon the in-person appearance of the individual”. DSS offered an odd response which does not address advance requests for interpreter services:

The actual text of the policy states: “The receptionist will identify the need for services when the applicant or recipient arrives at the office.” There is no reference to the physical appearance of an individual. The need is identified by verbal or written communication with the individual.

At 871.

Seventh, the GACEC asked if the DSS website contains online versions of applications in Spanish. DSS responded in the affirmative.

At 872.

§1010

First, the Councils noted that the regulation suggested that only “clients” were entitled to interpreters, contrary to the ADA. DSS responded that “(t)he title is changed to “Arranging Services for Individuals with Hearing Impairments”. At 872.

Second, the Councils noted that the regulation only authorized interpreter services for “applicants” and “recipients”, contrary to the ADA. DSS amended the policy to read as follows: “This policy applies to individuals who have a hearing impairment and require auxiliary aids or services to provide information to, or receive information from DSS.” At 872.

Third, the Councils observed that the only accommodation identified for persons with hearing impairments is an interpreter. DSS responded that it will review its vendor contracts to assess what other auxiliary aids might be appropriate. At 872. The SCPD may wish to offer technical assistance in conjunction with the CODHHE.

Fourth, the Councils recommended the explicit incorporation of a standard of ‘effective communication’ consistent with the ADA. DSS added the following sentence: “A contracted vendor will provide the individual with effective communication services”. At 872.

Fifth, the Councils noted that “covering the arrangement of services for individuals with hearing impairments with the three-sentence policy is inadequate guidance to staff.” DSS responded that it will embellish guidance through internal documents. At 872.

Since the Division incorporated several amendments prompted by the Councils’ commentary, and the regulation is final, I recommend no further action. Alternatively, consistent with the above “Third” paragraph, the SCPD could offer technical assistance on auxiliary aids.

3. DSS Final Food Supp. Program Identification Card Reg. [16 DE Reg. 874 (2/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2012. A copy of the December 28 GACEC letter is attached for facilitated reference.

The Councils expressed only one (1) concern with the proposal, i.e., that elimination of the Food Supplement Identification card could have a negative effect on some participants who have no other forms of identification. The Division of Social Services responded that it understands the Councils’ perspective but the ID card was never intended to be used as a verification of identity. The Division therefore adopted the regulation which eliminates the requirement of issuance of the ID card.

Since the regulation is final, and the Division responded to the Councils’ concern, I recommend no further action.

4. DSS Final Child Care Subsidy Elig. & Provider Reim. Reg. [16 DE Reg. 876 (2/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2012. A copy of the December 28, 2012 GACEC letter is attached for facilitated reference.

The Councils endorsed the proposed regulation subject to one observation, i.e., the provider rate chart was not available on the DSS website as of December 21.

DSS has now adopted a final regulation with no further changes. It acknowledges the Councils' endorsement and notes that "the provider rate chart will be available on the DSS website in the near future."

Since the regulation is final, and DSS responded to the only concern identified by the Councils, I recommend no further action.

5. DMMA Final Psychiatric Hospital Reimbursement Reg. [16 DE Reg. 867 (2/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2012. A copy of the December 21, 2012 SCPD memo is attached for facilitated reference.

The Councils noted that the revisions were prompted by CMS and expected to have little fiscal impact. The Councils endorsed the proposed regulation subject to correction of a minor grammatical edit.

The Division of Medicaid & Medical Assistance has now adopted a final regulation which incorporates the Councils' suggested grammatical edit.

Since the regulation is final, and the Division adopted the Councils' only recommended amendment, I recommend no further action.

6. DLTCRP Final Pediatric Nursing Home Emergency Prep. Reg. [16 DE Reg. 863 (2/1/13)]

The DDC, GACEC, and SCPD commented on the proposed version of this regulation in December. A copy of the December 28, 2012 GACEC letter is attached for facilitated reference.

First, the Councils recommended renumbering §12.6.3 as §12.7. The DLTCRP agreed and effected the renumbering.

Second, the Councils recommended revisions to §12.6 to clarify that plans are required in connection with initial license applications. The Division adopted the Councils' suggested language verbatim.

Since the regulation is final, and the Division adopted revisions conforming to all Council suggestions, I recommend no further action.

7. DLTCRP Final Assisted Living Facility Emergency Prep. Reg. [16 DE Reg. 965 (2/1/13)]

The DDC, GACEC, and SCPD commented on the proposed version of this regulation in December. A copy of the December 28, 2012 GACEC letter is attached for facilitated reference.

First, the Councils recommended renumbering §18.6.3 as §18.7. The DLTCRP agreed and effected the renumbering.

Second, the Councils recommended revisions to §18.6 to clarify that plans are required in connection with initial license applications. The Division adopted the Councils' suggested language verbatim.

Since the regulation is final, and the Division adopted revisions conforming to all Council suggestions, I recommend no further action.

8. DLTCRP Final Nursing Facility Emergency Prep. Reg. [16 DE Reg. 861 (2/1/13)]

The DDC, GACEC, and SCPD commented on the proposed version of this regulation in December. A copy of the December 28, 2012 GACEC letter is attached for facilitated reference.

First, the Councils recommended renumbering §8.6.3 as §8.7. The DLTCRP agreed and effected the renumbering.

Second, the Councils recommended revisions to §8.6 to clarify that plans are required in connection with initial license applications. The Division adopted the Councils' suggested language verbatim.

Since the regulation is final, and the Division adopted revisions conforming to all Council suggestions, I recommend no further action.

9. DOE Final Teacher of Students with Visual Imp. Cert. Reg. [16 DE Reg. 856 (2/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2012. A copy of the GACEC's December 20, 2012 letter is attached for facilitated reference.

First, the Councils noted that the "grandfather" date in the regulation (1/11/07) was the same as the "grandfather" date for the "Deaf" teacher certification but shorter than the "grandfather" date for the "Autism" teacher certification. The Councils observed that the rationale for the different dates was unclear. The Professional Standards Board responded that the 2007 date is based on the initial effective date of the Standard Certificate regulation. The Board did not indicate why the "Autism" teacher certification regulation has a 2005 "grandfather" date.

Second, the Councils questioned whether providing only 18 months to achieve compliance was sufficient time. The Board responded that a local employing agency could request up to a 2-year extension by obtaining approval of an Emergency Certificate.

Third, the Councils reminded the Board that Title 14 Del.C. §206 requires certification standards for teachers of students with visual impairments to include certain Braille proficiency requirements. The Board responded that the reference to §206 compliance had been inadvertently omitted. A reference was reinstated.

Since the regulation is final, and the Board responded to each concern identified by the Councils, I recommend no further action.

10. DOE Final Teacher of Students Who Are Deaf/HOH Reg. [16 DE Reg. 851 (2/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2012. A copy of the December 21, 2012 SCPD letter is attached for facilitated reference.

First, the Councils recommended four (4) grammatical edits to §5.0. The Professional Standards Board effected three (3) of the four (4) recommended revisions. It failed to capitalize “Deaf” in the last sentence.

Second, the Councils expressed their appreciation for adding a “grandfather” provision which had been omitted in the pre-publication draft. However, the Councils questioned the effective date (January 11, 2007) and rationale for adopting the date. The Professional Standards Board responded that the 2007 date is based on the initial effective date of the Standard Certificate regulation. The Board did not indicate why the “Autism” teacher certification regulation has a 2005 “grandfather” date.

Third, the Councils questioned whether providing only 18 months to achieve compliance was sufficient time. The Board responded that a local employing agency could request up to a 2-year extension by obtaining approval of an Emergency Certificate.

Fourth, the Councils questioned the credits in ASL required for certification. Indeed, the Councils noted that ASL credits are optional under §§4.1.2.6 - 4.1.2.8. The Board responded that there was a difference of opinion among educators in this context. The Board made no change but clarified that LEAs would be required to provide an educator “with deep ASL content and knowledge” if necessary for an individual student. At 861.

Since the regulation is final, and the Board responded to almost all of the Councils’ observations, I recommend no further action.

11. DMMA Prop. LTC Medicaid Resource Regulation [16 DE Reg. 825 (2/1/13)]

The Division of Medicaid & Medical Assistance proposes to amend its LTC Medicaid resource regulations.

As background, DMMA notes that federal legislation enacted in 2010 created a twelve month “disregard” for federal income tax refunds received between December 31, 2009 and December 31, 2012. That “disregard” has expired and the Division is now adding the following conforming sentence: “Any retained portion of a tax refund and/or advance payment that was received on or after January 1, 2013 will be a countable resource the month following receipt.” At 826.

I did not identify any technical problems with the regulation. I recommend that the Councils comment that they reviewed the regulation and did not identify any technical concerns. The interplay of multiple federal bills makes it difficult to independently assess the substantive merits of the regulatory change.

12. DPH Proposed Newborn Screening Regulation [16 DE Reg. 827 (2/1/13)]

The Division of Public Health proposes to adopt extensive revisions to its regulation covering screening of newborn infants for metabolic, hematologic, endocrinologic, and certain structural disorders. I have the following observations.

First, in §1.0, the original regulation contained a second “sentence” beginning “(T)hese regulations describe...”. The superseding revision is grammatically incorrect. It is not a sentence: “To regulate the procedures for the Newborn Screening Program where each newborn delivered in the state must be provided a panel of screening tests to identify certain metabolic, hematologic, endocrinologic and certain structural disorders that may result in developmental delay, cognitive disabilities, serious medical conditions, or death.”

Second, in the same “sentence”, I recommend deletion of the word “certain” between “identify” and “metabolic”. Compare comparable provisions in title to §4.0, §4.1, and 6.1. The definitions of “endocrinologic disorder”, “hematologic disorder”, and “metabolic disorder” are not restrictive. Indeed, the definition of “metabolic disorder” refers to “include, but are not limited to...”.

Third, the regulation sometimes refers to an “institution” and sometimes refers to a “facility”. The term “institution” is used in §§1.0, 5.2, 7.2, 9.1, 9.2, and 10.1. The term “facility” is used in §§1.0, 4.1.1, 4.3, 6.1.1, 6.1.3, 6.2, and 6.3.1. The Delaware Manual for Drafting Regulations issued by the Register of Regulations offers the following guidance:

6.2.2. Strive for consistency in terminology, expression and arrangement. Avoid using the same word or term in more than one sense. Conversely, avoid using different words to denote the same idea. ...

I recommend using the term “facility”.

Fourth, in §2.0, definition of “hematologic disorder”, the term “result” should be “results”.

Fifth, the structure of §4.0 merits overhaul. Both §§4.1 and 4.3 purport to establish a sequence of responsibility for assuring collection and submission of results. Both sections contemplate parental responsibility. Query whether a parent of a child born in a hospital should be made responsible for collection and submission of results if “overlooked” by the hospital. Section 4.1 covers hospitals and non-hospitals. Section 4.3 overlaps, covering non-hospitals. An undefined “primary care provider” is made responsible before a parent or guardian. Thus, a grandparent providing most general care for an infant would be responsible for ensuring the screening before a parent or legal guardian. I suspect the Division intended to refer to “primary health care provider”. Compare §8.3.

Sixth, §6.1.1 refers to “no later than 3 days after birth...” The strikeout of “3” results in a confusing reference.

Seventh, in §7.1, some words are ostensibly missing from the following sentence: “The sample must be taken from every newborn who one or more of the following categories:...”

Eighth, §11.0 refers only to “Hereditary Disorders”. This may not be co-extensive with “metabolic, hematologic, endocrinologic, and certain structural disorders”. It is unclear if abnormalities in any of these contexts could be non-hereditary (e.g. induced by oxygen deprivation during birth). If so, the reference to “Hereditary Disorders” may be too narrow.

I recommend sharing the above observations with the Division.

13. H.B. No. 23 (Digital Record of School Board Meetings)

This legislation was introduced on January 23, 2013. As of February 5, it remained in the House Education Committee.

As background, legislation was enacted in 2011 requiring the State Board of Education to record all regular monthly Board meetings and make the recordings available to the public on the DOE’s website within 7 business days. See attached original H.B. No. 26, H.A. No. 3, and engrossed version of H.B. No. 26 from the 146th General Assembly.

H.B. No. 23 is generally patterned on the original version of H.B. 26. It would require boards of education of districts and charter schools to digitally record all of their public meetings and make the recordings available on their websites within 7 business days.

The sponsors may wish to consider a few amendments to conform more closely to the engrossed version of H.B. No. 26. Consider the following.

First, the State Board legislation only applies to “regular monthly public board meetings” and excludes “executive sessions, or ...other meetings of the Board, such as workshops, retreats, and committee meetings. Similarly, the attached Christina School District policy (cited in the synopsis) does not apply to “all their public meetings”. Rather, the policy only applies to “all public meetings, where action is to be taken”. Thus, it would not apply to retreats and workshops. I recommend that the sponsors consider excluding executive sessions which typically involve personnel matters and attorney-client discussions. I also recommend excluding workshops, retreats, and similar meetings in which no action is being taken.

Second, the State Board legislation includes the following provision ensuring equal access by individuals with hearing impairments: “A written transcript of the regular monthly public board meetings that are digitally recorded pursuant to this paragraph, or other reasonable accommodation, will be provided by the Department of Education within seven (7) business days upon request of a person with a hearing impairment.” It would be preferable to include a similar provision in H.B. No. 23.

I recommend sharing the above observations with policymakers.

14. H.B. No. 10 (Felon Voting Restriction)

This bill was introduced on January 25, 2013. It was released from the House Administration Committee on January 23 and awaits a House vote.

As background, the legislation is the second leg of a Constitutional Amendment which eliminates the existing 5-year waiting period before eligible felons who have fully discharged their sentences may have their voting rights restored. The SCPD endorsed the predecessor legislation (H.B. No. 9) which passed the House and Senate in 2012. The January 25, 2011 SCPD memo, which includes background information, is attached for facilitated reference. I am also attaching a March 28, 2012 News Journal article which provides commentary on the predecessor bill.

I recommend endorsement for the reasons compiled in the Council’s earlier memo. Consistent with the attached updated statistics, Delaware’s law is more restrictive than the laws in at least 38 other states and D.C., i.e., 2 states do not take away voting rights from felons, 13 states and D.C. restore voting rights upon release from prison, 4 states restore voting rights upon release from prison and completion of parole, and 19 states restore voting rights upon release from prison and completion of probation and parole. Under current Delaware law, 5 years must pass since “expiration of the sentence” which includes completion of “imprisonment, parole, work release, early release, supervised custody, probation and community supervision, and” ...payment of “all financial obligations required by the sentence.” See Article V, §2 of Delaware Constitution and Title 15 Del.C. §6102(b). The legislation would strike the 5-year period in the Constitution.

Parenthetically, if the Constitution is amended, follow-up “housekeeping” legislation may still be needed to amend Title 15 Del.C. §6103(c) which recites as follows:

(c) If the applicant has been convicted of a felony which is not disqualifying but the felony conviction occurred within 5 years preceding the date of the application, then the registration application shall be denied.

I recommend sharing the above observations with policymakers and the State Election Commissioner.

15. H.B. No. 20 (Absentee Voting)

This bill was introduced on January 17, 2013. As of February 5, it remained in the House Administration Committee. It is the first leg of a Constitutional amendment and requires a 2/3 vote by successive General Assemblies.

As background, legislation (S.B. No. 143) was introduced in 2011 to effect multiple changes in the Delaware Constitution related to voting. That bill passed the Senate in 2012 but not the House. The new legislation (H.B. No. 20) is more restrained. It extracts one section (absentee voting) from the prior legislation (lines 28-32) which becomes the sole focus of H.B. No. 20.

The Delaware Constitution is somewhat prescriptive in authorizing absentee ballots. For example, it contemplates use of absentee ballots based on “sickness or physical disability” but omits any reference to “mental disability”. The bill would remove limitations and simply allow the General Assembly to enact laws covering qualifications for use of absentee ballots.

I recommend endorsement.

16. H.B. No. 9 (Immunity in Commitment Process)

This is an information item since the SCPD previously endorsed the legislation through the attached January 16, 2013 memo.

As background, H.B. No. 9 was introduced on January 15, was released from committee on January 16, and passed the House on January 17. As of February 5, it remained in the Senate Health & Social Services Committee.

The legislation is the result of a consensus recommendation of the H.J.R. 17 Study Group. First, it provides immunity to peace officers, physicians, mental health screeners, and facilities involved in the pre-24 hour detention period for the mental health assessment, clinical decision, and involuntary hold. Second, it provides more limited immunity during the 24-hour detention period. As the synopsis recites, “(m)edical negligence claims arising after the mental health assessment and resulting clinical decision to detain and claims unrelated to mental health are not intended to be included in the immunity protection.

I recommend no further action unless the Council wishes to share its earlier endorsement with a broader range of recipients.

17. H.B. No. 24 (School Attendance)

This legislation was introduced on January 24, 2013. As of February 5, it remained in the House Education Committee.

Consistent with the synopsis, the bill would have two effects.

First, under current law, the principal may refer a case for prosecution at any time up to the 30th day of unexcused absences but must refer the case for prosecution following the 30th day. See Title 14 Del.C. §2725(c). The bill substitutes “20th” day for “30th” day, thereby reducing the discretion of the principal. Reasonable persons may differ on whether truncating the principal’s discretion is preferable.

Second, under current law, a set of sequential activities is set in motion for children in grades K-5:

- after 10th day of unexcused absence, notice to parents and visiting teacher;
- following 15th day of unexcused absence, notice to parents to appear at school within 10 days of notice for conference;
- following 30th day of unexcused absence, referral for prosecution; and
- following completion of prosecution and subsequent failure of student to return to school within 5 school days, referral to DSCY&F.

Title 14 Del.C. §2702(d)

The legislation applies these sequential activities to students in grades K-12.

There are at least two (2) technical problems with the legislation:

A. It establishes inconsistent timetables. Unamended §2702(d)(2) contemplates a parental conference 25 days after initiation of unexcused absences while proposed §2702(d)(3) contemplates prosecution 20 days after initiation of unexcused absences. This results in a referral for prosecution prior to the initial parental conference. It also creates some “tension” with Title 14 Del.C. §2125(c) which generally envisions the principal’s referral for prosecution occurring after the parental conference.

B. If the legislation is enacted, Title 14 Del.C. §2702(e) becomes surplusage. Compare Title 14 Del.C. §2702(d)(1) and 14 Del.C. §2702(e). If §2702(d) is expanded to cover students in grades 6-12, there is no need for §2702(e). It should therefore be stricken as part of the bill.

Finally, the Legislature may wish to consider unintended consequences. Promoting quicker prosecution of parents of students over 16 years of age may prompt students to simply drop out of school. Parents are faced with incarceration and hefty fines. A first offense is punishable by up to 10 days in jail and a \$300 fine. See Title 14 Del.C. §2729(d). Query whether families facing such prosecution will opt for withdrawal from school.

I recommend sharing the above observations with policymakers.

Attachments

8g:legreg/213bils
F:pub/bjh/leg/2013p&l/213bils



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MEMORANDUM

DATE: December 21, 2012

TO: Ms. Sharon L. Summers, DSS
Policy, Program & Development Unit

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

RE: 16 DE Reg. 603 [DSS Proposed Child Care Subsidy Purchase of Care Plus Phase Out Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to initiate a phase out of its Purchase of Care Plus (POC+) program commencing January 1, 2013. The proposed regulation was published as 16 DE Reg. 603 in the December 1, 2012 issue of the Register of Regulations.

As background, this program is an option which allows providers to charge DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service rate. Historically, SCPD believes some providers have limited DSS purchase of care slots since the compensation was so low the providers arguably could not sustain their businesses if they had too many POC slots. By inference, the POC+ program gave families an option, i.e., if a preferred provider had no POC slots, the family could offer the DSS subsidized compensation supplemented by a family payment. The family would still enjoy a State subsidy but have to pay a supplement resulting in the provider receiving an aggregate of its "private-pay" rate.

The purpose and rationale for the proposed phase-out is: In 2011, the provider rates were raised to sixty five percent of the market rate plus fifty cents. In addition, providers who join the Quality Rating and Improvement System known as Stars can potentially receive up to one hundred percent of the market rate. Some providers may choose the option of not participating in Stars, but will make up the difference by collecting the additional POC Plus fees through low income families. Phasing out of POC+ will encourage providers to participate in Stars and give some financial relief to our low income families.

There are pros and cons to this initiative.

The "pros" are as follows: 1) giving providers an incentive to participate in Stars quality rating program; 2) giving providers an incentive to offer more "regular" POC slots; and 3) reducing prospects for providers to negotiate payment of supplemental fees from families.

The "cons" are as follows: 1) reducing the network of providers who are willing to participate in the overall State subsidy program; 2) eliminating an option for families seeking a preferred provider with no "open" POC slots; and 3) being a disincentive for TANF clients to seek employment. For example, if DVR has a client with the opportunity to work, they will then exceed the FPL, will lose POC and have to pay out of pocket for child care services. This person will most likely not be able to attain a salary to pay for child care services and may just opt to rely totally on state benefits. Therefore, if POC+ is eliminated, the Division should adopt a program that has a buy-in option, similar to DMMA's Medicaid for Workers with Disabilities (MWD) program so there is an incentive for people to go to work, gain self-sufficiency and still keep their child care services.

SCPD does not know how many families participate in the POC+ program, how attractive the 65% + 50 cent payments are, and how difficult it is to identify child care providers with openings. However, SCPD does believe that the disadvantages outweigh the advantages and cannot endorse the regulation.

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

cc: Ms. Elaine Archangelo
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

16reg603dss-child care subsidy purchase of care plus:12-20-12

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

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December 28, 2012

Sharon L. Summers
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**RE: DSS Proposed Interpreter and Translation Services Regulation [16 DE Reg. 605
(December 1, 2012)]**

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Social Services (DSS) proposal to revise its regulations covering interpreter services for non-English speaking clients and clients with hearing loss. The rationale for the changes is as follows:

The language in DSSM §§1009 and 1010 is changed to People First and the titles are changed to more accurately reflect the activity performed. In addition, the outdated listing of contracted vendors is removed. Finally, procedure is removed from the manual.

The GACEC would like to share the following observations.

§1009

First, the title to §1009 refers to "non-English speaking clients". Likewise, the second paragraph of text refers to "non-English speaking clients". This is overly narrow. The first sentence of text more accurately refers to individuals who have "limited English proficiency". Moreover, the latter reference conforms to the U.S. Department of Health and Human Services (HHS) guidance excerpted from 68 Fed Reg. 47311 (August 8, 2003):

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English may be limited English proficient, or "LEP," and may be eligible to receive language assistance with respect to a particular type of service, benefit, or encounter.

See also attached excerpt from HHS Office for Civil Rights (OCR) Website describing "LEP" as covering individuals who have "not developed fluency in the English language". Individuals who speak "some English" but lack "fluency" still qualify for "LEP" services.

DSS may wish to use the term "limited English proficiency" and include a definition.

Second, the regulation authorizes interpreter services only to "applicants" and "recipients". This is also overly narrow. There may be individuals who request information on their behalf or on behalf of others. The HHS standard refers to a "service, benefit, or encounter".

Third, the second paragraph of text suggests that staff or vendor translation is the exclusive approach to address the needs of persons who would benefit from interpreter services. Consistent with the attached HHS OCR guidance, individuals should be offered the option of relying on their own interpreter. OCR notes that some individuals may be more comfortable with a family member interpreting. Likewise, an individual may prefer to use a "personal" interpreter in lieu of waiting for a State interpreter or rescheduling a visit.

Fourth, it would be preferable to include a standard of "timely" provision of interpreter services. HHS characterizes undue delay in providing interpreter services as a "frequently encountered" Title VI violation. See 67 Fed Reg. 4975-76 (February 1, 2002).

Fifth, the exclusive context for determining the need for interpreter services is a receptionist assessment on the physical appearance of the individual:

The receptionist will identify the need for services when the applicant or recipient arrives at the office.

HHS guidance contemplates advertising the availability of interpreter services. It would be preferable to allow individuals to request an interpreter in advance (e.g. via phone).

Council understands that people may also apply for benefits online at the DSS website. HHS guidance contemplates providing accommodations for high percentage minority languages (e.g. Spanish). Does the DSS website provide an online version of applications in Spanish that may satisfy accommodation requirements?

§1010

First, the title to the section suggests that only existing "clients" are covered by the policy. This is too narrow to meet ADA standards. See Department of Justice (DOJ) Americans with Disabilities Act (ADA) guidance:

The effective communication requirement applies to ALL members of the public with disabilities, including job applicants, program participants, and even people who simply contact state or local government agencies seeking information about programs, services, or activities.

Second, the regulation authorizes interpreter services only to "applicants" and "recipients". This is overly narrow. There may be individuals who request information on their behalf or on behalf of others.

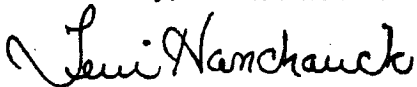
Third, the policy recites that it covers "auxiliary aids" for persons with hearing impairments. It then omits any accommodations apart from interpreter services. Consistent with the Division of Substance Abuse and Mental Health (DSAMH) policy, "30% to 50% of persons > 65 years of age have significant hearing loss leading to impairment in functioning." If a person presents a "hard of hearing" profile, providing an American Sign Language (ASL) interpreter will not be useful. Moreover, the DOJ ADA guidance provides a long list of "auxiliary aids" apart from interpreters for individuals with hearing impairments.

Fourth, Council recommends incorporating a reference to "effective communication" in the regulation since this is the operative ADA benchmark.

Fifth, covering the arrangement of services for individuals with hearing impairments with the three-sentence policy is inadequate guidance to staff.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,



Terri A. Hancharick
Chairperson

TAH:kpc

CC: Kyle Hodges, Council on Deaf & Hard of Hearing Equality

Enclosures

STATE OF



DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS

GEORGE V. MASSEY STATION
516 WEST LOCKERMAN STREET
DOVER, DELAWARE 19904
TELEPHONE: (302) 739-4553
FAX: (302) 739-6126

December 28, 2012

Sharon L. Summers
Policy, Program and Development Unit
Division of Social Services
1901 North DuPont Highway
P. O. Box 906
New Castle, DE 19720-0906

**RE: DSS Proposed Food Supplement Program Identification Card Regulation [16 DE Reg. 607
(December 1, 2012)]**

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Social Services (DSS) proposal to amend its Food Supplement Program regulation. As background, the current regulation requires DSS to "issue a serially numbered photo-ID card to each certified Food Stamp household". With implementation of the Electronic Benefit Transfer (EBT) Card, DSS notes that it is no longer necessary for program participants to be issued a DSS identification card. Moreover, DSS observes that the Centers for Medicare and Medicaid Services (CMS) has deleted the requirement from the federal regulations. Therefore, DSS proposes to delete the requirement of issuance of the identification card.

The percentage of the population that is on food stamps is much higher than other assistance programs. In addition, the DSS issued identification card may be the only form of identification for many people. Therefore, the GACEC has reservations regarding the proposal to no longer issue such identification cards due to the potentially negative impact.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Terri A. Hancharick".

Terri A. Hancharick
Chairperson

TAH:kpc

STATE OF



DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS

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December 28, 2012

Sharon L. Summers
Policy, Program and Development Unit
Division of Social Services
1901 North DuPont Highway
P. O. Box 906
New Castle, DE 19720-0906

RE: DSS Proposed Child Care Subsidy Income Eligibility and Provider Reimbursement Regulation [16 DE Reg. 609 (December 1, 2012)]

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Social Services (DSS) proposal to amend its regulation covering financial eligibility of families participating in the child care subsidy program and provider reimbursement rates. As background, based on findings of the 2011 Delaware Child Care Market Rate Study, the Legislature increased provider rates in this program to 65% of Market Rate plus 50 cents effective October 1, 2011. However, the actual regulation contains outdated family income eligibility and provider reimbursement charts. DSS proposes to eliminate the charts from the regulation and publish them on its Website. This should result in quicker updates.

The GACEC endorses the proposed regulation subject to one observation. DSS indicates that the income limits chart is already on the Website. This is accurate. DSS also indicates that the provider rate chart "will be posted" on the Website. As of December 21st, the GACEC could not locate the provider rate chart. Council would like to remind DSS to post the latter chart to facilitate easy access to the information.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Terri Hancharick".

Terri A. Hancharick
Chairperson

TAH:kpc



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

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Fax: (302) 739-6704

MEMORANDUM

DATE: December 21, 2012

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: ^{DM/6} Mr. Don Moore, Vice-Chairperson
State Council for Persons with Disabilities

RE: 16 DE Reg. 597 [DMMA Proposed Psychiatric Hospital Reimbursement Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to revise the Medicaid State Plan to describe reimbursement methodologies for inpatient psychiatric hospital services and outpatient hospital services. The proposed regulation was published as 16 DE Reg. 597 in the December 1, 2012 issue of the Register of Regulations.

As background, DMMA notes that it has been paying providers of inpatient psychiatric services and partial hospital psychiatric services an "individually negotiated rate with each provider". CMS has disallowed this methodology and the Division is now adopting a more uniform rate for private providers of these services using Medicare rates as a point of reference. The Division recites that the new methodology will have "a fairly small fiscal impact". At 598. The actual rate calculation standards are detailed and "technical". At 599.

Since it appears the initiative is prompted by CMS and there is little fiscal impact, SCPD endorses the proposed regulation subject to a minor grammatical edit. In the first sentence on page 599, insert "at" prior to "42 CFR 413".

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

cc: Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

GEORGE V. MASSEY STATION
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December 28, 2012

Thomas Murray, Deputy Director
Division of Long Term Care Residents Protection
3 Mill Road, Suite 8
Wilmington, DE 19806

RE: DLTCRP Proposed Pediatric Nursing Home Emergency Preparedness Regulation [16 DE Reg. 593 (December 1, 2012)]

Dear Mr. Murray:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Health and Social Services Division of Long Term Care Residents Protection (DLTCRP) proposal to revise its pediatric nursing home regulation to address emergency preparedness.

As background, the Division notes that the changes are motivated by circumstances encountered during and after Hurricane Irene in 2011 as well as input from the University of Delaware and a consulting firm. The regulation requires facilities to have two active, full-time employees who have completed specific Federal Emergency Management Agency (FEMA) training within a 24-month period. In addition, the regulation requires annual submission of a facility plan to the Division which conforms to a Division template. The GACEC endorses the proposed regulation subject to two amendments.

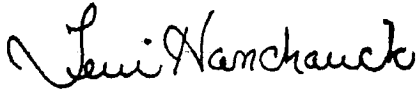
First, §12.6.3 could be "renumbered" as §12.7. Section 12.6 is a sentence which requires facilities to submit a plan and certificates. Section 12.6.3 is another independent sentence which does not agree with the format and grammar in §12.6.

Second, §12.6 recites that "(e)ach facility shall submit with its annual license" the "all hazards emergency plan" and documentation of FEMA training. This section is problematic since: 1) facilities do not "submit a license"; and 2) the requirement does not require submission of plans in connection with initial licenses. The relevant licensing statutes are codified at Title 16 Del.C. Ch. 11. Title 16 Del.C. §1104(a) refers to an application for a license or renewal of a license and §1104(e) refers to an "annual renewal application". Therefore, the GACEC recommends amending §12.6 to read as follows:

Each facility shall submit with an application for a license and annual renewal of a license:

Thank you in advance for your time and consideration of our recommendations. Please feel free to contact me or Wendy Strauss should you have questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Terri Hancharick".

Terri A. Hancharick
Chairperson

TAH:kpc

STATE OF



DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS

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December 28, 2012

Thomas Murray, Deputy Director
Division of Long Term Care Residents Protection
3 Mill Road, Suite 8
Wilmington, DE 19806

RE: DLTCRP Proposed Assisted Living Facility Emergency Preparedness Regulation [16 DE Reg. 595 (December 1, 2012)]

Dear Mr. Murray:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Health and Social Services Division of Long Term Care Residents Protection (DLTCRP) proposal to revise its assisted living regulation to address emergency preparedness. As background, the Division notes that the changes are motivated by circumstances encountered during and after Hurricane Irene in 2011 as well as input from the University of Delaware and a consulting firm. The regulation requires facilities to have two active, full-time employees who have completed specific Federal Emergency Management Agency (FEMA) training within a 24-month period. In addition, the regulation requires annual submission of a facility plan to the Division which conforms to a Division template. The GACEC endorses the proposed regulation subject to three amendments.

First, "Assisted living" should be substituted for "Nursing" in §18.1.

Second, §18.6.3 could be "renumbered" as §18.7. Section 18.6 is a sentence which requires facilities to submit a plan and certificates. Section 18.6.3 is another independent sentence which does not comport with the format and grammar in §18.6.

Third, §18.6 recites that "(e)ach facility shall submit with its annual license the "all hazards emergency plan" and documentation of FEMA training. This section is problematic since: 1) facilities do not "submit a license"; and 2) the requirement does not require submission of plans in connection with initial licenses. The assisted living facility "licensing requirements and procedures" regulation (16 DE Admin Code 3225, §4.0) requires facilities to comply with initial and renewal licensing standards codified at Title 16 Del.C. Ch. 11. Title 16 Del.C. §1104(a) refers

to an application for a license or renewal of a license and §1104(e) refers to an "annual renewal application". Therefore, Council recommends amending §18.6 to read as follows:

Each facility shall submit with an application for a license and annual renewal of a license:

Finally, the GACEC would like to request a copy of the "template" mentioned in §18.3. The Council may have additional recommendations to submit based on the content of the template.

Thank you in advance for your time and consideration of our recommendations and request. Please feel free to contact me or Wendy Strauss should you have questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Terri Hancharick".

Terri A. Hancharick
Chairperson

TAH:kpc

STATE OF



DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS

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December 28, 2012

Thomas Murray, Deputy Director
Division of Long Term Care Residents Protection
3 Mill Road, Suite 8
Wilmington, DE 19806

RE: DLTCRP Proposed Nursing Facility Emergency Preparedness Regulation [16 DE Reg. 592 (December 1, 2012)]

Dear Mr. Murray:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Health and Social Services Division of Long Term Care Residents Protection (DLTCRP) proposal to revise its skilled and intermediate nursing facility regulation to address emergency preparedness. As background, the Division notes that the changes are motivated by circumstances encountered during and after Hurricane Irene in 2011 as well as input from the University of Delaware and a consulting firm. The regulation requires facilities to have two active, full-time employees who have completed specific Federal Emergency Management Agency (FEMA) training within a 24-month period. In addition, the regulation requires annual submission of a facility plan to the Division which conforms to a Division template. The GACEC endorses the proposed regulation subject to two amendments.

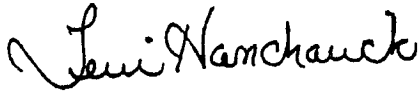
First, §8.6.3 could be "renumbered" as §8.7. Section 8.6 is a sentence which requires facilities to submit a plan and certificates. Section 8.6.3 is another independent sentence which does not agree with the format and grammar in §8.6.

Second, §8.6 does not require submission of plans in connection with initial license applications. The skilled and intermediate nursing facility "licensing requirements and procedures" regulation (16 DE Admin Code 3201, §4.0) requires facilities to comply with initial and renewal licensing standards codified at Title 16 Del.C. Ch. 11. Title 16 Del.C. §1104(a) refers to an application for a license or renewal of a license and §1104(e) refers to an "annual renewal application". Therefore, the GACEC recommends amending §8.6 to read as follows:

Each facility shall submit with an application for a license and annual renewal of a license:

Thank you in advance for your time and consideration of our recommendations and request. Please feel free to contact me or Wendy Strauss should you have questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Terri Hancharick".

Terri A. Hancharick
Chairperson

TAH:kpc

STATE OF



DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS

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FAX: (302) 739-6126

December 20, 2012

Charles Michels, Executive Director
Delaware Professional Standards Board
John G. Townsend Building
401 Federal Street
Dover, DE 19901

RE: DOE Proposed Teacher of Students with Visual Impairments Certification Regulation [16 DE Reg. 587 (December 1, 2012)]

Dear Mr. Michels:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Professional Standards Board proposal to revise its certification standards for teachers of students with visual impairments. Council would like to share three observations on the proposed regulation.

First, §5.0 contains a "grandfather" provision applicable to educators who obtained their certificate between January 11, 2007 and the effective date of the regulation. This is the same time frame as proposed under the "Deaf" teacher certification regulation (16 DE Reg. 582) but shorter than the September, 2005 time frame in the "Autism" teacher certification regulation. The rationale for the different dates is unclear. The DOE may wish to consider whether an earlier date should be adopted for consistency.

Second, educators who do not meet all of the requirements in the regulation have only 18 months to achieve compliance. This is a relatively short time frame and could be lengthened.

Third, when the Professional Standards Board last revised this regulation, the Councils reminded it of the application of Title 14 Del.C. §206. That statute establishes a presumption that proficiency in Braille reading and writing is essential for each student. It also contains the following teacher certification mandate:

(d) As part of the certification process, all newly certified teachers of the visually impaired, after

enactment of this section shall be required to demonstrate competence in reading and writing Braille. The Department of Education which certifies teachers shall require proof of a passing score on the Library of Congress Braille Competency Test (when it is completed and validated), or any comparable, nationally recognized validated test. Until that time, the Department of Education will continue to certify teachers of the visually impaired through its existing standards. All newly hired teacher aides will be required to achieve certification as Braille transcribers through the Library of Congress within 2 years of employment.

In its response to the earlier comment made by the GACEC and other Councils, the DOE noted that "a reference to an existing statute was added to make the regulation compliant." See 10 DE Reg. 1147 (January 1, 2007). It then amended §3.0 to require applicants to meet the requirements in Title 14 Del.C. §206(d). At 1149. See also 16 DE Reg. 587, 589 (December 1, 2012), §3.0. At a minimum, the proposed regulation must continue to comply with §206(d) which requires a passing score on a validated test. The proposed regulation does not have a test requirement. Incidentally, §206(d) was added to the Code in 1995. The DOE may wish to assess whether this still reflects current "best practice" or merits repeal or amendment.

Thank you in advance for your consideration of our comments and observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,



Terri A Hancharick
Chairperson

TAH:kpc

CC: The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Mary Ann Mieczkowski, DOE
Susan Haberstroh, DOE
John Hindman, Esq., DOE
Terry Hickey, Esq., DOE
Paula Fontello, Esq., DOE
Robert Doyle, Division for the Visually Impaired (DVI)



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
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FAX: (302) 739-6704

December 21, 2012

Mr. Charlie Michels, Executive Director
Professional Standards Board
Townsend Building
401 Federal Street
Dover, DE 19901

RE: 16 DE.Reg. 582 [DOE Proposed Teacher of Students Who Are Deaf or Hard of
Hearing Certification Regulation]

Dear Mr. Michels:

The State Council for Persons with Disabilities (SCPD) has reviewed the Professional Standards Board's [in collaboration with the Department of Education (DOE)] proposal to revise the certification requirement for Teachers of Students Who Are Deaf or Hard of Hearing published as 16 DE Reg. 582 in the December 1, 2012 issue of the Register of Regulations. SCPD has the following observations.

First, the published version of the regulation contains the following limited "grandfather" provision.

5.0 Past Certification Recognized

The Department shall recognize a Standard Certificate Teacher of Students Who are Deaf or Hard of Hearing issued by the Department between January 11, 2007 and the effective date of this regulation. A teacher holding a Standard Certificate Teacher of Students Who Are Deaf or Hard of Hearing issued between January 11, 2007 and the effective date of this regulation shall be considered certified to teach children who are deaf or hard of hearing.

A. At a minimum, this section should be revised as follows: 1) capitalize "deaf" in last sentence for consistency; 2) capitalize two references to "are" in both sentences; and 3) substitute "students" for "children" in last sentence to match Part 1574 title.

B. SCPD appreciates that the PSB adopted a "grandfather" provision that was not included in a

previous draft that was shared on October 31st. However, the rationale for adopting the "2007 forward" date is unclear. The "autism teacher" standard has a "look back" period dating to 2005. See 16 DE Reg. 489, 493 (November 1, 2012) (proposed). If the qualifications did not change between 2005-2007, the DOE may wish to use a 2005 date.

C. The "grandfather" provision does not appear to "cure" a concern that an educator would have only 18 months to complete the required 21 credits. A longer time frame should be considered.

II. Reasonable persons could differ on the requirement of 3 credits in American Sign Language (ASL). Sections 4.1.2.6 - 4.1.2.8 actually makes the 3 credits in ASL optional. An educator can take either "Visual Language Development" or "American Sign Language." On the one hand, the proposed standard it is ostensibly too low to develop proficiency and one could question the lack of a more robust standard for ASL competency. On the other hand, there may not be a "logical" requirement regarding ASL credits for a Standard Certificate for Teachers of Students Who are Deaf or Hard of Hearing. For example, even 3 courses may not make someone competent enough in ASL to be instructing deaf students and one could opine that Teachers of Students Who are Deaf or Hard of Hearing should not be interpreting or teaching ASL. Query whether someone is qualified to instruct Spanish speaking individuals after 3 credits or even 3 courses of Spanish?

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

Sincerely,



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

cc: The Honorable Mark T. Murphy
Dr. Teri Quinn Gray
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Mr. John Hindman, Esq.
Ms. Susan Haberstroh
Council on Deaf & Hard of Hearing Equality
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

16reg582 doe-teacher cert deaf 12-21-12



SPONSOR: Rep. Willis & Rep. Lavelle & Rep. Hudson & Sen. Katz
& Sen. Lawson & Sen. Simpson ;
Reps. Manolakos, Ramone, Walker, Wilson, Kowalko;
Sens. Peterson, Sorenson

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 26

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE STATE BOARD OF
EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 104(b), Title 14 of the Delaware Code by adding a new paragraph (13) to read:

2 “(13) Digitally record all public meetings of the State Board of Education and make the recordings available to
3 the public on the Department of Education’s website within one business day of each meeting. These recordings are not
4 official Board minutes, but are a means to enhance communication to the public and to State legislators.”.

5 Section 2. This bill takes effect on September 1, 2011.

SYNOPSIS

This bill requires that all public meetings of the State Board of Education be digitally recorded and made available to the public on the Department of Education’s website within one business day. The recordings will not be considered the official Board minutes.

Red Clay Consolidated School District has been, as of September 2010, providing the public with digital recordings of their Board public session meetings via the District’s website. The Christina School District School Board enacted a policy to provide digital recordings of their public session meetings and expects to be online in January 2011.



SPONSOR: Rep. Willis

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 3

TO

HOUSE BILL NO. 26

1 AMEND House Bill No. 26 by striking lines 2 through 4 and by substituting in lieu thereof the following:

2 “(13) Digitally record all regular monthly public board meetings of the State Board of Education and make the
3 recordings available to the public on the Department of Education’s website within seven (7) business days of each
4 meeting. These recordings are not official Board minutes, but are a means to enhance communication to the public and
5 State legislators. The requirements of this section do not apply to meetings where recording equipment is not available, to
6 executive sessions, or to other meetings of the Board, such as workshops, retreats, and committee meetings. A written
7 transcript of the regular monthly public board meetings that are digitally recorded pursuant to this paragraph, or other
8 reasonable accommodation, will be provided by the Department of Education within seven (7) business days upon request
9 of a person with a hearing impairment.

10 Severability Clause. If any provision of this Act is deemed or held to be invalid or unenforceable for any reason
11 whatsoever, the invalidity or unenforceability does not affect any other provision of this Act that may be given effect
12 without the invalid or unenforceable provision, and to this end, the provisions of this Act are severable.”

SYNOPSIS

This amendment requires that all regular monthly public meetings of the State Board of Education be digitally recorded and made available to the public on the Department of Education’s website within seven (7) business days. The recordings will not be considered the official Board minutes.

Red Clay Consolidated School District has been, as of September 2010, providing the public with digital recordings of their Board public session meetings via the District’s website. The Christina School District School Board enacted a policy to provide digital recordings of their public session meetings and expects to be online in January 2011.

The requirements of this section do not apply to meetings where recording equipment is not available, to executive sessions, or to other meetings of the Board, such as workshops, retreats, and committee meetings. A written transcript of the regular monthly public board meetings that are digitally recorded pursuant to this paragraph, or other reasonable accommodation, will be provided by the Department of Education within seven (7) business days upon request of a person with a hearing impairment. A severability clause has been added to the bill.



SPONSOR: Rep. Willis & Rep. Lavelle & Rep. Hudson & Sen. Katz & Sen.
Lawson & Sen. Simpson ;
Reps. Manolakos, Ramone, Walker, Wilson, Kowalko; Sens.
Peterson, Sorenson

HOUSE OF REPRESENTATIVES

146th GENERAL ASSEMBLY

HOUSE BILL NO. 26
AS AMENDED BY
HOUSE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE STATE BOARD OF EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 104(b), Title 14 of the Delaware Code by adding a new paragraph (13) to read:

“(13) Digitally record all regular monthly public board meetings of the State Board of Education and make the recordings available to the public on the Department of Education’s website within seven (7) business days of each meeting. These recordings are not official Board minutes, but are a means to enhance communication to the public and State legislators. The requirements of this section do not apply to meetings where recording equipment is not available, to executive sessions, or to other meetings of the Board, such as workshops, retreats, and committee meetings. A written transcript of the regular monthly public board meetings that are digitally recorded pursuant to this paragraph, or other reasonable accommodation, will be provided by the Department of Education within seven (7) business days upon request of a person with a hearing impairment.

Severability Clause. If any provision of this Act is deemed or held to be invalid or unenforceable for any reason whatsoever, the invalidity or unenforceability does not affect any other provision of this Act that may be given effect without the invalid or unenforceable provision, and to this end, the provisions of this Act are severable.”.

Section 2. This bill takes effect on September 1, 2011.

CHRISTINA SCHOOL DISTRICT BOARD OF EDUCATION

01.07 POLICY STATEMENT ON BOARD MEETINGS

A. **PURPOSE:** This policy governs the conduct of meetings of the Christina School District Board of Education (CBOE or "Board".) CBOE is a body corporate and its meetings will focus on its fiduciary, ethical and legal responsibilities, including its primary obligation to promote student educational achievement. The President of the Board shall manage each Board meeting, and will be the primary arbiter of Board compliance with Board policy.

B. **ISSUE:** All Board meetings should have a standard format complying with all Delaware laws and regulations.

C. **POLICY:**

Make-Up of the Board, Quorum and Voting Requirements: The Board consists of seven members elected or appointed in accordance with Title 14 of the Delaware Code. A meeting of the Board requires a quorum of at least four members. Passage of any motion at a meeting of the Board requires at least four affirmative votes, regardless of the number of Board members present.

Designation of Executive Secretary: The Board shall designate the Superintendent to serve as Executive Secretary.

Board Business: The Board will generally meet to conduct regular business on the second Tuesday of each month, generally at 7:30 pm, with timely prior notice of meeting time, location and posting of agenda in accordance with Title 29, Chapter 100 of the Delaware Code. Changes to accommodate holidays and special events may be proposed and approved by the Board.

Subject to the public notice requirements of Title 29, Chapter 100 of the Delaware Code, additional meetings may be held upon the call of the President of the Board, an affirmative vote of a quorum of the Board or the Executive Secretary of the Board.

The Board will conduct its meeting in accordance with Delaware Code, the Board's Policy Manual and Robert's Rules of Order. The conduct of Board members shall exemplify the highest standards of civility. While in public at the meeting, each Board Member shall:

- Use his or her best efforts to retain the Board's focus on student learning as expressed in the Beliefs Statement.
- Comply with Delaware Code, Robert's Rules of Order, and the Board's Policy Manual.



Recording of School Board Meetings: The Board intends to make an audio or audiovisual recording of all public meetings, where action is to be taken. This is not a current requirement of Delaware Code, but a desire by the Board to make available the activities of the Board to a broader audience than those able to attend public meetings.

CHRISTINA SCHOOL DISTRICT BOARD OF EDUCATION

The Board meetings will not be delayed, interrupted or postponed due to problems with recording equipment.

Any audio or audiovisual recordings shall be the official record of the public Board meeting, but may be available for public access, through the District website. Any audio and/or audiovisual recordings of the Board meeting shall be retained and disposed of in accordance with the District's records retention schedule.

Members of the public will be made aware that they are being recorded, and the use of the recorded message is at the discretion of the District, without recourse.

Public Speaking at a Board Meeting: The Board's President shall halt public statements that are repetitive, vulgar, profane, or not germane to the matter before the Board. Upon the President's striking of the gavel, any individual speaking publicly must immediately cease speaking. The President shall then explain the basis of the gaveling, and the individual shall not resume speaking until authorized by the President. By a majority vote, the Board may reverse the President's determination that a public statement is repetitive, vulgar, profane, or not germane.

The Board shall provide a Public Comment Form at or near the entry of each meeting site before the meeting begins. A member of the public who wishes to speak publicly shall first complete and sign the form and provide it to the Board's designated clerk at the meeting site. The form shall at a minimum provide:

- That public comments are limited to three minutes per individual speaker, and 20 minutes per topic
- That repetitive, personally insulting, or profane comments are proscribed
- That Board members are unable to engage in debate with a speaker, but may refer the speaker to staff for further discussion and follow-up
- That the proceedings are being recorded for accurate documentation of minutes
- That upon the President's striking of the gavel; an individual speaking publicly must immediately cease speaking. The President will then explain the basis of the gaveling, and the individual shall not resume speaking until authorized by the President
- That by signing the form, the individual has read, understands and agrees to comply with the terms and conditions set forth on the form.

Board President's Duties:

The President will call to order each Board meeting with a welcoming statement that provides the following information:

- The purpose of the public meeting
- The meaning of the rules governing "Public Recognition:
- An explanation that, although Board members will not engage in debate during Public Recognition, the Board President may refer individual speakers to members of District staff for discussion and further information

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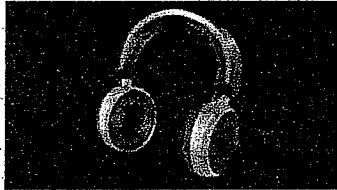
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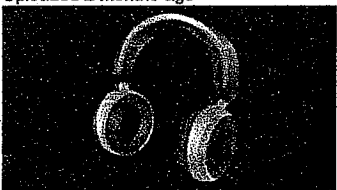
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STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

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MEMORANDUM

DATE: January 25, 2011

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, ^{Chairperson} Chairperson
State Council for Persons with Disabilities

RE: H.B. 9 [Felon Voting Restriction]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 9 which is the first leg of a Constitutional Amendment that would eliminate the existing five-year waiting period before eligible felons who have fully discharged their sentences may have their voting rights restored. This bill is identical to legislation (H.B. 17) introduced in the preceding General Assembly and endorsed by SCPD. The bill would apply to most felonies with the exception of offenses against public administration, murder, manslaughter, and sex crimes. SCPD endorses the proposed legislation and has the following observations.

Attached please find an informative April 1, 2009 News Journal article describing the predecessor bill which confirms that felons would have to complete all aspects of sentencing, including restitution and payment of fines, prior to restoration of eligibility to vote.

A number of studies have revealed that a disproportionate number of persons with mental illness and cognitive impairments are incarcerated. This bill would therefore have a disproportionate effect on persons with disabilities.

Consistent with the attached March 21, 2009 Associated Press article, 2 states do not take voting rights from felons, 14 states restore voting rights upon release from prison, 5 states restore voting rights upon completion of parole, and 20 states restore voting rights upon completion of prison, parole, and probation. Thus, the current Delaware 5-year waiting period is more constrictive than standards in 41 states.

Last Fall the New York Times published the attached editorial which concluded as follows:

Democracy is strengthened when as many citizens as possible have the right to vote. Fully integrating ex-offenders back into society is also the best way to encourage their lasting rehabilitation. It is past time for all states to restore individual voting rights automatically to ex-offenders who have served their time.

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 A. Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Hb 9 voting restoration 1-25-11



April 1, 2009

Do your time, cast your vote, amendment says

By J.L. MILLER
The News Journal

DOVER -- A constitutional amendment to allow convicted felons to vote once they have paid their debt to society cleared its first hurdle Tuesday when the House voted 32-8 in favor of the proposal.

House Bill 17, sponsored by Rep. Hazel D. Plant, D-Wilmington Central, would eliminate a five-year waiting period currently in the Delaware Constitution. A felon now is eligible to vote five years after the expiration of his sentence or upon receiving a pardon from the governor.

The constitution bars anyone convicted of murder or manslaughter -- except vehicular homicide -- from ever voting. The same lifetime prohibition extends to anyone convicted of a sex-related felony and bribery or abuse of office, and Plant's bill would not change any of those prohibitions.

Plant, who sponsored the original amendment that allowed felons to vote after a five-year wait, said it is time to do away with the waiting period.

"People asked me why they had to wait five years before they could vote when if they got a job two days after getting out of prison, the government would tax them," Plant said after the floor vote. "Once a jury sentences you and you complete your sentence, complete your probation and make restitution, your sentence ends right there and you should be able to vote."

She received little argument from her fellow House members, although seven Republicans and one Democrat cast their votes against it.

"I want to thank Rep. Plant for bringing this bill before us," said Rep. Helene M. Keeley, D-Wilmington South. "People make mistakes and they've served their time and they've paid their restitution, and I think it is the right thing to do for that person to be allowed to vote again."

Rep. William A. Oberle Jr., R-Beechers Lot, said the key for his support is that felons have to fulfill all the obligations of their sentences, including restitution and probation.

"Once that clean slate is acquired, I think it's counterproductive for that individual not to be allowed to vote," Oberle said.

Voting against the bill were Reps. Joseph W. Booth, R-Georgetown, Gerald W. Hocker, R-Ocean View, Clifford G. "Biff" Lee, R-Laurel, Nick T. Manolakos, R-Limestone Hills, William R. "Bobby" Outten, R-Harrington, Daniel B. Short, R-Seaford, Robert E. Walls, D-Milford, and David L. Wilson, R-Lincoln. Rep. Greg Lavelle, R-Sharples, did not vote.

In order to become a part of the constitution, the bill must pass the Senate in this legislative session. It then must pass both houses in the session that begins in 2011.

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LOCAL

Last updated March 21, 2009 10:09 a.m. PT

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State-by-state look at felon voting restoration

By THE ASSOCIATED PRESS

States use a variety of approaches to deal with the issue of restoring voting rights to felons. An estimated 5.3 million people nationwide are ineligible to vote because of a felony conviction, according to The Sentencing Project, an advocacy group in Washington, D.C.

VOTING RIGHTS NOT TAKEN AWAY (PRISONERS MAY VOTE):

- Maine
- Vermont

VOTING RIGHTS RESTORED AFTER RELEASE FROM PRISON:

- District of Columbia
- Hawaii
- Illinois
- Indiana

-Massachusetts: Up until 2000, the state allowed inmates to vote. The state's voters passed a constitutional amendment that instead allows voting rights to be restored after release from prison.

- Michigan
- Montana
- New Hampshire
- North Dakota
- Ohio
- Oregon
- Pennsylvania
- Rhode Island
- Utah

VOTING RIGHTS RESTORED AFTER RELEASE FROM PRISON AND COMPLETION OF PAROLE:

- California
- Colorado
- Connecticut: In 2001, then-Gov. John G. Rowland signed into law a bill extending voting rights to felons on probation.
- New York
- South Dakota.

VOTING RIGHTS RESTORED AFTER COMPLETION OF PRISON, PAROLE

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AND PROBATION:

- Alaska
- Arkansas: Full payment of all legal financial obligations is also required.
- Georgia
- Idaho
- Iowa
- Kansas
- Louisiana
- Maryland
- Minnesota
- Missouri
- Nebraska: There is a two-year post-sentence ban on voting.
- New Jersey
- New Mexico
- North Carolina
- Oklahoma
- South Carolina
- Texas
- Washington: Full payment of all legal financial obligations is also required.
- West Virginia
- Wisconsin

VOTING RIGHTS FOR SOME FELONY CONVICTIONS ONLY RESTORED ON AN INDIVIDUAL BASIS


- Alabama: In 2003, Gov. Bob Riley signed a law that permits most felons to apply for a certificate of eligibility to register to vote after completing their sentence. Full payment of all legal financial obligations is also required.
- Arizona: Two-time ex-felons must wait two years before applying for a certificate of discharge. First-time felons are automatically restored rights after completing prison, probation and parole and payment of all legal financial obligations.
- Delaware: In 2000, the General Assembly passed a constitutional amendment restoring voting rights to some ex-felons five years after the completion of their sentence. Full payment of all legal financial obligations is also required.
- Florida: In 2007, the state streamlined the clemency process for most people with nonviolent convictions. Full payment of all legal financial obligations is also required.
- Mississippi
- Nevada: In 2003, the state approved a provision to automatically restore voting rights for first-time nonviolent felons immediately after completion of sentence.
- Tennessee: In 2006, the state streamlined restoration process for most persons upon completion of sentence. Full payment of all legal financial obligations is also required.
- Wyoming: In 2003, Gov. Dave Freudenthal signed into law a bill allowing people convicted of a nonviolent first-time felony to apply for restoration of voting rights five years after completion of sentence.

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VOTING RIGHTS DENIED TO ALL WITH FELONY CONVICTIONS, UNLESS GOVERNMENT APPROVES INDIVIDUAL RIGHTS RESTORATION:

-Kentucky: In 2001, The Legislature passed a bill that requires the Department of Corrections to inform and aid eligible offenders in completing the restoration process to regain their voting rights.

-Virginia: Felons convicted of nonviolent offenses can apply for the restoration of their voting rights after three years; felons convicted of violent offenses must wait five years.

Source:

The Sentencing Project, Brennan Center for Justice.

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October 19, 2010

Their Debt Is Paid

More than five million Americans could be barred from voting in November because of unjust and archaic state laws that disenfranchise former offenders, even when they have gone on to live crime-free lives.

Many states are finally revisiting these laws. According to an encouraging new study by the Sentencing Project, a nonprofit research and advocacy group, reforms carried out during the last decade in nearly two dozen states have led to 800,000 people getting back their voting rights. More needs to be done.

State lawmakers and civil rights groups began to pay attention in the late 1990s when studies showed that millions of convicted felons — a disproportionate of them racial minorities — had been deprived of the vote, often for life. Some states also denied voting rights to people on probation or, even more incredibly, because they had been unable to pay outstanding fines.

The restoration movement gathered momentum after the 2000 election debacle in Florida, where thousands of people mistakenly listed as felons were purged from the rolls or turned away at the polls. Since then, several states — including Maryland, Delaware, Nebraska and New Mexico — repealed or amended lifetime voting bans for convicted felons. Others — including Florida, New York and Alabama — streamlined the process that ex-offenders most go through to get back their rights.

Democracy is strengthened when as many citizens as possible have the right to vote. Fully integrating ex-offenders back into society is also the best way to encourage their lasting rehabilitation. It is past time for all states to restore individual voting rights automatically to ex-offenders who have served their time.

Bill to ease felons' voting advances

5-year waiting period would be cut

BY JONATHAN STARKEY

The News Journal

A constitutional amendment that cleared the state House of Representatives on Tuesday would set aside the five-year waiting period before Delawareans convicted of nonviolent felonies could re-register to cast ballots in elections.

House Bill 9 failed once on Tuesday before being recalled to the House floor, where it passed

28-13 — the slimmest of margins for the two-thirds vote required to pass an amendment to Delaware's Constitution. Rep. Deborah Hudson, R-Fairthorne, changed her vote to allow the bill to pass. She could not be reached for comment.

Under the bill, eligible felons must serve out probation and pay any restitution before being allowed to re-register to vote. Those convicted of murder, sexual offenses and even bribery of a public official would still face a life-

time ban on voting. The bill now heads to the Senate.

Others should be allowed to regain that privilege, said Rep. Helene Keeley, D-Wilmington South, the bill's sponsor.

"When someone has paid their debt to society, they're working, they're paying taxes, those people should have the right to vote," Keeley said. Wilmington Rep. Hazel Plant pushed the measure before her death in 2010.

Amendments to Delaware's Constitution face a higher barrier to passage than most bills. They must clear both the Delaware

House and Senate in two separate General Assembly sessions, which each last two years, before heading to the governor's office to be signed into law.

The bill generated no debate on the House floor on Tuesday, but many lawmakers were steadfast in their opposition.

Rep. Daniel Short, R-Seaford, in explaining his no vote, said voting is a "sacred privilege" and a longtime ban on voting deters potential criminals.

Contact Jonathan Starkey at 324-2832, on Twitter @jwstarkey or jstarkey@delawareonline.com.

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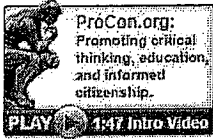
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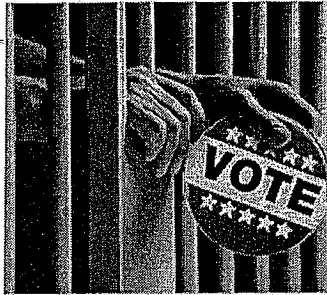
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State Felon Voting Laws



Two states allow felons to vote from prison while other states may permanently ban felons from voting even after being released from prison, parole, and probation, and having paid all their fines.

The chart below provides links to each state's laws on felon voting and places each US state within one of five categories ranging from harshest (may lose vote permanently) to least restrictive (may vote while in prison). Applications for re-enfranchisement and clemency have been provided for the states which require them.

Felon voting has not been regulated federally although some argue that Section 2 of the Voting Rights Act can be applied to felon disenfranchisement and that Congress has the authority to legislate felon voting in federal elections.

In addition, 10 states restrict some people with a misdemeanor conviction from voting.

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I. State by State Chart of Felon Voting Laws:

	May lose vote permanently:	Vote restored after:	Vote restored after:	Vote restored after:	Unrestricted:	
	Click on the state to view its rules on felon disenfranchisement in PDF format. Documents were sourced directly from state codes, acts, orders, constitutions, or other state election office documents (all laws are current as of June 6, 2012)	(Some felons may vote depending on the state, crime committed, time elapsed since completion of sentence, and other variables)	Term of Incarceration + Parole + Probation	Term of Incarceration + Parole	Term of Incarceration	(Convicted felons may vote by absentee ballot while in prison)
	12 States	19 States	4 States	13 States & DC	2 States	
1. Alabama	✓ (more details)					
2. Alaska		✓				
3. Arizona	✓ (more details)					
4. Arkansas		✓				
5. California			✓			
6. Colorado			✓			
7. Connecticut			✓			
8. District of Columbia				✓		
9. Delaware	✓ (more details)					
10. Florida	✓ (more details)					
11. Georgia		✓				
12. Hawaii				✓		
13. Idaho		✓				
14. Illinois				✓		
15. Indiana				✓		
16. Iowa	✓ (more details)					
17. Kansas		✓				
18. Kentucky	✓ (more details)					
19. Louisiana		✓				
20. Maine						✓
21. Maryland		✓				
22. Massachusetts				✓		



23. Michigan				✓		
24. Minnesota		✓				
25. Mississippi	✓ (more details)					
	<p>Click on the state to view its rules on felon disenfranchisement in PDF format. Documents were sourced directly from state codes, acts, orders, constitutions, or other state election office documents (all laws are current as of June 8, 2012)</p>	<p>May lose vote permanently:</p> <p>(Some felons may vote depending on the state, crime committed, time elapsed since completion of sentence, and other variables)</p>	<p>Vote restored after:</p> <p>Term of Incarceration + Parole + Probation</p>	<p>Vote restored after:</p> <p>Term of Incarceration + Parole</p>	<p>Vote restored after:</p> <p>Term of Incarceration</p>	<p>Unrestricted:</p> <p>(Convicted felons may vote by absentee ballot while in prison)</p>
26. Missouri		✓				
27. Montana				✓		
28. Nebraska	✓ (more details)					
29. Nevada	✓ (more details)					
30. New Hampshire				✓		
31. New Jersey		✓				
32. New Mexico		✓				
33. New York			✓			
34. North Carolina		✓				
35. North Dakota				✓		
36. Ohio				✓		
37. Oklahoma		✓				
38. Oregon				✓		
39. Pennsylvania				✓		
40. Rhode Island				✓		
41. South Carolina		✓				
42. South Dakota		✓ (more details)				
43. Tennessee	✓ (more details)					
44. Texas		✓				
45. Utah				✓		
46. Vermont					✓	
47. Virginia	✓ (more details)					
48. Washington		✓ (more details)				
49. West Virginia		✓				
50. Wisconsin		✓				
51. Wyoming	✓ (more details)					
	<p>Click on the state to view its rules on felon disenfranchisement in PDF format. Documents were sourced directly from state codes, acts, orders, constitutions, or other state election office documents (all laws are current as of June 8, 2012)</p>	<p>May lose vote permanently:</p> <p>(Some felons may vote depending on the state, crime committed, time elapsed since completion of sentence, and other variables)</p>	<p>Vote restored after:</p> <p>Term of Incarceration + Parole + Probation</p>	<p>Vote restored after:</p> <p>Term of Incarceration + Parole</p>	<p>Vote restored after:</p> <p>Term of Incarceration</p>	<p>Unrestricted:</p> <p>(Convicted felons may vote by absentee ballot while in prison)</p>



STATE OF DELAWARE
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MEMORANDUM

DATE: January 16, 2013

TO: Members of the House Health & Human Development Committee

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

RE: H.B. 9 [Mental Health Detainment]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 9 which clarifies the law on immunity regarding the process to detain or not detain a person for an involuntary mental health evaluation. Consistent with the synopsis, medical negligence claims arising after the mental health assessment and resulting clinical decision to detain, and claims unrelated to mental health, are not intended to be included in the immunity protection.

SCPD endorses the proposed legislation and appreciates the collaboration of the H.J.R. 17 Study Group which resulted in a consensus recommendation from a diverse group of stakeholders.

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

cc: Ms. Rita Landgraf
Ms. Deborah Gottschalk
Ms. Kevin Ann Huckshorn
Mr. James Lafferty
Mr. Matthew Stehl
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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