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DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian Hartman

Re: Legislative & Regulatory Initiatives

Date: March 6, 2013

I am providing my analysis of one (1) legislative and eleven (11) regulatory initiatives in anticipation of the March 14 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DOE Final Administration of Medications & Treatments Reg. [16 DE Reg. 957 (3/1/13)]

The GACEC and SCPD commented on the proposed version of this regulation in January, 2013. The GACEC's January 16, 2013 letter is attached for facilitated reference. The GACEC commentary includes two (2) observations (Items 1 and 5) which are not included in the SCPD commentary.

First, the GACEC questioned the inclusion of a recital that the nurse would only administer a medication that conformed to FDA and peer review standards. The GACEC questioned whether the nurse would be responsible for checking peer review journals prior to administration of medications pursuant to a valid prescription. The DOE did not address the concern apart from the following general response: "A comment related to medications and dosages administered by the school nurse and the limitations of such is not being amended."

Second, the Councils recommended that schools alert parents that they should obtain a second labeled container from a pharmacy when filling a prescription if the school will be asked to administer a medication. The DOE responded as follows:

> (T)he Department plans to update the Permission Form in the School Nursing:Technical Assistance Manual to alert parents of the possible need for a second labeled container from a pharmacy when filling prescriptions.

Third, the Councils recommended insertion of a comma in §3.0. The comma was inserted.

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SUSSEX COUNTY 20151 Office Circle, Georgetown, DE (302) 856-0038

Fourth, the Councils identified a grammatical error in §5.1. The error was not corrected.

Fifth, the GACEC suggested clarification of the term "dose". The Department added a definition of "dose" and "dosage".

Since the regulation is final, and the DOE responded to most identified concerns, I recommend no further action.

2. DOE Final Cyberbullying Regulation [16 DE Reg. 955 (3/1/13)]

The GACEC, SCPD, and ACLU commented on the proposed version of this regulation in January, 2013. A copy of the January 16 GACEC letter and February 4 ACLU letter are attached for facilitated reference. The SCPD letter was similar to the GACEC letter.

The Department notes that comments were received from the Councils and ACLU and, "(a)fter considering the comments, the Department, working with the Attorney General's Office, decided not to further revise the proposed regulation." At p. 955. The regulation does not summarize the comments or contain findings. It therefore fails to conform to the following statutory requirements:

> (b) At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include:
>
> (1) A brief summary of the evidence and information submitted;
> (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended;
> (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received;...

Title 29 Del.C. §10118 [emphasis supplied]

Consistent with the Councils' commentary, some aspects of the final regulation are particularly troubling, i.e., 1) omission of the explicit statutory expectation that actionable bullying be limited to "intentional" conduct; and 2) presumption that posting information on social networks is published to a broad school audience regardless of privacy settings or other limitations on postings.

The regulation is subject to challenge within 30 days of adoption by an aggrieved party pursuant to Title 29 Del.C. §10141 or at any time in defense to enforcement of the regulation. I am somewhat doubtful that the above provisions would survive judicial review.

3. DLTCRP Final LTC Facility Crim. History Ck. & Drug Testing Reg. [16 DE Reg. 974 (3/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in January, 2013. A copy of the January 30 GACEC letter is attached for facilitated reference. I was not able to view the actual revised regulation. The Register contains a note that it was not being published in the Register due to size but was available via a link. Between March 1 - 6, the link was not functional and the version in the Administrative Code was not updated. My analysis is therefore based on the "Summary of Comments Received with Agency Response and Explanation of Changes" section.

1 and 2. The Councils noted that routinely including a high volume of arrest records without disposition violated a basic precept in EEOC guidance.

The Division responded that it was providing a full record so employers could conduct their own analysis.

3. The Councils objected to a recital contemplating that all dispositions would be convictions. The Division substituted "outcome" for "conviction".

4. The Councils recommended substitution of "discrete" for "discrreet" in four sections. The Division agreed and effected the substitutions.

5. The Councils identified a grammatical error in §6.4. The error was corrected.

6. The Councils recommended insertion of the word "generally" in §7.1. The Division agreed and inserted the word.

7. The Councils observed that the Division lacked statutory authority to substitute a BCC depository of employer letters for an employer-based retention system. The Division responded that the statute "requires the previous employer to provide the letter; it does not specify the manner in which it must be delivered."

8. The Councils recommended insertion of two words in §8.1. The words were inserted.

9. The Councils suggested that a 15 year disqualifying period for misdemeanors in the abuse/neglect context was too long. No change was made.

10. and 11. The Councils suggested grammatical changes in §8.3. The Division deleted the entire section.

12. and 13. The Councils suggested grammatical changes in §§12.3 and 12.5. The changes to both sections were adopted.

14. The Councils suggested a grammatical edit in §11.5.4. The Division noted that the comment applied to §12.5.4 and effected the change.

15. The Councils suggested that the regulations include more specifics on the appeal system authorized by statute. The Division responded that it only issues determinations of disqualifying convictions which will be decided in conformity with the APA. No specifics were added.

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

4. DLTCRP Final Home Health Crim. History Ck. & Drug Test Reg. [16 DE Reg. 978 (3/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in January, 2013. A copy of the January 30 GACEC letter is attached for facilitated reference.

1. The Councils noted that routinely including a high volume of arrest records without disposition violated a basic precept in EEOC guidance. The Division responded that it was providing a full record so employers could conduct their own analysis.

2. The Councils recommended adding "and home health agencies" to §3.0, definition of "Division or DLTCRP". The term was added.

3. The Councils noted that routinely including arrest records without disposition violated a basic precept in EEOC guidance. No change was made.

4. The Councils objected to a recital contemplating that all dispositions would be convictions. The Division substituted "outcome" for "conviction".

5. The Councils recommended substitution of "discrete" for "discrreet" in four sections. The Division agreed and effected the substitutions.

6. The Councils identified a grammatical error in §6.4. The error was corrected.

7. The Councils recommended insertion of the word "generally" in §7.1. The Division agreed and inserted the word.

8. The Councils observed that the Division lacked statutory authority to substitute a BCC depository of employer letters for an employer-based retention system. The Division responded that the statute "requires the previous employer to provide the letter; it does not specify the manner in which it must be delivered."

9. The Councils recommended insertion of two words in §8.1. The words were inserted.

10. The Councils suggested that a 15 year disqualifying period for misdemeanors in the abuse/neglect context was too long. No change was made.

11. and 12. The Councils suggested grammatical changes in §8.3. The Division deleted the entire section.

13. - 16. The Councils suggested grammatical changes in §§10.8, 11.1, 11.5.1, and 11.5.4. The recommended changes to the four sections were adopted.

17. The Councils suggested that the regulations include more specifics on the appeal system authorized by statute. The Division responded that it only issues determinations of disqualifying convictions which will be decided in conformity with the APA. No specifics were added.

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

5. DSS Final Child Care Sub. Prog: Food Benefit Vol. Child Care Reg. [16 DE Reg. 990 (3/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in January. A copy of the GACEC's January 30, 2013 letter is attached for facilitated reference.

First, the Councils identified a discrepancy in DSS regulations concerning eligibility for the program based on achievement of a college degree. The Division decided to delete the entire section in anticipation of incorporating consistent content in a future regulation.

Second, the Councils recommended retention of existing regulatory language clarifying that: 1) the program is an entitlement for eligible parents; and 2) parents with a child under age 6 are exempt from participation unless they volunteer. Since the entire section is being stricken, these provisions are being deleted.

Since DSS is deleting both the existing regulation and proposed regulation, I recommend no further action.

6. DSS Withdrawal of Child Care Subsidy POC Plus Phase Out Reg. [16 DE Reg. 987 (3/1/13)]

My February 6, 2013 P&L memo contained the following italicized information on this regulation:

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.

The Division is now formally publishing its withdrawal of the regulation. Apart from the Councils' comments, it also received comments from other agencies opposing the initiative. I recommend no further action.

7. DPH Final School-based Health Centers Regulation [16 DE Reg. 982 (3/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2012. A copy of the GACEC's December 28, 2013 letter is attached for facilitated reference.

First, the Councils strongly objected to a narrow exemption from third party billing for students identified under the IDEA or Section 504 or being evaluated for eligibility under the IDEA or Section 504. The Councils offered alternative language. The Division adopted the alternative language verbatim.

Second, the Councils recommended correction of an inaccurate statutory reference. The reference was corrected.

Third, the Councils recommended an amendment to §2.0 to conform to the Administrative Code Drafting and Style Manual. The Division adopted conforming language.

Fourth, the Councils recommended an amendment to correct grammar. The Division adopted suggested language verbatim.

Fifth, the Councils recommended that the Division consider authorizing a relative caretaker to enroll a student in the program. DPH agreed and added a reference to relative caregiver.

Sixth, the Councils recommended adding a provision authorizing a student who has reached the age of majority to "self-enroll". The Division agreed and added a conforming sentence.

Since the regulation is final, and the Division honored every recommendation, I suggest sending a "thank you" communication to the Division and the DHSS Secretary. Note that the Summary of Evidence section recites that the regulation was approved by both the Attorney General's Office and DHSS Cabinet Secretary. At p. 984.

8. DSAMH Final MH Screener & Voluntary Admission Payment Reg. [16 DE Reg. 992 (3/1/13)]

The GACEC, SCPD, DDC, and CLASI submitted extensive comments on the proposed version of this regulation in December. A copy of the December 28 GACEC letter (with 46 itemized comments) and CLASI's December 21 letter (with 34 itemized comments) are attached for facilitated reference. The Division of Substance Abuse and Mental Health has now adopted a final regulation.

Parenthetically, it was initially difficult to determine whether the Division made any changes based on the commentary. The regulation acknowledges receipt of comments from the Councils and CLASI and then recites as follows: "For purposes of reference, DSAMH has considered each comment as it was presented in the first of the three respondents' letters and responds as follows:" This is followed by a blank space. There is no reference to the "fourth" respondent's letter. The text of the final regulation is also not provided. The regulation recites that it is not published due to length but is available through a link. The link was not operational between March 1-6. The regulation is also absent from the Administrative Code as of March 6.

The APA requires a summary of the comments and findings on the comments:

> (b) At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include:
>
> > (1) A brief summary of the evidence and information submitted;
> > (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended;
> > (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received;...

Title 29 Del.C. §10118 [emphasis supplied] . Based on the information available through the Register of Regulations, the above standards have not been met.

However, I was able to obtain the attached copy of the final regulation from another CLASI attorney. My analysis is based on that version.

1. and 2. The Councils noted that the background section was inaccurate in multiple respects based on statutes which remain in effect until July 1, 2013. The Division made no change based on its belief that "there is no conflict until such time as there are credentialed Mental Health Screeners."

3. The Councils identified a defect in the title to the regulation and recommended changes in structure. The Division amended the title only.

4-6. The Councils recommended three technical revisions. The Division adopted conforming amendments.

7. The Councils recommended deletion of "or their designee". The Division deleted the term.

8. and 9. The Councils recommended two amendments based on grammar. Both amendments were adopted.

10. and 11. The Councils recommended a revision based on grammar. The Division adopted the suggested substitute verbatim. The Councils questioned the requirement that a nurse have a 4-year degree which is not required by the licensing statute. The Division responded that their experts "held that there is a considerable difference between a 2-year and a 4-year nursing degree". Therefore, no change was made.

12. The Councils identified several problems with the definition of "supervision of unlicensed mental health professionals". The Division incorporated several discrete amendments.

13. The Councils recommended revision of §3.2.2 to correct grammar. The Division corrected the section.

14 - 15. The Councils identified two concerns with §§3.4.1 and 3.4.2. The Division responded that the concerns were based on an earlier draft which was revised in the published version. This is not entirely accurate. The proposed and final versions of the regulation require a DSAMH employee to have five years of experience while an employee of a Delaware health care facility only needs two years of experience. The rationale for the difference in unclear.

16. The Councils identified a grammatical error in §3.4.1.2. The Division corrected the error.

17-19. The Councils recommended several revisions to §§3.4.2. The Division agreed and effected the revisions.

20-22. The Councils recommended deletion of three sections as superfluous. The Division retained the sections.

23. The Councils noted that unlicensed mental health professionals were required to pay application and credentialing fees while licensed professionals paid no fees. The Division deleted the fee requirement.

24. The Councils identified duplication of standards in two sections. The sections were amended.

25. The Councils identified an anomaly insofar as an unlicensed State employee could qualify as a screener with a Bachelor's degree while a private-sector applicant required a Master's degree. The Division adopted a Bachelor's degree standard for both State and private sector applicants.

26. The Councils noted that statutory law contemplates screeners "taking into custody" individuals whose behavior constitutes a danger to self or others. The Councils recommended inclusion of at least training standards on exercise of such "police power". The Division responded that mental health experience necessarily involves training in some techniques. I remain concerned that screeners taking "dangerous" individuals into custody without training in justified use of force, safe transportation procedures, etc. is imprudent.

27-29. The Councils suggested an overhaul of §4.0. The Division adopted several revisions to the section.

30. The Councils recommended an edit to §5.1 to correct grammar. The section was revised to eliminate the error.

31-39. The Councils identified several grammatical and punctuation errors in §5.0. The Division adopted several revisions. Parenthetically, there is a new error "(...in §5.1 above. Including...") in §5.2.2.2.

40-43. The Council identified several concerns with §6.0. The Division adopted many amendments to the section.

44. The Councils recommended that a single 78-word sentence be "broken down" into subparts. The Division revised the text to consist of three sentences.

45. The Councils identified three grammatical errors in §10.0. The Division corrected the errors.

46. The GACEC asked if criminal background checks would be conducted for unlicensed mental health screeners. The Division responded that ("(t)he only unlicensed credentialed mental health screeners will be State mobile crisis employees". This is an odd statement. If an unlicensed individual who meets the regulatory standards (§3.5) applies, the Division would have to approve the application.

Since the regulation is final, and the Division responded to each Council comment, I recommend no further action.

9. DMMA Prop. Increased Medicaid Primary Care Service Payment Reg. [16 DE Reg. 921 (3/1/13)]

The Division of Medicaid and Medical Assistance proposes to amend the Medicaid State Plan to conform to changes prompted by the federal Affordable Care Act. In a nutshell, states are required to adjust Medicaid payment rates for certain primary care services in 2013 and 2014 to ensure that they at least match certain Medicare rates. States are also required to adjust fees for vaccine administration under the Vaccines for Children (VFC) program to match the greater of a Medicare rate and VFC regional maximum amount. The federal government will cover 100% of the costs of the difference between the current State payment rates and the new rates so there is no State fiscal impact.

Since the changes are required to conform to federal law and CMS guidance, I recommend endorsement.

10. DSS Proposed Case Administration Regulation [16 DE Reg. 927 (3/1/13)]

The Division of Social Services proposes to revise a variety of sections in its DSS Manual in the context of Case Administration. The 15-page set of changes covers many forms of public assistance and amends sections dealing with discrimination, access to records, and complaints.

I have the following observations.

First, §1003.4 authorizes agency staff to release records to a court-appointed guardian ad litem "relating to the child and his or her family or guardian". This may be "overbroad". The relevant statutes, Title 13 Del.C. §§701© and 29 Del.C. §9007A, confer a right "to inspect and copy any records relating to the child and parents involved in the case of appointment". This access right would not ostensibly extend to the entire "family", including siblings, aunts and uncles, etc.

Second, §1003.5 authorizes release of confidential information in connection with "civil proceedings". This is also "overbroad" and could result in disclosure of information unauthorized by law. Section 1003.5 is based on 45 C.F.R. 205.50(a) and 7 C.F.R. 272.1(c). The latter regulation does not authorize disclosure in connection with "civil proceedings". The former regulation (§205.50) authorizes release based on "any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of any such plans or programs." Thus, if the State instituted a civil action to recover the value of benefits fraudulently obtained, access to records would be authorized. Section 1003.5, Par. 1, on the other hand, literally authorizes release of information in connection with any civil proceedings (e.g. child custody; creditor-debtor litigation; landlord-tenant litigation) which are not "connected" to the administration of the DHSS plans or programs. The references should preferably be modified to incorporate this limitation.

Third, §1004 authorizes 'sending" of records only via Division employee or Department mail. The Division may wish to consider addressing electronic forwarding of records (e.g. by encrypted or non-encrypted email). The Division may also wish to include some standards concerning safeguarding of electronic case records.

Fourth, §1005, Pars. 3 and 5 contain some inconsistent standards.

A. Par. 3.A. establishes a 5 year record retention period for records but Par. 3.D. refers to retention "beyond the three-year period".

B. Par. 3.A. establishes a 5 year record retention period but Par. 5 authorizes files to be purged after 4 years.

Fifth, §1006.1, Par. 2, states that "(n)either the Division nor its contractors will not discriminate..." The word "not" should be deleted so the statement would recite that neither the Division nor its contractors will discriminate..."

Sixth, §1008 only contemplates access to policy manuals at physical sites (e.g. public libraries; State Offices). DSS should review Title 29 Del.C. §10003 which contemplates that each agency will maintain a web portal through which FOIA requests can be made. Requests for access to records can also be made via email or fax. Section 1008 is ostensibly outdated insofar as it only describes access to information by visiting "bricks and mortar" sites. The above statute also contains specific photocopying fees information, including copying the first 20 pages for free. In contrast, §1008, Par. 3.B states that all pages are charged at a set rate.

I recommend sharing the above observations with the Division.

11. DDDS Proposed Autism Services Providers Regulation [16 DE Reg. 918 (3/1/13)]

Senate Bill No. 22, enacted in 2012, requires the Department of Health & Social Services to promulgate regulations establishing standards for certifying qualified autism services providers. In early February, the DLP Autism Delaware, and the SCPD submitted comments on a pre-publication draft of the standards. The Department is now formally publishing its proposed regulations which include some edits prompted by the earlier commentary.

I have the following observations.

First, in §2.0, the definition of "applied behavior analysis" is not co-terminus with the statutory definition. The regulation adds two sentences which limit the scope of ABA and amount to an invitation to insurers to deny payment based on the exclusions and limitations. It is improper to have a regulatory definition which is narrower than a statutory definition. The enabling legislation does not confer authority on DHSS to further define ABA and the attempt is "ultra vires".

Second, in §2.0, the definition of "autism service provider covers a "board-certified behavior analyst" (BCBA) but omits a Board Certified Behavior-Analyst Doctoral (BCBA-D) which is treated as a distinct provider throughout the regulations. See, e.g. §2.0, definition of "behavioral technician" and §§3.1, 3.2, and 4.1.1. A reference to the BCBA-D should be added to the definition of "autism service provider.

Third, in §2.0, definition of "autism service provider", the reference to "authorized by this section" is copied directly from the statute and makes no sense in the context of §2.0 of the regulations. Consider substituting "by this regulation" or, based on the reference to "these regulations" in the definition of "behavioral technician", substitute "these regulations".

Fourth, in §2.0, definition of "therapeutic care", insert "acting" between "assistant" and "under". Compare comparable reference in definition of "psychological care".

Fifth, in §3.1, first sentence, delete "to be" since the regulation(s) are establishing the standards now, not in the future.

Sixth, in §3.1, second sentence, substitute "it certifies" for "they certify" since the antecedent (Board) is singular.

Seventh, in §3.1, referring to a website that may change in a regulation may be imprudent. It would be preferable to simply refer to the most recent ethical and practice standards adopted by the Behavior Analyst Certification Board. For example, in §2.0, definition of autism spectrum disorders", the reference is to the most recent edition of the DSM, not a version appearing on a website.

Eighth, in §3.2, the reference to "2.2" should be "§2.0".

Ninth, in §3.3.1, first sentence, substitute "reflects" or "must reflect" for "should reflect". The word "should" is hortatory. Cf. Delaware Administrative Code Style Manual, §6.3.

Tenth, in §3.3.1, second sentence, subsittute "hours per week" for "hours a week". Compare reference in §3.3.2.

Eleventh, in §3.3.1, second sentence, substitute "clinical management and case supervision" for "supervision" for consistency.

Twelfth, §§3.3.1 and 3.3.2 are ostensibly inconsistent. Section 3.3.1 establishes a 1.5/10 hourly ratio of supervision to treatment. Thus, a supervisor could spend 0.75 hours supervising a technician conducting 5 hours of treatment. Section 3.3.2, however, would literally require a supervisor to spend 1.5 hours in supervision for a technician conducting 5 hours of treatment. Indeed, the reference to "10 hours per week or less" results in the need to spend 1.5 hours in supervision for a technician spending 1 minute to 9.99 hours in direct treatment.

Thirteenth, §3.3.3 refers to "other requirements" It would be preferable to clarify that this applies to behavioral technicians".

Fourteenth, in §3.3.3.7, first sentence, delete the period after "BCBA".

I recommend sharing the above observations with the Department.

12. Proposed Legislation: State Tax Credit for Hiring DDDS Clients

Consistent with the my attached February 21, 2013 presentation to the Joint Finance Committee, I prepared the attached legislation to authorize a State tax credit for employers who hire DDDS clients.[1] It is patterned on legislation (H.B. No. 275) enacted in 2012 establishing a tax credit for hiring certain veterans. It would enhance implementation of the "employment first" legislation (H.B. No. 319) enacted in 2012 to promote job opportunities for individuals with disabilities in integrated settings.

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[1]A full version of the presentation, with attachments, is published on the SCPD Website at http://scpd.delaware.gov/information/testimony.shtml.

My brief research confirms that other states have adopted similar State tax credits for hiring individuals with disabilities. See attached materials describing Maryland and New York initiatives. State tax credits can be combined with qualifying federal tax credits.

I recommend that the SCPD adopt the lead role in promoting legislative consideration of the bill which, when combined with an advertising/marketing campaign, could "jump start" employment opportunities for DDDS clients.

Attachments

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STATE OF DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS
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January 16, 2013

Susan Haberstroh, Regulation Review
Department of Education
35 Commerce Way, Suite 1
Dover, Delaware

RE: DOE Proposed Administration of Medications and Treatments Regulation [16 DE Reg. 696 (January 1, 2013)]

Dear Ms. Haberstroh:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education proposal to adopt a revised regulation covering medications and treatments. The "Synopsis of Subject Matter of the Regulation" provides the following overview:

> The amendments include the addition of definitions, clarification of the process for the administration of medications and treatments, and also changes that reflect recent amendments to 24 Del.C. Section 1921(a)(17) relating to who may assist students with medications and when they may do so.

At 696.

The latest legislation revising §1921(a)(17) is the attached Senate Bill No. 257 signed by the Governor on July 18, 2012.

The regulation is comprehensive and logical in format; however, Council would like to share a few observations.

First, §1.2.2 states the following, "Medications and dosages administered by the school nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines. Council would like clarification on this section. If the doctor prescribes a dosage that is higher than the recommended dosage and the medication is brought to

school in its original container, is the nurse responsible for checking the FDA peer review journal? Would the nurse be held liable if the dosage is not checked in the journal?

Second, §1.2.1 requires the prescription medication to be provided to the school "in the original container". This requirement could present some practical problems if a medication must be supplied to more than one provider (e.g. school and after-school program). Moreover, the State criminal statute requiring that prescription medications be kept in an original container was repealed a few years ago. On the other hand, a pharmacy will generally provide a second labeled container on request. Moreover, providing the original container with label reduces prospects for medication errors. Council does not object to the requirement that the medication be provided in the original container; however, we believe it would be preferable if schools alerted parents that they should obtain a second labeled container from the pharmacy when filling prescriptions. Many parents may not be aware of this option.

Third, in §3.0, a comma should be inserted after the word "Treatments".

Fourth, in §5.1, the grammar is incorrect. At a minimum, the word "who" should be inserted between "employees" and "are". However, since the statute does not "authorize" all educators and employees to assist with medication, Council recommends substituting "employees who qualify under 24 Del.C. §1921(a)(17) to assist a student..." This terminology is consistent with the language used in §5.1.2.

Fifth, Council would like clarification on what constitutes a 'dose' of medication. For example, if a doctor prescribes a controlled substance that is to be taken once every four hours, could enough of the medication be brought to school and administered without violating section 5.1.1.2.1 in terms of multiple doses? Does Section 5.1.1.1.1 apply to controlled substances as well?

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

Sincerely,

Dafne A. Carnright/kpc

Dafne A. Carnright
Vice Chairperson

DAC:kpc

CC: The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Charles Michels, Professional Standards Board
Mary Ann Mieczkowski, DOE
John Hindman, Esq., DOE
Terry Hickey, Esq., DOE
Paula Fontello, Esq., DOE

Enclosure

SPONSOR: Sen. Hall-Long & Rep. Walker
Sens. Blevins, Ennis, Henry, Katz, Simpson, Sokola & Sorenson;
Reps. Barbieri, Briggs King, Carson, Jaques, Q. Johnson, Keeley & Ramone

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 257

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO ASSISTANCE WITH MEDICATIONS.

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

Section 1. Amend §1921(a)(17), Title 24, Delaware Code, by making insertions as shown by underlining as follows:

(17) Educators, coaches, or persons hired or contracted by schools serving students in kindergarten through grade 12 who assist students with medications that are self-administered during school field trips and approved school activities outside the traditional school day or off-campus that have completed a Board of Nursing approved training course developed by the Delaware Department of Education;

SYNOPSIS

This Act expands the ability of persons to assist in the administration of medications to students by including coaches or persons hired or contracted by schools serving students in kindergarten through grade 12. The Act also provides for the assistance of medication during approved school activities outside the traditional school day and off-campus activities.

Author: Senator Hall-Long

SD : JJC : mz
2381460157

Jun 14, 2012

STATE OF DELAWARE

ATTACHMENTS OMITTED

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS
GEORGE V. MASSEY STATION
516 WEST LOOCKERMAN STREET
DOVER, DELAWARE 19904
TELEPHONE: (302) 739-4553
FAX: (302) 739-6126

January 16, 2013

Susan Haberstroh, Regulation Review
Department of Education
35 Commerce Way, Suite 1
Dover, Delaware

RE: DOE Proposed Cyberbullying Regulation [16 DE Reg. 694 (January 1, 2013)]

Dear Ms. Haberstroh:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education proposed Cyberbullying regulation which will implement Senate Bill No. 193. The GACEC and State Council for Persons with Disabilities (SCPD) commented on the initial regulation which was proposed in October of 2012. A copy of the October 17, 2012 GACEC letter is attached for facilitated reference. Rather than adopt a final regulation, the DOE is now publishing a revised proposed regulation. Council would like to share the following observations and recommendations.

First, as background, Council would like to reiterate the following (italicized) commentary from our October 17, 2012 letter:

> *Students with disabilities are disproportionately victims of bullying. The attached article, "Teens with Disabilities Face High Rates of Bullying" (September 4, 2012), describes research demonstrating that 57% of students with intellectual disabilities are bullied and slightly less than half of students with autism, learning disabilities and speech/language impairments are victimized. The research also concluded that bullying of students with disabilities is more prevalent in general education settings. Moreover, bullying does not "build character". See attached article entitled "Myths and Facts About Bullying in Schools" (April, 2005). Students who are victimized are often characterized by low self-esteem, depression, and poor coping skills. Bullying also results in diminished academic performance. See attached article, "Academic Consequences Follow Social Rejection" (March 23 2006). Therefore, the concept of deterring bullying, including cyberbullying, merits our endorsement.*
>
> *At the same time, some students with disabilities may be more subject to discipline for cyberbullying based on their lack of deliberative functioning. For example, a student with Attention Deficit Hyperactivity Disorder (ADHD) may impulsively post a picture or publish communication without appreciating the consequences or intending any harm.*
>
> *Given this background, Council is very interested in regulations on this issue and would like to share*

the following observations on the proposed regulation.

Second, Council would like clarification on what is meant by "...which (1) interferes with a student's physical well-being..." in section 2.1. What is the definition of 'physical well-being'?

Third, the Councils submitted the following (italicized) comments on §2.3. The January version of the regulation contains an identical section so Council would like to reiterate our earlier comments.

First, §2.3 recites as follows:

> *The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.*

At a minimum, the word "communication" should be substituted for "speech". The Delaware Bullying Prevention Association website [www.bullyprevention.org/aboutdbpa.html] defines cyberbullying as including "denigration: spreading information or pictures to embarrass". The term "speech" may not cover publication of a hostile or embarrassing photo and §2.1 uses the broader term, "communication". For the same reason, the term "communication" should be substituted for the term "speech" in §2.2.

However, the premise that the place of origin is completely immaterial is problematic. If the origin is actually misuse of a classroom computer, it is intuitive that the conduct can be more closely regulated. Consider the following alternatives:

> *Communication may qualify as cyberbullying irrespective of place of origin and irrespective of use of school district or charter school materials.*

OR

> *Communication may qualify as cyberbullying regardless of both place of origin and lack of reliance on school district or charter school materials.*

Fourth, in October, the Councils objected to an "overbroad" definition of Cyberbullying in §2.1:

Second, the term "unpleasant" in §2.1 is "overbroad". Communication may be "unflattering", "not pleasant", or "negative" without rising to the level of bullying. Moreover, the regulation should preferably conform to the statutory definition of bullying in Title 14 Del.C. §4112D(a). To the extent the regulatory definition conflicts with the statutory definition (which includes "electronic" actions), the regulation is subject to judicial invalidation. Moreover, the regulation omits the concept of "intention" which is contained in the statute. For these reasons, the Department could consider the following substitute:

> *Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students intended to cause embarrassment, humiliation, fear, or emotional harm.*

The terms "embarrass", "humiliating", "fear", and "emotional harm" are contained in the statute. The term "unpleasant" is not in the statute.

The January version removes the term "unpleasant". However, it still omits the concept of "intention" which is explicitly included in the statute:

(a) Definition of bullying. – As used in this section, "bullying" means any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of:...

Title 14 Del.C. §4112D(a) [emphasis supplied] This could easily be corrected by inserting "intentional" prior to "use of uninvited..." in the first line of §2.1.

Fifth, in October, the Councils objected to adoption of a categorical rule that, regardless of privacy settings, use of prevalent social media was deemed automatically available to a broad audience within the school community. The January version "softens" the categorical rule by converting it to a "presumption". This is an improvement. However, it still contemplates presumptive "guilt" or "culpability" regardless of "privacy settings or other limitations on those postings". It would be more logical to establish a presumption of dissemination to the school community only if at least one student in the school community has access to the social network posting. If the only individuals with access to the posting are parents and relatives, the validity of the presumption is highly questionable. Policies restricting free speech should be restrained and "tailored" in scope.

Sixth, in October, the Councils included the following (italicized) recommendation:

> *Fourth, the regulation only covers student-student bullying. Consistent with the attached article, "When the Bully Is the Teacher" (September 12, 2011), research confirms that teacher bullying of students is "a common problem" with 93% of teachers and students surveyed reporting that teacher bullying is occurring in schools. The bullying statute [Title 14 Del.C. §4112D] is not limited to student-student bullying and the regulation could be improved by addressing teacher-student bullying.*

The January version does not address teacher-student bullying.

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,

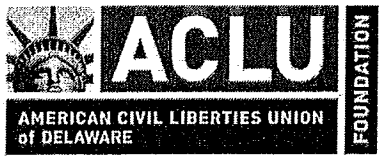
Dafne A. Carnright, KPC

Dafne A. Carnright
Vice Chairperson

DAC:kpc

CC: The Honorable Matthew L. Denn, Lt. Governor
The Honorable Beau Biden, Attorney General
The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Charles Michels, Professional Standards Board
Mary Ann Mieczkowski, DOE
John Hindman, Esq., DOE
Terry Hickey, Esq., DOE
Paula Fontello, Esq., DOE
Kathleen MacRae, American Civil Liberties Union (ACLU) of Delaware

Enclosures



February 4, 2013

By Regular Mail and Email
Susan Haberstroh, Ph.D.
Regulation Review
Department of Education
35 Commerce Way, Suite 1
Dover, DE 19904

Re: Proposed Regulation: 14 DE Admin. Code 624, School District/Charter School Policy Prohibiting Cyber bullying

AMERICAN CIVIL LIBERTIES UNION FOUNDATION of DELAWARE
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NORMAN M MONHAIT
PRESIDENT

KATHLEEN M MacRAE
EXECUTIVE DIRECTOR

RICHARD H MORSE
LEGAL DIRECTOR

Dear Dr. Haberstroh:

I write with regard to the proposed new regulation 14 DE. Admin. Code 624, School District/Charter School Policy Prohibiting Cyber bullying, published at 16 DE Reg. 694. The ACLU of Delaware strongly agrees that bullying needs to be addressed by the schools, but is concerned that the proposed cyber bullying regulation fails to use the power the General Assembly has given the Department of Education to take effective action to reduce cyber bullying.

By authorizing the Department of Education to promulgate an anti-cyber bullying policy that the districts and charter schools must adopt, Senate Bill 193 gave the Department of Education the power to require the local districts and charter schools to adopt specific educational approaches that can effectively deal with the bullying problem. The proposed regulation does not do that.

If schools' efforts to deal with bullying are to be effective, the primary approach must be to teach and to work with responsible adults in the children's lives -- their parents -- to use the educational power of the schools to produce better behavior. A cyber bullying policy should require educational approaches that are likely to work and prevent bullying from occurring so frequently. The policy should not be limited, as the proposed regulation is, to something that merely creates a new basis for disciplining children. Given the unfortunately common practice in Delaware schools of pushing problematic students out of school through repeated suspensions, the proposed regulation is likely to increase the number of disaffected children who misbehave and fail. See Advancement Project, Alliance for Educational Justice and GSA Network, *Two Wrongs Don't Make a Right: Why Zero Tolerance is Not the Solution to Bullying* (June 2012) (available at http://b.3cdn.net/advancement/73b640051a1066d43d_yzm6rkffb.pdf). Thus, the proposed regulation is likely to increase bullying, not reduce it.

The Department of Education should use the power Senate Bill 193 gave it, and require districts and charter schools to implement prevention, not just punishment. When I wrote you on November 1, 2012 about the proposed cyber

bullying regulation that had been published, I enclosed a memorandum describing the elements of an anti-bullying policy that would be effective. I again urge the Department of Education to adopt a regulation that would require the school districts and charter schools to adopt effective anti-bullying tactics like those described in that memorandum, rather than merely increase the bases for punishing children.

My November 1, 2012 letter addressed the constitutional infirmities that were in the earlier version of the proposed regulation. We are pleased that some of them have been addressed. However, others remain and I will address them briefly.

First, § 2.3 purports to authorize schools to punish students for off campus speech that occurs in their homes and elsewhere. The Supreme Court has never construed the First Amendment to permit that. To the contrary, the United States Court of Appeals that covers Delaware has observed: "Neither the Supreme Court nor this Court has ever allowed schools to punish students for off-campus speech that is not school-sponsored or at a school-sponsored event and that caused no substantial disruption at school." *J.S. ex. rel. Snyder v. Blue Mountain School District,* 650 F. 3d 915, 933 (3d Cir. 2011), cert. denied, 132 S. Ct. 1097 (2012)).

As the Court of Appeals observed in another case:

> It would be an unseemly and dangerous precedent to allow the state, in the guise of school authorities, to reach into a child's home and control his/her actions there to the same extent that it can control that child when he/she participates in school sponsored activities. Allowing the District to punish [plaintiff] for conduct he engaged in while at his grandmother's house using his grandmother's computer would create just such a precedent, and we therefore conclude that the district court correctly ruled that the District's response to [plaintiff's] expressive conduct violated the First Amendment guarantee of free expression.

Layshock v. Hermitage School District, 650 F. 3d 205, 216 (3d Cir. 2011), cert. denied, 132 S. Ct. 1097 (2012).

By encouraging the schools to discipline students for off campus internet use, the Department of Education may be causing school districts to risk being held liable in damages to students who are disciplined for off campus activity. Moreover, by stating that school districts may discipline students for off campus internet use, the proposed regulation could be exposing districts to litigation brought by a student who claims he is injured by an off campus posting that the district failed to prevent.

Second, even if the school districts and charter schools could punish students for off campus internet speech, they could only do so for speech that causes a material and substantial disruption at school. The proposed regulation

omits that limitation even though it is required by decisions of the United States Supreme Court, *e.g., Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 509 (1969), and the General Assembly said in a recital for Senate Bill 193 that "the Lieutenant Governor and Attorney General will be drafting a narrow cyber bullying policy ... targeted specifically at off-campus activity that is likely to cause material and substantial disruption within public schools."

Third, the definition of cyber bullying in § 2.1 is overbroad because it includes communications that do not reach the intended victim. The essence of cyber bullying is that it is harmful, abusive speech that causes damage because it reaches its intended victim or victims. The General Assembly recognized this in the statutory definition of bullying, which defines the term to mean "any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee ...." 14 *Del. C.* § 411D(a). That limitation is constitutionally required, because otherwise the regulation would purport to prohibit speech directed to the broader community. Denigrating speech may be detestable, but if it is not directed at a specific individual it is the type of reprehensible speech that the First Amendment protects as part of the price of freedom. *See, e.g., Brandenburg v. Ohio,* 395 U.S. 444 (1969) (vacating conviction for racist and anti-Semitic speech); *National Socialist Party of America v. Village of Skokie,* 432 U.S. 43 (1977) (summarily reversing state court injunction barring Nazis from marching through community of Holocaust survivors).

The cyber bullying regulation the Department of Education issues may be the first comprehensive statewide effort to deal with cyber bullying in the country. Delaware can be proud of that: the Delaware model can lead the country in dealing with this difficult problem. But in order to do that the regulation must be effective and constitutional. Therefore, ACLU of Delaware urges the Department of Education to revise the proposed regulation in accordance with the recommendations we have made and the materials I sent you in November.

Sincerely yours,

Richard H. Morse

Richard H. Morse

cc: Honorable Matthew P. Denn (by email)
Honorable Joseph R. Biden, III (by email)
Ms. Mary Kate McLaughlin (by email)
John B. Hindman, Esquire (by email)
Brian Hartman, Esquire (by email)
Ms. Kathleen MacRae (by email)

STATE OF DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS
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January 30, 2013

Tom Murray, Deputy Director
DHSS/DLTCRP
3 Mill Road, Suite 308
Wilmington, DE 19806

RE: DLTCRP Proposed Long Term Care (LTC) Criminal History Check and Drug Test Regulation [16 DE Reg. 716 (1/1/13)]

Dear Mr. Murray:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Long Term Care Residents Protection (DLTCRP) proposal to adopt a new set of comprehensive standards covering criminal history checks and drug testing for nursing and similar facilities. The changes are motivated, in part, to incorporate the role of the new "Background Check Center" (BCC) established by Senate Bill No. 216 enacted in July, 2012. The changes are also intended to conform to 2012 Equal Employment Opportunity Commission (EEOC) guidance on reliance on arrest and conviction records to disqualify individuals from employment. See §8.3. Council would like to share the following observations.

First, in §3.0, definition of "criminal history", the Division includes the following sentence: "It shall be limited to convictions and arrests for which no disposition is available." This is problematic. The EEOC guidance (incorporated by reference at §8.6) discourages reliance on arrest records by employers. Moreover, the incidence of arrest records without disposition is high:

> A 2006 study by the DOJ/BJS found that only 50% of arrest records in the FBI's III database were associated with a final disposition.

At 5. Routinely including a high volume of arrest records without disposition manifestly violates a basic precept of the EEOC guidance.

Second, §5.2 envisions the BCC continuously monitoring employees in its Master List for both arrests and convictions. The BCC is then authorized to use its discretion in sharing arrest information with the employer. This is not consistent with the EEOC guidance. The EEOC provides the following characterization of arrest records:

> The fact of an arrest does not establish that criminal conduct occurred. Arrests are not proof of

criminal conduct. Many arrests do not result in criminal charges, or the charges are dismissed. Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty.

At 12.

Third, §5.2 contains the following sentences:

> DLTCRP will monitor the charge until there is a disposition. When the disposition is known, DLTCRP will inform the Employer of the conviction.

This incorrectly presumes that all dispositions will be convictions. Consider substituting "any conviction" for "the conviction".

Fourth, the term "discrete" should be substituted for "discreet" throughout the document. It is incorrectly used in §§6.3, 6.4, 9.2, and 10.3.

Fifth, in §6.4, there is a plural pronoun (their) with a singular antecedent (employee). Consider substituting "inclusion" for "their place".

Sixth, §7.1 states as follows:

> 7.1. Before hiring an Applicant, employers are required by law to obtain from prior employers and to provide to prospective employers Service Letters which provide specific information as required by the Department of Labor. 19 Del.C. §708.

This is not entirely accurate. Title 19 Del.C. §708(b)(6) authorizes conditional employment based on difficult circumstances. At a minimum, consider inserting "generally" prior to "required".

Seventh, §7.2 recites as follows:

> When an employee hired after the effective date of the BCC is terminated, the employer shall promptly complete a Service Letter which will be stored by the BCC and available to the next prospective employer. The Service Letter shall expire after 5 years.

While this employer requirement may be conceptually sound, it may lack statutory authority. Title 19 Del.C. §708(b)(5) contemplates employers maintaining the Service Letters and honoring requests from prospective employers for the Service Letters pertaining to applicants. Violations of the law result in civil penalties. Council could not locate any statute which permits an employer to simply send the Service Letters to the BCC which would then respond to employer requests for the Letters.

Eighth, in §8.1, first sentence, the word "to" should be inserted between "authorized" and "furnish". Moreover, in the first sentence, the word "to" should be inserted between "person" and "employers".

Ninth, in §8.2, the 15-year period for abuse/neglect convictions seems a bit long. By analogy, felony theft convictions have a 10-year disqualifying period. Consider a shorter period for misdemeanors involving abuse/neglect. The conviction information would still be disclosed pursuant to the criminal background check but there would not be a categorical, "no-exceptions" disqualification from employment if the 15-year standard were modified.

Tenth, in §8.3.1, consider substituting "inform" for "informs". There is also a plural pronoun (them) with

a singular antecedent (individual). Consider substituting "the individual" for "them". Alternatively, the term "him" could be substituted. See Delaware Administrative Code Style Manual, §3.3.2.1.

Eleventh, in §8.3.2, I believe the fourth "bullet" (Evidence...conduct) is "bunched" with the third bullet.

Twelfth, in §12.3, capitalize "Bureau".

Thirteenth, in §12.5.1, there is a plural pronoun (their) with a singular antecedent (Applicant). Consider substituting "his". See Delaware Administrative Code Style Manual, §3.3.2.1.

Fourteenth, in §11.5.4, substitute "names" for "name".

Fifteenth, Title 29 Del.C. §7972 provides for due process and a hearing to contest BCC errors. Hearings must be consistent with the APA. The regulation omits information in this context. For example, in §11.5, an applicant should be able to obtain a written copy of BCC disclosures to bring to an attorney or facilitate checking accuracy based on other records. Moreover, there is no mention of a hearing in the regulation. There is only an obtuse reference to "appeal" in §15.5.5.

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

Sincerely,

Dafne A. Carnright, KPC

Dafne A. Carnright
Vice Chairperson

DAC:kpc

STATE OF DELAWARE

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January 30, 2013

Tom Murray, Deputy Director
DHSS/DLTCRP
3 Mill Road, Suite 308
Wilmington, DE 19806

RE: DLTCRP Proposed Home Health Criminal History Check and Drug Test Regulation [16 DE Reg. 717 (1/1/13)]

Dear Mr. Murray:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Long Term Care Residents Protection (DLTCRP) proposal to adopt a new set of comprehensive standards covering criminal history checks and drug testing for home health agencies. The changes are motivated, in part, to incorporate the role of the new "Background Check Center" (BCC) established by Senate Bill No. 216 enacted in July, 2012. The changes are also intended to conform to 2012 Equal Employment Opportunity Commission (EEOC) guidance on reliance on arrest and conviction records to disqualify individuals from employment. See §8.3. The GACEC would like to share the following observations.

First, in §3.0, definition of "criminal history", the Division includes the following sentence: "It shall be limited to convictions and arrests for which no disposition is available." This is problematic. The EEOC guidance (incorporated by reference at §8.6) discourages reliance on arrest records by employers. Moreover, the incidence of arrest records without disposition is high:

> A 2006 study by the DOJ/BJS found that only 50% of arrest records in the FBI's III database were associated with a final disposition.

At 5. Routinely including a high volume of arrest records without disposition manifestly violates a basic precept of the EEOC guidance.

Second, in §3.0, definition of "Division or DLTCRP", consider adding "and home health agencies" to the end since this is the subject of the regulation.

Third, §5.2 envisions the BCC continuously monitoring employees in its Master List for both arrests and convictions. The BCC is then authorized to use its discretion in sharing arrest information with the

employer. Consistent with the above discussion under "First", this is not consistent with the EEOC guidance. The EEOC provides the following characterization of arrest records:

> The fact of an arrest does not establish that criminal conduct occurred. Arrests are not proof of criminal conduct. Many arrests do not result in criminal charges, or the charges are dismissed. Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty.

At 12.

Fourth, §5.2 contains the following sentences:

> DLTCRP will monitor the charge until there is a disposition. When the disposition is known, DLTCRP will inform the Employer of the conviction.

This incorrectly presumes that all dispositions will be convictions. Consider substituting "any conviction" for "the conviction".

Fifth, the term "discrete" should be substituted for "discreet" throughout the document. It is incorrectly used in §§6.3, 6.4, 9.2, and 10.3.

Sixth, in §6.4, there is a plural pronoun (their) with a singular antecedent (employee). Consider substituting "inclusion" for "their place".

Seventh, §7.1 states as follows:

> 7.1. Before hiring an Applicant, employers are required by law to obtain from prior employers and to provide to prospective employers Service Letters which provide specific information as required by the Department of Labor. 19 Del.C. §708.

This is not entirely accurate. Title 19 Del.C. §708(b)(6) authorizes conditional employment based on exigent circumstances. At a minimum, consider inserting "generally" prior to "required".

Eighth, §7.2 recites as follows:

> When an employee hired after the effective date of the BCC is terminated, the employer shall promptly complete a Service Letter which will be stored by the BCC and available to the next prospective employer. The Service Letter shall expire after 5 years.

While this employer requirement may be conceptually sound, it may lack statutory authority. Title 19 Del.C. §708(b)(5) contemplates employers maintaining the Service Letters and honoring requests from prospective employers for the Service Letters pertaining to applicants. Violations of the law result in civil penalties. Council could not locate any statute which permits an employer to simply send the Service Letters to the BCC which would then respond to employer requests for the Letters.

Ninth, in §8.1, first sentence, the word "to" should be inserted between "authorized" and "furnish". Moreover, there are words missing from the second "sentence" which lacks a predicate. Alternatively, based on the analogous §8.1 in the proposed Criminal History Record Checks and Drug Testing regulation [16 DE Reg. 716 (1/1/13)], the second "sentence" could be deleted.

Tenth, in §8.2, the 15-year period for abuse/neglect convictions seems a bit long. By analogy, felony theft convictions have a 10-year disqualifying period. Consider a shorter period for misdemeanors involving abuse/neglect. The conviction information would still be disclosed pursuant to the criminal background check but there would not be a categorical, "no-exceptions" disqualification from employment if the 15-year standard were modified.

Eleventh, in §8.3.1, consider substituting "inform" for "informs". There is also a plural pronoun (them) with a singular antecedent (individual). Consider substituting "the individual" for "them". Alternatively, the term "him" could be substituted. See Delaware Administrative Code Style Manual, §3.3.2.1.

Twelfth, in §8.3.2, Council believes the fourth "bullet" (Evidence...conduct) is advertently "bunched" with the third bullet.

Thirteenth, in §10.8, insert "any" before "other". Compare analogous §10.8 in the proposed Criminal History Record Checks and Drug Testing regulation, 16 DE Reg. 716 (January 1, 2013).

Fourteenth, in §11.1, capitalize "Bureau".

Fifteenth, in §11.5.1, there is a plural pronoun (their) with a singular antecedent (Applicant). Consider substituting "his". See Delaware Administrative Code Style Manual, §3.3.2.1.

Sixteenth, in §11.5.4, substitute "names" for "name".

Seventeenth, Title 29 Del.C. §7972 provides for due process and a hearing to contest BCC errors. Hearings must be consistent with the APA. The regulation omits information in this context. For example, in §11.5, an applicant should be able to obtain a written copy of BCC disclosures to bring to an attorney or facilitate checking accuracy based on other records. Moreover, there is no mention of a hearing in the regulation. There is only a vague reference to an appeal in §11.5.5.

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

Sincerely,

Dafne A. Carnright/KPC

Dafne A. Carnright
Vice Chairperson

DAC:kpc

STATE OF DELAWARE

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January 30, 2013

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 Program: Food Benefit Volunteers Child Care Regulation [16 DE Reg. 717 (January 1, 2013)]

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Social Services (DSS) proposal to adopt some discrete amendments to its Child Care Subsidy Program standards. The GACEC would like to share the following observations on the proposed regulation.

First, §3.E. limits post-secondary education as follows: "E. Post Secondary Education (first degree only)." This could be interpreted as an Associate or two-year degree. This would be inconsistent with the attached §11003.7.5 of the DSS regulations. The latter regulation envisions "that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, ...DSS will not authorize child care services for parents/caretakers who already have one four-year college degree or are in a graduate program." It would be preferable to modify the reference in the proposed regulation to "(not to exceed initial 4-year college degree)'.

Second, DSS is striking current §11003.3.1. At 719. This section clarifies: 1) that child care for eligible parents is an entitlement; and 2) that parents with a child under age six are exempt from participation unless they volunteer. If these program features remain accurate, it may be preferable to retain the substance of the standard in a regulation. Council did not identify any other regulation which addresses the exemption for children under age six.

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

Sincerely,

Dafne A. Carnright/KPC

Dafne A. Carnright
Vice Chairperson

DAC:kpc

Enclosure

11003.7.5 Income Eligible/Education and Post-Secondary Education

Parents/caretakers who participate in education and post-secondary education can receive income eligible Child Care for the duration of their participation as long as:

A. their participation will lead to completion of high school, a high school equivalent or a GED; or

B. their participation in post-secondary education was part of a DSS TANF Employment and Training program; or

C. their participation in post-secondary education began while participating in the DSS Food Stamp Employment and Training (FS E and T) program; and

D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.

DSS will not authorize child care services for parents/caretakers who already have one four year college degree or are in a graduate program.

9 DE Reg. 572 (10/01/05)
10 DE Reg. 1007 (12/01/06)

ATTACHMENT OMITTED

STATE OF DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS
GEORGE V. MASSEY STATION
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December 28, 2012

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901

RE: DPH Proposed School-Based Health Centers Regulation [16 DE Reg. 600 (December 1, 2012)]

Dear Ms. Harvey:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health (DPH) proposal to adopt a regulation establishing standards for school-based health centers. The GACEC would like to share the following observations.

First, the Administration promoted legislation (House Bill No. 303) which was enacted in 2012 despite considerable debate and introduction of multiple amendments. The GACEC and State Council for Persons with Disabilities (SCPD) identified a significant concern with the application of the legislation to parents of students with disabilities. A copy of the May 7, 2012 GACEC memo is enclosed for your convenience. In a nutshell, federal law bars claims against insurance policies of Individuals with Disabilities Education Act (IDEA) and §504-identified students if there would be any adverse financial impact without parental consent. At the request of the Councils, Representative Quinton Johnson introduced House Amendment 3 to House Bill No. 303. In exchange for not pursuing the amendment, DHSS agreed to adopt a conforming regulation with specific language. This agreement was confirmed in writing through a May 10, 2012 email which can be provided upon request. Unfortunately, the proposed regulation does not conform to the commitment made by DHSS. The abridged reference in the regulation is as follows:

> 6.3. Any services provided by SBHCs pursuant to a student's Individualized Education Program (IEP) are not subject to third-party billing.

This omits all federally required protections for students with §504 plans. It also omits federally required protections for students being evaluated for eligibility under the IDEA and §504 who do not yet have an IEP or §504 plan.

At a minimum, this section should be revised as follows:

> *6.3. The following services shall be exempt from third-party billing:*
>
> *6.3.1. Any services provided to a student related to an evaluation or assessment of eligibility under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq, or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.; and*
>
> *6.3.2. Any services provided to a student implementing an Individualized Education Program (IEP) or Section 504 Plan developed in conformity with either of the above federal laws.*

Second, in §1.0, substitute "§§3365 and 3571G" for "§3365 and 3517G".

Third, in §2.0, the first sentence does not conform to the Administrative Code Drafting and Style Manual available at http://regulations.delaware.gov/documents/drafting&stylemanual.pdf. Section 3.1.2 of the Manual recites as follows:

> The first paragraph should read, "The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise."

Fourth, in §3.1, third sentence, the grammar is problematic. Consider substituting "SBHCs do not supplant...".

Fifth, §4.1 limits the authority to enroll a minor to a parent or guardian. The Division should consider whether a "relative caretaker" or "custodian" could authorize enrollment or if a definition of "parent" should be added which includes a "relative caregiver" or "custodian". See Title 14 Del.C. §§202 and 3101(7) and Title 13 Del.C. §707.

Sixth, there is no provision authorizing a student who has reached the age of majority to "self-enroll". See Title 14 Del.C. §3101(7) and Title 13 Del.C. §707. This should be addressed in the regulation.

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

Sincerely,

Terri Hancharick

Terri A. Hancharick
Chairperson

TAH:kpc

Enclosure

STATE OF DELAWARE

GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS
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December 28, 2012

Susan C. Sargent
USDOJ Settlement Project Director
Division of Substance Abuse and Mental Health
1901 North DuPont Highway
New Castle, Delaware 19720

RE: DSAMH Mental Health Screener and Voluntary Admission Payment Regulation [16 DE Reg. 611 (December 1, 2012)]

Dear Ms. Sargent:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Substance Abuse and Mental Health (DSAMH) proposal to adopt standards in two areas: 1) credentialing of mental health screeners; and 2) provider payment for voluntarily admitted patients. As background, House Substitute 1 for House Bill No. 311 was enacted and signed by the Governor in July, 2012. This bill revised the mental health commitment process. The Department of Health and Social Services (DHSS) is authorized to issue regulations implementing the revised law. See Title 16 Del.C. §5122(m). The GACEC would like to share the following observations.

1. The regulation is inaccurate in some contexts. For example, the "background" section (p. 612) recites as follows:

> Title 16 Ch. 51, Subchapter II now requires an assessment by a credentialed mental health screener before an individual is detained on a 24-hour psychiatric hold...

To the contrary, Title 16 Del.C. §5121A, which remains in effect until July 1, 2013, confers mental health detention authority on peace officers and physicians, not mental health screeners.

2. Section 1.0 recites as follows:

> Title 16, Chapter 51 of the Delaware Code states that only psychiatrists and people credentialed by the Department of Health & Social Services (DHSS) as a Mental Health

Screener (MH Screener) have the authority to detain or abrogate a detainment of a person involuntarily for a psychiatric evaluation.

This is inaccurate since it ignores Title 16 Del.C.§5121A which remains in effect until July 1, 2013. Also, the reference to "a detainment of a person involuntarily for a psychiatric evaluation" is oddly worded. It suggests that there could be a "voluntary" detainment. Furthermore, the statutory term is "detention" and there is a statutory definition of "involuntary detention". See Title 16 Del.C. §§5122 and 5122(a)(9). Finally, since the DHSS regulation only covers adults, the reference could be more specific. Consider substituting "detention of an adult for a psychiatric evaluation".

3. The title to §1.0 (Mental Health Screener Credentialing) is inappropriate. The title to the overall regulation identifies two topics: 1) credentialing of MH screeners; and 2) payment for voluntary admission. It makes no sense to have §1.0 titled "Mental Health Screener Credentialing" since this is the topic of §§1.0-8.0. It would be much clearer if the regulation were divided into two prominent subparts with headings, i.e. Mental Health Screener Credentialing and Payment for Voluntary Admission. The current format is to have §§1.0- 8.0 and 10.0 address credentialing and then to "bury" payment for voluntary admission out of order as §9.0. The current text in §1.0 could be placed under a heading of "Purpose; Use of Mental Health Screener Designation" or "Background; Use of Mental Health Screener Designation".

4. In §1.0, substitute "professionals" for "people" to conform to Title 16 Del.C. §5122(a)(9).

5. In §1.0, second sentence, substitute "regulation" for "chapter".

6. In §1.0, second sentence, the reference to "himself or herself" is outdated. The Delaware Administrative Code Style Manual provides the following guidance:

> 3.3.2 Gender
> 3.3.2.1. Avoid using pronouns that indicate gender. Use the noun which the pronoun would replace. However, if pronoun gender must be indicated, use "his" instead of "his/her" and "he" instead of "he/she" or "(s)he." The use of the masculine gender is addressed in 1 Del.C. §304 of the Delaware Code.

7. In §2.0, the definition of "Credentialed Mental Health Screener" uses a plural pronoun ("their") with a singular antecedent ("DSAMH"). However, the entire reference to "or their designee" should be stricken. The statute contemplates credentialing by the Department, not some non-Departmental entity.

8. In §2.0, substitute "Correction" for "Corrections" to conform to Title 29 Del.C. Ch. 89.

9. Section 2.0, definition of "Crisis Experience in a mental health setting" is grammatically weak. In pertinent part, it recites as follows:

> "Crisis experience in a mental health setting" means a crisis experience in a mental health setting is defined as direct experience...

Council suggests substituting the following: "Crisis experience in a mental health setting" means direct experience..."

10. In Section 2.0, definition of "Licensed Mental Health Professionals", the grammar merits correction. Consider inserting a period after the term "Chapter 51". Then, begin the next sentence with "The term includes licensed physicians..."

11. In Section 2.0, definition of "Licensed Mental Health Professionals", Council questions the requirement that a licensed registered nurse have "a bachelor's degree in nursing (BSN)" since this is not required by the licensing statute. See Title 29 Del.C. §1910. There may be many qualified registered nurses with considerable experience who would be disqualified by this unnecessary limitation.

12. In Section 2.0, the definition of "Supervision of unlicensed mental health professionals by a psychiatrist" is problematic. It would be preferable to convert this section to a substantive standard rather than a definition. For example, the second sentence is an operational protocol, not a definition. There are multiple grammatical errors in this definition. For example, there is a singular indefinite adjective ("an") with a plural noun ("professionals"). The references to "need to work" and "will need to be placed" are not typical regulatory terms. Consider substituting "must work" and "shall be placed". The reference to "agency's by-laws" makes no sense. Most agencies do not have "by-laws" apart from corporate by-laws defining the work of the board of directors. Furthermore, some individuals may not work for an "agency". Cf. §3.4.1.1 reference to "professional not affiliated with any Delaware health care facility".

13. In Section 3.2.2, strike "that such person is licensed" and substitute "that he is licensed" or "of a current license".

14. In §3.4.1, it is inconsistent to require five years of experience for DSAMH employees but only two years of experience for employees of any other public or private health care facility.

15. In §3.4.2, there is no provision for a public agency apart from DSAMH (e.g. Veterans Hospital) "vouching" for the years of experience.

16. In §3.4.1.2, there is a plural pronoun ("their") with a singular antecedent ("facility").

17. In §3.4.2.1, there is a plural pronoun ("they") with a singular antecedent ("applicant"). Moreover, consistent with Par. 11 above, Council again questions the categorical requirement that a licensed RN have a BSN degree.

18. In §3.4.2, the multiple references to "relating to Professions and Occupations" are unnecessary and should be deleted.

19. In §§3.4.2, strike the multiple references to "that such person is licensed" and substitute "that he is licensed" or "of a current license".

20. The GACEC recommends deletion of §3.4.2.4.2 as unnecessary. See Title 24 Del.C. §3908.

21. The GACEC recommends deletion of §3.4.2.5.2 as unnecessary. See Title 24 Del.C. §3032. If not deleted, the reference to "Board" makes very little sense in the context of the regulation.

22. Council recommends deletion of §3.4.2.6.2 as superfluous. See Title 24 Del.C. §3052. If not deleted, the reference to "Board" makes little sense in the context of the regulation.

23. Section 3.5.1 requires unlicensed mental health professionals applying for screener status to pay both an application fee and credentialing fee. There is no analog for licensed professionals. It is unclear if the latter professionals are also expected to pay such fees.

24. Since the standards are identical, §§3.5.1.1 and 3.5.1.2 could be merged.

25. In §§3.5.1.3 and 3.5.1.4, it is inconsistent to allow an unlicensed State employee to qualify with a Bachelor's degree while requiring a Master's degree for a private sector employee. This is reminiscent of the former practice of allowing unlicensed physicians to practice at the Delaware Psychiatric Center (DPC). There is very little logic to adopting a lesser credentialing qualification for State employees.

26. While the credentials sections address clinical experience, they are completely silent on expertise in utilizing police power and involuntary detention procedures. The statute contemplates the screeners promptly "taking into custody" individuals whose behavior constitutes a danger to self or others. See Title 16 Del.C. §5122(b). The statute also contemplates the screener transporting the individual involuntarily to another screener or facility. See Title 16 Del.C. §5122(c). The former Attorney General opposed granting police power to mental health personnel in the commitment context based on concerns about lack of training and capacity to detain violent individuals. Council queries whether physical fitness standards should be included in the credentialing criteria? Obviously, the ability to physically detain an unruly individual is contemplated by the statute and some individuals may initially appear cooperative but change their "affect" quickly. Training would also be essential.

27. Definitions should be compiled in the front of the regulation. See Delaware Administrative Code Style Manual, §3.1.2. It is unusual and confusing to have both a §2.0 definitions section and a §4.0 definitions section. Alternatively, Section 4.0 contains substantive standards rather than "definitions" and could be converted to a "contents of initial application" section and a "reapplication standards" section. The format of §4.0 could then be converted to the following: "An initial application for approval as an MH Screener shall include the following:...". The 2-year term of approval should then be inserted. Finally, a section could then require a reapplication to be filed at least X days prior to the expiration of the 2-year term. Otherwise, the regulation would literally permit a reapplication to be filed on the 2-year expiration date.

28. In §4.0, delete "or their designee". See Par. 7 above.

29. In §4.0, the reference to "group" is inappropriate since there are two sets of exempt professionals.

30. In §5.1, first definition, substitute "credentialed" for "credential".

31. Consistent with Par. 27 above, it is unusual and confusing to have a §2.0 definitions section, §4.0 definitions section, and §5.0 definitions section.

32. In Section 5.0, there is no operative sentence. The section consists of definitions and an outline.

There is no sentence similar to "(T)he following standards will apply to the credentialing and re-credentialing of MH screeners..."

33. The grammar in §5.1, first definition, is incorrect. At a minimum, consider inserting "which" prior to "will". However, substantively, the "definition" makes little sense and is not used anywhere in the text of the regulation.

34. The grammar in §5.1, second definition, is incorrect. At a minimum, consider inserting "which" prior to "will". However, substantively, the "definition" is unclear and is not used anywhere in the text of the regulation.

35. In §5.0, the third definition is a putative substantive standard, not a definition.

36. In §5.2.1.1, Council suspects the word "specific" was intended to be "specified".

37. In §5.2, the multiple references to "specified above" should be converted to "specified in §5.1" for clarity.

38. Punctuation is missing from the end of §5.3.2.2.

39. There is a lack of parallel form in §§5.2.4.4, 5.3.1.3, 5.3.2.3, and 5.3.3.3. See Delaware Administrative Code Style Manual, §6.2.3

40. Section 6.0 ("Data") is not within the scope of the title to the regulation which is limited to credentialing and payment for voluntary patients. Moreover, the lengthy narrative is not written in regulatory form and is extremely difficult to follow.

41. In §6.0, substitute "detentions" for "detainments" to conform to the statute and §7.0. See discussion in Par. 2. B. above. The Delaware Administrative Code Style Manual provides the following guidance:

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

42. Section 7.0 has a plural pronoun ("their") with a singular antecedent ("client").

43. In §7.0, substitute "self" for "that person".

44. Section 9.0 consists of a single 78-word sentence. Consider "breaking out" the last three concepts as subparts. For example, it could be revised as follows: Payment....confirmation of the following: 9.1. The admission represents...; 9.2. The duration of stay...; and 9.3. The State is the payer...

45. In §10.0, there are three instances of use of plural pronouns ("their") with a singular antecedent ("individual").

46. The GACEC respectfully requests clarification that the Division has not overlooked conducting

criminal background checks in connection with the certification, particularly in the context of unlicensed screeners since they would not have been vetted through the licensing process.

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

Sincerely,

Terri Hancharick

Terri A. Hancharick
Chairperson

TAH:kpc

CC: The Honorable Rita Landgraf, Secretary, DHSS

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December 21, 2012

BY U.S.MAIL AND FAX TO (302) 255-4428
Susan C. Sargent
USDOJ Settlement Project Director
Division of Substance Abuse and Mental Health
1901 North DuPont Highway
New Castle, Delaware 19720

Re: Proposed DSAMH regulations "Credentialing Mental Health Screeners and Payment for Voluntary Admissions"

Dear Ms. Sargent:

Below please find the Disabilities Law Program's comments to the proposed regulations pursuant to 16 Del. C. § 5122(m), for credentialing mental health screeners and paying for voluntary admissions of adults whose admissions are eligible for payment by the State. Thank you for the opportunity to provide comments on these regulations.

Comments:

1. In § 1.0 a Mental Health Screener is referred to as a "MH Screener," a reference which is repeated throughout the regulations in §§ 4.0, 6.0 and 8.0. However, in § 2.0 "Credentialed Mental Health Screener" is made a defined term. Because Credentialed Mental Health Screener is a defined term, it should be used consistently throughout the regulations. All references to "MH Screener" should be replaced by "Credentialed Mental Health Screener."

2. In § 2.0, the reference to DSAMH's "designee" should be deleted because 16 Del. C. § 5122(a)(1)(b)-(d) provides for credentialing by the Department of Health and Social Services, not a non-Departmental designee.

3. In § 2.0, the definition of "Crisis experience in a mental health setting" unnecessarily states in that is defining a term ("'Crisis experience in a mental health setting' means a crisis experience in a mental health setting *is defined as* . . ."). This sentenced should be modified to read "'Crisis experience in a mental health setting' means direct experience . . ."

4. In § 2.0 the definition of an "Unlicensed mental health professional" is very vague and anyone who is directly supervised by a psychiatrist and does not hold a professional license issued by the State of Delaware may satisfy the criteria. For example, a receptionist who works for a psychiatrist would satisfy the definition because he or she would be directly supervised by a psychiatrist and would not hold a professional license issued by the State of Delaware. These criteria should be further developed so that only those individuals who have relevant mental health experience can satisfy the definition.

5. In § 2.0 the definition of "Supervision of unlicensed mental health professionals by a psychiatrist" is not structured as a defined term. The definition of a defined term should be able to be substituted into any sentence in which the defined term is used and make sense to the reader. The current definition of "Supervision of unlicensed mental health professionals by a psychiatrist" does not so much define the term, but rather sets out specific conditions for the supervisory relationship as well as documentation requirements.

    a. The first sentence of this definition, which sets out the requirements of the supervisory relationship, would make more sense under § 3.5 "Unlicensed Mental Health Professionals under Direct Supervision of a Psychiatrist."

    b. The second sentence of this definition, which requires a faxed or original detainment form with the supervising psychiatrist's signature to be placed in the client's medical record within 24 hours, would make more sense under § 6.0 "Data."

6. In § 3.2 "Board Certified Emergency Physicians," all references to "physicians" should be modified to "board certified emergency physicians." Physicians who are not board certified emergency physicians are subject to a different set of qualification and certification requirements. For this reason, the text of the regulations should differentiate between these two sets of physicians and should not use interchangeable terminology. DSAMH should consider making "Psychiatrists," "Board Certified Emergency Physicians," and "Physicians" defined terms under § 2.0 to further reduce potential confusion.

7. Sections 3.2.1, 3.3.1, 3.4.1, and 3.5.1 all require applicants who wish to be credentialed mental health screeners to submit "qualifications," however the regulation does not state what specifically what "qualifications" entails. Moreover, it is unclear whether these "qualifications" are intended to be in addition to the evidence of licensure and years of relevant experience as also required by the regulations (see §§ 3.2.2, 3.3.2, 3.4.1.1, 3.4.1.2, 3.4.2.1 - 3.4.2.7.1 and 3.5.1.1 - 3.5.1.5). This will likely create confusion for applicants who will be unsure of what documentation they must submit in order to apply to be credentialed mental health screeners. Likewise, individuals wishing to challenge why they were not found eligible to become credentialed mental health screeners may have a strong argument that the regulations were unclear as to what they were required to submit.

8. In § 3.4.2.2. Advanced Practice Nurses are required to show that they are "working under a formal protocol with a Delaware licensed physician." This criterion is not required of any other non-physician applicant to be a credentialed mental health screener. If this criterion is intended to address situations in which an Advanced Practice Nurse is practicing independently it should be addressed explicitly.

9. In § 3.4.2.4.2 Licensed Clinical Social Workers who wish to be credentialed mental health screeners must show that they are licensed by the State of Delaware as a Licensed Clinical Social Worker as well as show they passed the American Association of State Social Worker Boards. The requirement that applicants show they passed the American Association of State Social Worker Boards is duplicative. Pursuant to 24 Del. C. § 3908 an individual cannot be licensed as a Licensed Clinical Social Worker in Delaware without having passed the American Association of State Social Worker Boards.

10. In § 3.4.2.5.2 Licensed Professional Counselors of Mental Health who wish to be credentialed mental health screeners must show they are licensed by the State of Delaware as a Licensed Professional Counselor of Mental Health as well as show they are certified by the National Board for Certified Counselors, Inc., or the Academy of Clinical Mental health Counselors, or other national mental health specialty certifying organization acceptable to the Board. The requirement that applicants show they are credentialed by the appropriate body is duplicative. Pursuant to 24 Del. C. § 3032(a)(1) an individual must obtain one of these certifications in order to be licensed as a Licensed Professional Counselor of Mental Health. Additionally, the reference in this subsection to the "Board" makes no sense. "Board" is not a defined term, nor is there any other reference regarding to which "Board" this provision is referring.

11. In § 3.4.2.6.2 Licensed Marriage and Family Therapists who wish to be credentialed mental health screeners must show they are licensed by the State of Delaware as a Licensed Marriage and Family Therapist as well as show they have passed the Association of Marital and Family Therapy Regulatory Boards or other examination acceptable to the Board. The requirement that applicants show they have passed the Association of Marital and Family Therapy Regulatory Boards or other examination. Pursuant to 24 Del. C. § 3032(a)(1) an individual must obtain one of these certifications in order to be licensed as a Licensed Marriage and Family Therapist. Additionally, the reference in this subsection to the "Board" makes no sense. "Board" is not a defined term, nor is there any other reference regarding to which "Board" this provision is referring.

12. Section 3.5.1.3 and 3.5.1.4 specify different standards for unlicensed mental health professionals applying to be credentialed mental health screeners, depending on whether they are employed by the State or a private facility. Unlicensed individuals who wish to work for the State are only required to have a bachelor's degree, whereas unlicensed individuals who wish to work for a private facility are required to have a master's degree. It is illogical to hold individuals working for the State to a lesser standard than those working in the private sector. The credentialing requirements should be standardized regardless of whether an individual works for a public or private facility.

13. Section 4.0 should not contain "definitions." There should only be one "definitions" section, which should be in the front of the substantive regulations. Section 2.0 should be the only definition section. Moreover, the terms contained in § 4.0 are substantive standards regarding applications and re-applications for credentialing, rather than true definitions. See Par. 5 above. Section 4.0 should be modified to reflect its substantive nature. The term "Definitions" should be deleted, and "Application for Credentialing" and "Application for Re-credentialing" should be numbered as §§ 4.1 and 4.2 respectively.

14. Section 4.0 does not specify to whom an application or re-application for credentialing should be sent.

15. In § 4.0 the reference to "or their designee" should be deleted. See Par. 2 above.

16. Section 5.0 should not contain "definitions." See Pars. 5 & 13 above. Additionally, the terms which are defined in § 5.0 are not used anywhere in the text of the regulations. It makes no sense to define terms which are never subsequently used. Moreover, the "definitions" in § 5.0 are not true definitions, but rather substantive standards.

17. The requirements in § 3.0 "Qualifications for Applicants for Credentialed Mental Health Screener" and § 5.2 "Credentialing" would be clearer and more understandable for both professionals and lay people if they were combined into a single section. If these sections are not combined, the term "qualifications" as used through § 5.2 should be clarified by cross-referencing the analogous subsections in § 3.0. For example, § 5.2.1.1 should be modified to read "'Compliance with qualifications specified above in Section 3.2'; '§ 5.2.2.1 should be modified to read "Compliance with qualifications specified in Section 3.3'" and so on.

18. In § 5.2.2.2 the reference to "DHSS Division of Substance Abuse and Mental Health" should be replaced by "DSAMH." "DSAMH" is defined as the appropriate acronym for the Division of Substance Abuse and Mental Health in § 1.0 and should be used consistently throughout the regulation.

19. Sections 5.3.1.1, 5.3.2.1, and 5.3.3.1 all refer to "qualifications specified above," however, the regulations do not cross-reference which specific qualifications are being cited. For clarity, these subsections should include a cross-reference to the particular "qualification" an individual must comply with in order to be eligible for re-credentialing. See Par. 17 above.

20. Sections 5.3.1.3, 5.3.2.3, and 5.3.3.3 refer to DSAMH's acceptance of "CMUs." However, the text does not explicitly state if CMUs will be accepted *in lieu of* additional DSAMH training, required in order to be re-credentialed as a mental health screener. This should be clarified. Additionally, the regulations should specify if a certain number of CMU hours are required in order to be accepted in lieu of DSAMH training.

21. In § 6.0 all references to "clients" should be replaced by "individuals" or "persons"

22. In § 6.1 substitute "release" for "undo a detainment."

23. In § 7.0 the reference to "clients" should be replaced by "individuals" or "persons"

24. In § 7.0 the language "pursuant to 16 Del. C. § 5122" should be added after "the intent of the law is to ensure that no client is detained." The revised language should read "The intent of the law is to ensure that no client [individual] is detained pursuant to 16 Del. C. § 5122. . . . " This will add clarity to the paragraph.

25. In § 8.1 the reference to "general facilities" is vague.

26. Section 8.1 effectively makes the only reason a credentialed mental health screener can lose his or her credential due to failure to comply with federal confidentiality laws. There is no mention of the potential revocation or suspension of a screener's credential due to abuse or neglect of patients or inappropriate use 24-hour detainments. Language should be added to include these circumstances as reasons a screener may lose his or her credential. It would be helpful to cross-reference 16 Del. C. § 5161(6), "Mental Health Patient's Bill of Rights," which creates an enforceable right to be free from abuse, mistreatment, neglect, unjustifiable force, and seclusion, physical restraint, drugs or other interventions administered primarily for purposes of staff convenience (and excluding seclusion, physical restraint, drugs and other interventions which comply with safeguards proscribed by the statute). If additional language is not added to § 8.1, then DSAMH will not have the authority to revoke or suspend a screener's credential for anything other than failure to comply with federal confidentiality laws. This section should also specifically state what criteria DSAMH will consider when evaluating whether an individual's credential should be revoked or suspended.

27. There is no definition of "records" for the purpose of § 8.1. Additionally, record keeping requirements of credentialed mental health screeners is out of place in § 8.1 which is about the suspension or revocation of an individual's credential to be a screener. This will likely create confusion for credentialed mental health screeners who may not realize they have specific record keeping duties in addition to those outlined in § 6.0. Any record keeping requirements should be incorporated into § 6.0.

28. Section 8.2 does not state who should be notified should a credentialed mental health screener lose his or her professional license or cease to work under the supervision of a psychiatrist.

29. The reinstatement standard pursuant to § 8.2 is very weak and should include the criteria which DSAMH will consider when deciding whether to reinstate and individual's credential. Section 8.2 should also state whether an individual's credential to be a screener is automatically reinstated at the end of an individual's suspension or reinstatement of their professional license.

30. Section 10.0 "Appeal Process" should be included under § 8.0 or renumbered as Section 9.0. Currently, § 8.0 which addresses the suspension and revocation of the mental health screener credential and § 10.0 which addresses appeals of the suspension or revocation of the mental health screener credential are separated by § 9.0 which addresses payment for voluntary and involuntary admission. This is incongruent. I would make much more sense to address all procedures related to the revocation and reinstatement of an individual's credential sequentially.

31. Section 10.0 "Appeal Process" should be enhanced to include whether individuals appealing the suspension or revocation of their mental health screener credential can submit additional records to be considered by DSAMH, have an opportunity to present his or her case in person, be represented by counsel, etc. Likewise the decision from the Director of DSAMH should be required to be in writing and set forth with specificity the reasons an appeal was granted or denied. Appeal rights will be especially crucial for licensed screeners, who, depending on the precipitating reason their credential was suspended or revoked, may face additional consequences from their relevant licensing board. For example, doctors may be disciplined by the medical board for actions including "[a]ny dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public," "misconduct, including but not limited to sexual misconduct, incompetence, or gross negligence or pattern of negligence in the practice of medicine or other profession or occupation regulated under this chapter," or "willful violation of the confidential relationship with or communications of a patient." 24 Del. C. § 1731 (a), (b)(9) & (b)(11)-(12). These criteria for discipline from the medical board may be satisfied, depending on the relevant circumstances, by events precipitating a doctor's suspension or revocation of his or her screening credential. Therefore, given the potential ramifications for licensed screeners, the appeal process should be strengthened and clarified.

32. In § 9.0 the reference to "hospitals" should be should be replaced by "designated psychiatric treatment facilities as defined in 16 Del. C. 5122"

33. In § 9.0 the reference to "clients" should be replaced by "individuals" or "persons."

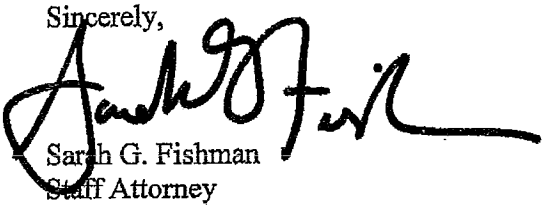
34. Section 9.0 allows payment to hospitals only upon independent review that an admission was the most appropriate and least restrictive treatment for the client in crisis and the state is the payer of last resort. There are several issues which this raises:

    a. It is unclear whether this section covers 24-hour emergency detentions *only* or payment for longer civil commitments as well. Given its placement in the regulations to Chapter 51, it would make sense for it to only cover 24-hour emergency detentions. However, the use of the term "admission" and referral to independent review of "the duration of stay for the admitted client" indicates that it may cover admissions lasting longer than an initial 24-hour emergency detention. This confusion should be rectified.

b. It is unclear based on the current language of this section whether an individual who received treatment may be billed for that treatment by the hospital if the State disagrees with a hospital's admission of the individual and withholds payment. This may potentially create a situation in which an individual is detained for 24 hours or even committed for a longer period of time, the State disagrees with that treatment decision and withholds payment, and the hospital then bills the individual for payment. This would obviously not be the intended outcome of a provision that tries to penalize hospitals for inappropriate care. Language should be added to this section which clarifies that if the State's independent review of an admission determines that it was not the most appropriate and least restrictive treatment option available and withholds payment, the hospital shall not bill the person who was detained or committed for payment.

If there are any questions about the comments submitted above, please contact me by phone at (302) 575-0660, ext. 241 or by email at sfishman@declasi.org. Thank you for the opportunity to provide input regarding these important regulations.

Sincerely,



Sarah G. Fishman
Staff Attorney

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, Chapter 51 (16 **Del.C.** Ch. 51)

FINAL

ORDER

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Substance Abuse and Mental Health (DSAMH) initiated proceedings to promulgate new regulations regarding the process by which individuals can be detained for behavioral health assessment and treatment. The Department's proceedings to promulgate new regulations were initiated pursuant to 29 Delaware Code, Section 10114, with authority prescribed by 29 Delaware Code, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 Delaware Code Section 10115 in the December 2012 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2012, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed establishes the Division of Substance Abuse and Mental Health's regulations for the eligibility criteria and means by which individuals qualify to attain credentialing as a mental health screener.

Background

House Bill 311 significantly updates the laws under which a person can be held involuntarily for up to 24 hours for a mental health evaluation. In place of the current system where a person is transported in handcuffs by police to a hospital emergency department, the bill allows a psychiatrist or credentialed mental health screener to evaluate a person anywhere and then transport that person to the most appropriate location for evaluation or treatment in the most appropriate and least restrictive manner. The changes in this bill will be phased in over a year to ensure that the greatly expanded, community-based services are fully operational before the complete change in procedure takes place. Credentialed Mental Health Screeners are to be in use by July, 2013.

In addition to providing people with a wider array of appropriate treatment options, these changes will free law enforcement from unnecessary transportation duties and long waits in hospital waiting rooms. This bill expands the number and kind of professional staff who are credentialed to involuntarily detain someone for a mental health evaluation, increases the immunity afforded to doctors, and expands immunity to other professionals involved in the process. In addition to moving Delaware towards best practices in this field and protecting the civil rights of Delawareans, these changes will enable the State to attain compliance with the terms set forth in Settlement Agreement United States v. State of Delaware, C.A. No. 11-591-LPS. This regulation delineates what who may be eligible, what information must be contained in the application to become credentialed as a Mental Health Screener, establishes the authority for the format for the training and delineates how the credentialed status must be maintained and how it may be suspended or revoked.

Summary of Proposal

This regulation sets forth methods used to determine eligibility for training and credentialing as a mental health screener. Effective July 1, 2013, new policy is added to the Division of Substance Abuse and Mental Health at DSAMH 6002 to provide mental health screener credentialing requirements.

Fiscal Impact Statement

The proposed regulation imposes no additional costs on DSAMH. Credentialing of Mental Health Screeners is required as a piece of Delaware's legislative and other efforts to improve the State's behavioral health care system in keeping with the U.S. Department of Justice Olmstead Settlement Agreement, entered into in July, 2011. The proposed regulation completes the promulgation of changes in the laws governing how the State acts to preserve the civil and human rights of individuals who may be recommended for involuntary detention under 16 Del. C. Chapter 51 as amended by HB 311 in July, 2012.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities and CLASI offered the comments and recommendations summarized below. DSAMH noted that the comments received from the former two entities were identical in content and that the latter's comments largely mirrored those of the former two. Both in response to comments and pursuant to DSAMH review, non-substantive changes were made several places in the regulations. For purposes of reference, DSAMH has considered each comment as it was presented in the first of the three respondents' letters and responds as follows:

Comment:

1. The regulation is inaccurate in some contexts...[with regard to conflicting old and new language]
2. (same concern)

Agency Response: *We understand. However, these regulations are being written in support of the new language. The amended language and the existing language were to be concurrently effective for one year, that is, until July, 2013. Therefore, there is no conflict: until such a time as there are credentialed Mental Health Screeners, the old language still applies. The language applies to children as well as adults; in Title 16 Chapter 51 references to children remained unchanged in consultation with the Kids Department.*

Comment:

3. The title to §1.0 (Mental Health Screener Credentialing) is inappropriate..The title to the overall regulation identifies two topics: 1) credentialing of MH screeners; and 2) payment for voluntary admission. ...It would be much clearer if the regulation were divided into two prominent subparts with headings...

Agency Response: *Amended general title of the regulation.*

6002 Credentialing Mental Health Screeners ~~and Payment for Voluntary Admissions~~

Comment:

4. In §1.0, substitute "professionals" for "people" to conform to Title 16, **Del.C.** §5122(a)(9)
5. In §1.0, ...substitute "regulation" for "chapter".
6. In §1.0...the reference to "himself or herself" is outdated.

Agency Response: *Amended, as follows.* ***Note that the Division supports the use of gender neutral language.***

1.0 Mental Health Screener Credentialing

Title 16, Chapter 51 of the **Delaware Code** states that only psychiatrists and ~~**people**~~ **professionals** credentialed by the Delaware Department of Health & Social Services (DHSS) as a Mental Health Screener (MH Screener) have the authority to detain or abrogate a detainment of a person involuntarily for a psychiatric evaluation. No persons shall hold ~~**himself or herself**~~ **themselves** out to the public as ~~**a**~~ credentialed mental health screeners unless the persons ~~**is**~~ **are** credentialed in accordance with this chapter. The Division of Substance Abuse and Mental Health (DSAMH) is the DHSS Division responsible for implementing and enforcing this law.

Comment:

7. In §2.0, the definition of "Credentialed Mental Health Screener" uses a plural pronoun with a singular antecedent. However, the entire reference to "or their designee" should be stricken.

Agency Response: *Amended, as follows.*

"Credentialed Mental Health Screener" means an individual who has applied for and been approved to be credentialed as a mental health screener under Chapter 51 by the DSAMH ~~**or their designee**~~.

Comments:

8. In §2.0, substitute "Correction" for "Corrections" to conform to Title 29 **Del.C.** Ch 89.
9. In §2.0, definition of "Crisis experience in a mental health setting "is grammatically weak...

Agency Response: *Comment 8 apparently refers to language in an earlier draft that was amended before the last draft was published (Word appears as corrected in the published version). Amended to address Comment 9, as follows.*

"Crisis experience in a mental health setting" ~~**means a crisis experience in a mental health setting**~~ is defined as direct experience providing acute crisis services to people with mental health disorders in settings that include, but are not limited to, psychiatric assessment centers, hospital emergency rooms, crisis walk in settings, admission departments of psychiatric or general service hospitals, mobile crisis departments, drop in centers and certain settings found in the Department of Correction~~s~~

Comments:

10. In §2.0, definition of "Licensed Mental Health Professionals," the grammar merits correction...

11. In §2.0, definition of "Licensed Mental Health Professionals," Council questions the requirement that a licensed registered nurse have "a bachelor's degree in nursing (BSN)" since this is not a requirement by the licensing state....

Agency Response: *The panel of experts convened to consider these regulations held that there is considerable difference between a 2-year and a 4-year nursing degree. Licensed individuals working under the supervision of a psychiatrist are not precluded from becoming credentialed. Amended to correct the grammar, as follows:*

"Licensed Mental Health Professionals" means individuals who are licensed by the State of Delaware and who are otherwise eligible to be credentialed as a mental health screener under Chapter 51. **The term** includes**:** licensed physicians (MD/DO) whose practice specialty is other than psychiatry; licensed registered nurses with a bachelor's degree in nursing (BSN); licensed advanced practice registered nurses (APN); licensed physician assistants (PA-C); licensed clinical psychologists (PhD/Psy.D); licensed clinical social workers (LCSW); licensed mental health counselors (LMHC); and licensed marriage and family therapists (LMFT).

Comment:

12. In §2.0, the definition of "Supervision of unlicensed mental health professionals by a psychiatrist" is problematic.

Agency Response: *Amended to clarify, as follows. The Division notes that "organization" in this context refers to contracted provider or government agencies.*

"Supervision of unlicensed mental health professionals by a psychiatrist" means any unlicensed mental health professionals who need to work under a psychiatrist licensed to practice medicine will perform this work under their **organization's ~~agency's~~ ~~by-laws~~ practice standards and guidelines~~. and The~~ This includes** requirements that the credentialed mental health screener discuss the individual-in-care's issues on the phone or through telepsychiatry with the supervising psychiatrist at the time of the detainment decision, and assur**eing** that this psychiatrist agrees and countersigns the decision made. An **~~faxed~~ electronically transmitted copy** or original detainment form with the supervising psychiatrist's signature will need to be placed in the client's medical record at the facility or site where the detainment occurred within 24 hours.

Comment:

13. In §3.2.2, strike "that such person is licensed and substitute "that he is licensed" or "of a current license".

Agency Response: *Amended, as follows*:

3.2.2 Each physician must supply evidence **~~that such person is licensed~~ of current licensure** to practice medicine in Delaware and **~~is~~ current** Board Certifi**~~ed~~cation** by the American Board of Emergency Medicine.

Comment:

14. In §3.4.1, it is inconsistent to require five years of experience for DSAMH employees but only two years of experience for employees of any other public or private health care facility.

15. In §3.4.2, there is no provision for a public agency apart from DSAMH (e.g. Veterans Hospital) "vouching" for the years of experience.

16. In §3.4.1.2, there is a plural pronoun ("their") with a singular antecedent ("facility").

Agency Response: *Comments 14 and 15 apparently refer to language in an earlier draft that was amended before the last draft was published; grammar corrected as requested by comment 16. See below:*

3.4.1 Each applicant must submit qualifications and supply evidence that:

3.4.1.1 If employed by DSAMH or a self-employed professional not affiliated with any Delaware health care facility, the applicant has five (5) years' experience in mental health clinical and/or crisis settings as an employed or as a contracted professional.

3.4.1.2 If employed or contracted by any Delaware health care facility, the applicant has at least two (2) years experience in mental health clinical and/or crisis settings as an employed or as a contracted professional, and that ~~that~~ non-state health care facilit**~~y~~ies** will take responsibility for the years of experience required for their staff to be credentialed.

Comments:

17. In §3.4.2.1 There is a plural pronoun ("they") with a singular antecedent ("applicant"). ...Council again questions the categorical requirement that a licensed RN have a BSN degree.

18. In §3.4.2, the multiple references to "relating to Professions and Occupations" are unnecessary and should be deleted.

19. In §3.4.2, strike the multiple references to "that such person is licensed" and substitute "that he is licensed" or "of a current license".

20. The GACEC recommends deletion of §3.4.2.4.2 as unnecessary. ...

21. The GACEC recommends deletion of §3.4.2.5.2 as unnecessary....

22. Council recommends deletion of §3.4.2.6.2 as superfluous....

Agency Response: *With the exception of the requirement for the 4-year nursing degree which was the*

recommendation of the expert panel, the Division agrees with most comments and amended the section, as follows:

3.4.2 Licensed Non-Physician Mental Health Professionals must meet the following qualifications:

3.4.2.1 Registered Nurse. Each applicant shall document ~~that they are licensed in~~ **current licensure by** the State of Delaware as a Registered Nurse with a BSN degree and in good standing, as set forth in 24 **Del.C.** Ch. 19~~, relating to Professions and Occupations~~.

3.4.2.2 Advanced Practice Nurse. Each applicant shall document ~~that such person is licensed in~~ **current licensure by** the State of Delaware as an Advanced Practice Nurse in good standing, as set forth in Title 24 **Del.C.** Ch. 19~~, relating to Professions and Occupations~~ and ~~is working~~ **employment** under a formal protocol with a Delaware licensed physician

3.4.2.3 Licensed Psychologist. Each applicant shall document ~~that such person is licensed in~~ **current licensure by** the State of Delaware as a Licensed Clinical Psychologist in good standing, as set forth in 24 **Del.C.** Ch. ~~35 relating to Professions and Occupations~~.

3.4.2.4 Licensed Clinical Social Worker

3.4.2.4.1 Each applicant shall document ~~that such person is licensed in~~ **current licensure by** the State of Delaware as a Licensed Clinical Social Worker in good standing, as set forth in 24 **Del.C.** Ch. 39 ~~relating to Professions and Occupations~~.

3.4.2.4.2 Each applicant shall document that such person has passed the American Association of State Social Work Boards.

3.4.2.5 Licensed Professional Counselor of Mental Health

3.4.2.5.1 Each applicant shall document ~~that such person is licensed in~~ **current licensure by** the State of Delaware as a Licensed Professional Counselor of Mental Health in good standing, as set forth in 24 **Del.C.** Ch. 30 ~~relating to Professions and Occupations~~.

3.4.2.5.2 Each applicant shall document that such person is certified by the National Board for Certified Counselors, Inc. (NBCC), or the Academy of Clinical Mental Health Counselors (ACMHC), or other national mental health specialty certifying organization acceptable to the Board.

3.4.2.6 Licensed Marriage and Family Therapist

3.4.2.6.1 Each applicant shall document ~~that such person is licensed in~~ **current licensure by** the State of Delaware as a Licensed Marriage and Family Therapist in good standing, as set forth in 24 **Del.C.** Ch. 30 ~~relating to Professions and Occupations~~.

3.4.2.6.2 Each applicant shall document that such person has passed the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) standardized examination or other examination acceptable to the Board.

3.4.2.7 Licensed Physician Assistant.

3.4.2.7.1 Each applicant shall document ~~that such person is licensed in~~ **current licensure by** the State of Delaware as a Physician Assistant in good standing, as set forth in 24 **Del.C.** Ch. 17, ~~relating to Professions and Occupations~~ and ~~is working~~ **employment** under the delegated authority of a licensed physician.

Comments:

23. Section 3.5.1 requires unlicensed mental health professionals applying for screener status to pay both an application fee and credentialing fee. There is no analog for licensed professionals. It is unclear if the latter professionals are also expected to pay such fees.

24. Since the standards are identical, §§3.5.1.1 and 3.5.1.2 could be merged.

25. In §§3.5.2.4 and 3.5.1.4, it is inconsistent to allow an unlicensed State employee to qualify with a Bachelor's degree while requiring a Master's degree for a private sector employee…

Agency Response: *Comments accepted; amended, as follows:*

3.5 Unlicensed Mental Health Professionals under Direct Supervision of a Psychiatrist

3.5.1 Each unlicensed mental health professional who is applying to become credentialed as a mental health screener must submit qualifications, ~~pay the application fee, pay the credentialing fee,~~ and supply evidence that:

3.5.1.1 Such person has had two **(2)** years of clinical and/or crisis experience if working as a State employee or contractor; ~~3.5.1.2 Such person has at least two (2) years of clinical and/or crisis experience~~ **or** if working with a Delaware Health Care Facility as an employee or contracted staff member;

3.5.1.~~2~~**2** Such person has at least a bachelor's or master's degree in a mental health related field if working as a State employee or contractor; ~~3.5.1.4 Such person has a master's degree in a mental health related field~~ **or** if working with a Delaware Health Care Facility as an employee or contracted staff member; and

3.5.1.~~3~~**3** Such person has committed to completing forty (40) hours of crisis services in an employed position under direct supervision of a psychiatrist or credentialed mental health screener following

completion of the mental health screener training and satisfactory score on the mental health screener credentialing exam.

Comment:

26. While the credentials sections address clinical experience, they are completely silent on expertise in utilizing police power and involuntary detention procedures. The statute contemplates the screeners promptly "taking into custody" individuals whose behavior constitutes a danger to self or others. See Title 16 **Del.C.** §5122(b). The statute also contemplates the screener transporting the individual involuntarily to another screener or facility. See Title 16 **Del.C.** §5122(c). The former Attorney General opposed granting police power to mental health personnel in the commitment context based on concerns about lack of training and capacity to detain violent individuals. Council queries whether physical fitness standards should be included in the credentialing criteria? Obviously, the ability to physically detain an unruly individual is contemplated by the statute and some individuals may initially appear cooperative but change their "affect" quickly. Training would also be essential.

Agency Response: *The Division respectfully submits that mental health crisis experience necessarily involves contact with unruly or otherwise uncooperative individuals. Crisis mental health professionals receive training in nonviolent intervention and de-escalation techniques; they also work in concert with law enforcement, hospital constabulary and others in situations where there may a risk of violence. The "taking into custody" of an individual is a process that may involve both law enforcement and mental health professionals or it may not; much depends on the professional judgment of those involved in the incident at hand. Likewise, transport may be handled in a variety of different manners, depending on the professionals' assessment of the risks involved, with the ultimate goal of providing care in the least restrictive, least traumatic manner safely possible.*

Comments:

27. Definitions should be compiled in the front of the regulation. ...It is unusual and confusing to have both a §2.0 definitions section and a §4.0 definitions section. Alternatively, Section 4.0 contains substantive standards rather than "definitions" and could be converted to a "contents of initial application" section and "reapplication standards" section. The format of §4.0 could then be converted to the following: "An initial application for approval as an [sic] MH Screener shall include the following:...". The 2-year term of approval should then be inserted. Finally, a section could then require a reapplication to be filed at least X days prior to the expiration of the 2-year term. Otherwise, the regulation would literally permit a reapplication to be filed on the 2-year expiration date.

28. In §4.0, delete "or their designee". See Par.7 above

29. In §4.0, the reference to "group" is inappropriate since there are two sets of exempt professionals

Agency Response: *Section 4 has been amended, as follows, to address these comments:*

4.0 Application~~s Process~~ for Credentialing and Re-credentialing

Definitions

4.1 "Application for Credentialing"

4.1.1 ~~means~~ An individuals who wish**es** to be credentialed as a ~~**credentialed**~~ MH Screener ~~**to be able to perform detainments**~~ under Chapter 51 ~~**will need to fill out**~~ **shall complete** an **Application for Credentialing as a Mental Health Screener to DSAMH.**

4.1.1.1 The application shall ~~**that**~~ include~~**s**~~ a resume, school transcripts, current work history including experience in working with people in mental health crises, current employment, and all contact information, including Delaware license numbers and titles**, and such other credentials or proof of certification as may be necessary to meet requirements set forth in section 3 above.**

4.2 "Application for Renewal of Credentialing"

4.2.1 ~~means~~ All Delaware credentialed mental health screeners **except as noted in 4.2.1.2 below** will be required to re-apply every two **(2)** years, **60 days prior to the second anniversary date of the issued credential, for renewal of the credential** to DSAMH. ~~**or their designee and to**~~

4.2.1.1 The application for renewal shall require the submission of ~~send in their~~ applicable CEU's, **as well as such other credentials or proof of continuing licensure, credentials or certification as may be necessary to meet the requirements set forth in section 3 above** to be re-credentialed.

4.2.1.2 The only professionals ~~**that will**~~ not ~~be~~ required to ~~**do**~~ **undergo** this re-credentialing process are licensed physicians whose specialty is psychiatry and physicians who ~~**are**~~ **maintain** Board Certifi~~ed~~**cation** Emergency Physicians.

4.2.1.2.1 DSAMH will provide any changes in state mental health or associated resources to these licensed psychiatric and emergency medicine physicians in a timely manner and when these services become available or are changed in any way.

Comments:

30. In §5.1, first definition, substitute "credentialed" for "credential".

31. Consistent with Par. 27 above, it is unusual and confusing to have a §2.0 definitions section, §4.0 definitions

section, and §5.0 definitions section

32. In Section 5.0, there is no operative sentence. The section consists of definitions and an outline. There is no sentence similar to "(T)he following standards will apply to the credentialing and re-credentialing of MH screeners…"

33. The grammar in §5.1, first definition, is incorrect….

34. The grammar in §5.1, second definition, is incorrect…

35. In §5.0, the third definition is a putative substantive standard, not a definition.

36. In §5.2.1.1, Council suspects the word specific was intended to be "specified".

37. In §5.2, the multiple references to "specified above" should be converted to "specified in §5.1 for clarity.

38. Punctuation is missing from the end of §5.3.2.2.

39. There is a lack of parallel form in §§5.2.4.4, 5.3.1.3, 5.3.2.3, and 5.3.3.3.

Agency Response: Section 5 has been amended to address the concerns voiced in the comments above, as follows:

5.0 Training, Credentialing and Re-credentialing Requirements for Licensed and Unlicensed Mental Health Professionals

5.1 ~~Definitions~~ **Training**

The following standards will apply to the credentialing and recredentialing of Mental Health Screeners and sets forth the minimum qualifications and training requirements.

5.1.1 For licensed physicians other than psychiatrists" ~~means~~ training guidelines for applicants ~~who are licensed physicians other than psychiatrists~~ will include content that may change over time and is up to DSAMH to direct, **including acceptable CEUs generally related to psychiatric or crisis work.**

5.1.2~~"Training Guidelines for credentialed mental health screener,~~ For licensed applicants" ~~means~~ training guidelines for applicants ~~who are licensed professionals~~ will include content that may change over time and is up to DSAMH to direct, **including acceptable CEUs generally related to psychiatric or crisis work.**

5.1.3~~"Training Guidelines for credentialed mental health screener,~~ For unlicensed applicants" ~~means unlicensed applicants will be trained under the same~~ training guidelines ~~as~~ for applicants ~~who are licensed; plus in addition, applicants will be required to participate in 40 hours of supervised crisis internship in a mental health setting. This~~ **will include** content **that** may change over time and is up to DSAMH to direct, **including acceptable CEUs generally related to psychiatric or crisis work.**

5.2 Credentialing

5.2.1 Board Certified Emergency Physicians.

5.2.1.1 Compliance with qualifications specifi~~c~~**ed in §3** above;

5.2.1.2 Compliance with training guidelines as specified in §5.1 above.

5.2.2 Licensed physicians other than psychiatrists and Board Certified Emergency Physicians:

5.2.2.1 Compliance with qualifications specified **in §3** above;

5.2.2.2 **Compliance with training guidelines as specified in §5.1 above. Including** completion of 4 hours of training by the DHSS Division of Substance Abuse and Mental Health; and

5.2.2.3 Satisfactory score on the credentialing examination.

5.2.3 Licensed Mental Health Professionals

5.2.3.1 Compliance with qualifications specified **in §3** above;

5.2.3.2 **Compliance with training guidelines as specified in §5.1 above, including** completion of 40 hours of training by DSAMH; and

5.2.3.3 Satisfactory score on the credentialing examination.

5.2.4 Unlicensed Mental Health Professionals

5.2.4.1 Compliance with qualifications specified **in §3** above;

5.2.4.2 **Compliance with training guidelines as specified in §5.1 above, including** completion of 40 hours of mental health screener training by DSAMH; and completion of 40 hours of crisis services under direct supervision of a psychiatrist or credentialed mental health screener;

5.2.4.3 Satisfactory score on the credentialing examination.; ~~and~~

5.2.4.4 Completion of 40 hours of crisis services under direct supervision of a psychiatrist or credentialed mental health screener.

5.3 Re-Credentialing

5.3.1 Licensed Physicians other than psychiatrists and Board Certified Emergency Physicians:

5.3.1.1 Compliance with qualifications specified **in §3** above; and

5.3.1.2 **Compliance with training guidelines as specified in §5.1 above, including** completion of 4 hours of training by DSAMH every two years.

~~5.3.1.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.~~

5.3.2 Licensed Mental Health Professionals

5.3.2.1 Compliance with qualifications specified **in §3** above; and

5.3.2.2 **Compliance with training guidelines as specified in §5.1 above, including** completion of 4 hours of training by DSAMH every two years

5.3.2.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.

5.3.3 Unlicensed Mental Health Professionals

5.3.3.1 Compliance with qualifications specified above; and

5.3.3.2 **Compliance with training guidelines as specified in §5.1 above, including** completion of 8 hours of training by DSAMH every two years

5.3.3.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.

Comment:

40. Section 6.0 ("Data") is not within the scope of the title to the regulation which is limited to credentialing and payment for voluntary patients. Moreover, the lengthy narrative form is not written in regulatory form an dis extremely difficult to follow.

41. In §6.0, substitute "detentions" for "detainments" to conform to the statute and §7.0...

42. Section 7.0 has a plural pronoun ("their") with a singular antecedent ("client").

43. In §7.0, substitute "self" for "that person".

Agency Response: *The Division hopes that this comment is based on language in an earlier version. The regulation sections 6 and 7 have been amended (and combined), as follows, to clarify the role of record keeping in the credentialing process as necessary part of performance monitoring, compliance with the detention statute and prevention of conflicts of interest.*

~~6.0~~ ~~Data~~

6.0 **Credentialed Mental Health Screener Performance-**

6.1 ~~Essential~~ Conflict of Interest Statement

The intent of the law is to ensure that no ~~client~~ **person** is detained for any reason other than ~~their having~~ **experiencing symptoms associated with** a mental **health** condition that may result in danger to ~~that person~~ **self** or others, and that any conflicts of interest as set forth in 16 **Del.C.** §5122 are disclosed on the **DSAMH Crisis Intervention Assessment Tool and** 24-hour ~~Detention~~ **Emergency Admission** form filed with DSAMH within 24 hours of signature of the detention order. DSAMH will collect and monitor all assessments, detentions and non-detentions **performed by credentialed mental health screeners**, whether a conflict of interest is disclosed or not, for purposes of ensuring that the intent of this law is met.

6.~~1~~2 **Record Keeping,** Forms and Documentation

The **following standards will apply to the** Forms and Documentation required to **monitor and report on the performance of credentialed mental health screeners as it pertains to compliance with conflict of interest disclosure in actions to** detain, or undo a det~~ainment~~**ention**, of an individual under this statute.

6.2.1 Credentialed mental health screeners will be required to complete a DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form for the purpose of ensuring a standardized approach to assessing the needs of clients in crisis and documenting the decision premised upon that assessment. These forms will become part of the client's records ~~as well as be submitted to DSAMH. Data will be required on all detainments~~ and sent to DSAMH as soon as possible and within 24 hours by the credentialed MH Screener that signs the det~~ainment~~**ention** order. ~~These detainments will be reviewed on a case by case basis going forward.~~

6.~~2~~3 Data **Review and Reporting**

Detention Orders, Assessment Tools and Emergency Admissions forms will be reviewed and the data collected will be recorded in a database. ~~that will be documented daily in relation to detainments: DSAMH, as part of DHSS, will record a number of variables into a database.~~ This database will include administrative information, such as the client MCI number, the date of contact, where the contact occurred, what staff member was lead in this response by name, the nature of the crisis, what was done including alternatives to inpatient care, who signed the detainment order, where the individual went once the ~~detainment~~ **detention** order was signed, and who transported the client; and clinical information ~~as collected on the DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form. In addition~~, if a ~~detainment~~ **detention** order was not signed, ~~this database needs to~~ documen**tation as to** where the client went, to whom **referred** for care~~, what the~~ plans ~~were~~ for follow-up, and transportation. ~~DSAMH will also require a permanent data base that can render information on detainments every month going forward by April 2013.~~

6.3.1 Reports **from the DSAMH database** ~~that~~ will be publicly generated monthly ~~on Delaware detainments:~~ showing aggregated data ~~reports will be generated~~ on detainments **in Delaware.**

6.3.2 **Detainment data will be reviewed to monitor for anomalies in detainment rates to assure mental health screener performance improvement and compliance.**

Comment:

44. Section 9.0 consists of a single 78-word sentence. Consider "breaking out" the last three concepts as subparts...

Agency Response: *Amended, as follows:*

9.0 Payment for Voluntary and Involuntary Admissions.

Payment to hospitals for voluntary and involuntary admissions of clients in crisis will be made pending approval by a psychiatrist designated by the Secretary of Health and Social Services. **Approval will depend on ~~following~~** the **~~conduct~~ outcome** of an independent **review of forms and documentation as specified in Section 6.0. The review's specific purpose will be to** ~~and~~ confirm**~~ation~~** that: the admission represents the most appropriate and least restrictive treatment for the client in crisis; that the duration of stay for the admitted client is reviewed and deemed appropriate; and, that the State is the payer of last resort.

Comment:

45. In §10.0, there are three instances of use of plural pronouns ("their") with a singular antecedent ("individual").

Agency Response: *Amended, as follows:*

10.0 Appeal Process.

Any individual who has been denied credentialing as a mental health screener or who has had a **~~their~~** screening credential suspended or revoked can appeal this decision by writing to the DSAMH Director **~~with their~~ Such an** appeal, based on knowledge and facts of this event, **must be made** within twenty (20) days of the denial. A response by the DSAMH Director will be forthcoming within thirty (30) days.

Comment:

46. The GACEC respectfully requests clarification that the Division has not overlooked conducting criminal background checks in connection with the certification [sic], particularly in the context of unlicensed screeners since they would not have been vetted through the licensing process.

Agency Response: *Licensure of professionals precludes requiring a separate Division criminal background check. The only unlicensed credentialed mental health screeners will be State mobile crisis employees.*

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed new regulation to update the Division of Substance Abuse and Mental Health (DSAMH) to add policy regarding the process to credential mental health screeners is adopted and shall be final effective July 1, 2013.

Rita M. Landgraf, Secretary, DHSS

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

1.0 Mental Health Screener Credentialing

Title 16, Chapter 51 of the **Delaware Code** states that only psychiatrists and **[~~people~~ professionals]** credentialed by the Delaware Department of Health & Social Services (DHSS) as a Mental Health Screener (MH Screener) have the authority to detain or abrogate a detainment of a person involuntarily for a psychiatric evaluation. No person shall hold **[~~himself or herself~~ themselves]** out to the public as **[~~a~~]** credentialed mental health screener unless the person**[s ~~is~~ are]** credentialed in accordance with this chapter. The Division of Substance Abuse and Mental Health (DSAMH) is the DHSS Division responsible for implementing and enforcing this law.

2.0 Definitions

As used in this subchapter:

["Continuing Education Units (CEUs)" means a measure used in continuing education programs, particularly for those required in a licensed profession, in order for the professional to maintain the license. In the case of unlicensed professionals who do not qualify for CEUs, the equivalent for the purpose contact hours or certificates of attendance issued in lieu of CEUs for continuing behavioral health training and education.]

"Credentialed Mental Health Screener" means an individual who has applied for and been approved to be credentialed as a mental health screener under Chapter 51 by the DSAMH **[~~or their designee~~]**.

"Crisis experience in a mental health setting" **[~~means a crisis experience in a mental health setting~~]** is defined as direct experience providing acute crisis services to people with mental health disorders in settings that include, but are not limited to, psychiatric assessment centers, hospital emergency rooms, crisis walk in settings, admission departments of psychiatric or general service hospitals, mobile crisis departments, drop in centers and certain settings found in the Department of Corrections.

"Licensed Mental Health Professionals" means individuals who are licensed by the State of Delaware and who are otherwise eligible to be credentialed as a mental health screener under Chapter 51 include licensed physicians (MD/DO) whose practice specialty is other than psychiatry; licensed registered nurses with a bachelor's degree in nursing (BSN); licensed advanced practice registered nurses (APN); licensed physician assistants (PA-C); licensed clinical psychologists (PhD/Psy.D); licensed clinical social workers (LCSW); licensed mental health counselors (LMHC); and licensed marriage and family therapists (LMFT).

"Supervision of unlicensed mental health professionals by a psychiatrist" means an unlicensed mental health professionals who need to work under a psychiatrist licensed to practice medicine will perform this work under their **[~~agency's by-laws~~ organization's practice standards and guidelines. ~~and the~~ This includes]** requirements that the credentialed mental health screener discuss the individual in care's issues on the phone or through telepsychiatry with the supervising psychiatrist at the time of the detainment decision and assur**[~~e~~ing]** that this psychiatrist agrees and countersigns the decision made. A**[n ~~faxed~~ electronically transmitted copy]** or original detainment form with the supervising psychiatrist's signature will need to be placed in the client's medical record at the facility or site where the detainment occurred within 24 hours.

"Unlicensed mental health professional" means an individual who works under the direct supervision of a psychiatrist but does not hold a professional license issued by the State of Delaware.

3.0 Qualifications of Applicants for Credentialed Mental Health Screener

3.1 Psychiatrists

3.1.1 The psychiatrist must supply evidence **[~~that he or she is licensed~~ of current licensure]** to practice medicine in Delaware.

3.1.2 No mental health screener credentialing is required.

3.2 Board Certified Emergency Physicians

3.2.1 Each physician applicant must submit qualifications; and

3.2.2 Each physician must supply evidence **[~~that such person is licensed~~ of current licensure]** to practice medicine in Delaware and **[~~is~~ current]** Board Certifi**[~~ed~~cation]** by the American Board of Emergency Medicine.

3.2.3 Each physician will **[~~be required to~~]** receive and **[be required to]** review an information packet on statewide resources for clients in crisis.

3.3 Physicians

3.3.1 Each physician applicant must submit qualifications; and

3.3.2 Each physician must supply evidence **[~~that such person is licensed~~ of current licensure]** to practice medicine in Delaware.

3.3.3 Each physician will be required to attend four hours of training to be credentialed as a MH Screener.

3.4 Licensed Non-Physician Mental Health Professionals

3.4.1 Each applicant must submit qualifications and supply evidence that:

3.4.1.1 If employed by DSAMH or a self-employed professional not affiliated with any Delaware health care facility, the applicant has five (5) years' experience in mental health clinical and/or crisis settings as an employed or as a contracted professional.

3.4.1.2 If employed or contracted by any Delaware health care facility, the applicant has at least two (2) years experience in mental health clinical and/or crisis settings as an employed or as a contracted professional, and that **[~~that~~]** non-state health care facilit**[~~y~~ies]** will take responsibility for the years of experience required for their staff to be credentialed.

3.4.2 Licensed Non-Physician Mental Health Professionals must meet the following qualifications:

3.4.2.1 Registered Nurse. Each applicant shall document **[~~that they are licensed in~~ current licensure by]** the State of Delaware as a Registered Nurse with a BSN degree and in good standing, as set forth in 24 **Del.C.** Ch. 19**[~~, relating to Professions and Occupations~~]**.

3.4.2.2 Advanced Practice Nurse. Each applicant shall document **[~~that such person is licensed in~~ current licensure by]** the State of Delaware as an Advanced Practice Nurse in good standing, as set forth in Title 24 **Del.C.** Ch. 19**[~~, relating to Professions and Occupations~~]** and **[~~is working~~ employment]** under a formal protocol with a Delaware licensed physician

3.4.2.3 Licensed Psychologist. Each applicant shall document **[~~that such person is licensed~~ current licensure by]** in the State of Delaware as a Licensed Clinical Psychologist in good standing, as set forth in 24 **Del.C.** Ch. 35 **[~~relating to Professions and Occupations~~]**.

3.4.2.4 Licensed Clinical Social Worker

3.4.2.4.1 Each applicant shall document [~~that such person is licensed~~ **current licensure by**] in the State of Delaware as a Licensed Clinical Social Worker in good standing, as set forth in 24 **Del.C.** Ch. 39 [~~relating to Professions and Occupations~~].

[~~3.4.2.4.2 Each applicant shall document that such person has passed the American Association of State Social Work Boards.~~]

3.4.2.5 Licensed Professional Counselor of Mental Health

3.4.2.5.1 Each applicant shall document [~~that such person is licensed~~ **current licensure by**] in the State of Delaware as a Licensed Professional Counselor of Mental Health in good standing, as set forth in 24 **Del.C.** Ch. 30 [~~relating to Professions and Occupations~~].

[~~3.4.2.5.2 Each applicant shall document that such person is certified by the National Board for Certified Counselors, Inc. (NBCC), or the Academy of Clinical Mental Health Counselors (ACMHC), or other national mental health specialty certifying organization acceptable to the Board.~~]

3.4.2.6 Licensed Marriage and Family Therapist

3.4.2.6.1 Each applicant shall document [~~that such person is licensed~~ **current licensure by**] in the State of Delaware as a Licensed Marriage and Family Therapist in good standing, as set forth in 24 **Del.C.** Ch. 30 [~~relating to Professions and Occupations~~].

[~~3.4.2.6.2 Each applicant shall document that such person has passed the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) standardized examination or other examination acceptable to the Board.~~]

3.4.2.7 Licensed Physician Assistant.

3.4.2.7.1 Each applicant shall document [~~that such person is licensed~~ **current licensure by**] in the State of Delaware as a Physician Assistant in good standing, as set forth in 24 **Del.C.** Ch. 17[~~, relating to Professions and Occupations~~] and [~~is working~~ **employment**] under the delegated authority of a licensed physician.

3.5 Unlicensed Mental Health Professionals under Direct Supervision of a Psychiatrist

3.5.1 Each unlicensed mental health professional who is applying to become credentialed as a mental health screener must submit qualifications, [~~pay the application fee, pay the credentialing fee,~~] and supply evidence that:

3.5.1.1 Such person has had two years of clinical and/or crisis experience if working as a State employee or contractor;

[~~3.5.1.2 Such person has at least two (2) years of clinical and/or crisis experience~~ **or**] if working with a Delaware Health Care Facility as an employee or contracted staff member;

3.5.1.[~~3~~**2**] Such person has at least a bachelors or masters degree in a mental health related field if working as a State employee or contractor;

[~~3.5.1.4 Such person has a master's degree in a mental health related field~~ **or**] if working with a Delaware Health Care Facility as an employee or contracted staff member; and

3.5.1.[~~5~~**3**] Such person has committed to completing forty (40) hours of crisis services in an employed position under direct supervision of a psychiatrist or credentialed mental health screener following completion of the mental health screener training and satisfactory score on the mental health screener credentialing exam.

4.0 Applications Process

[~~Definitions~~

4.1] "Application for Credentialing"

[4.1.1 ~~means~~ **An individual~~s~~]** who wish[**es**] to be credentialed as a [~~credentialed~~] MH Screener [~~to be able to perform detainments~~] under Chapter 51 [~~will need to fill out~~ **shall complete an Application for Credentialing as a Mental Health Screener to DSAMH.**

4.1.1.1 ~~an~~ **The application ~~that~~ shall include~~s~~ ~~their~~ a]** resume, school transcripts, current work history including experience in working with people in mental health crises, current employment, and all contact information including Delaware license numbers and titles[**, and such other credentials or proof of certification as may be necessary to meet requirements set forth in section 3 above**].

[4.2] "Application for Re-credentialing"

[4.2.1 ~~means a~~A]ll Delaware credentialed mental health screeners **[except as noted in 4.2.1.2 below]** will be required to re-apply every two **[**(2)**]** years**[, 60 days prior to the second anniversary date of the issued credential, for renewal of the credential]** to DSAMH **[~~or their designee and to~~**

4.2.1.1 ~~send in their~~ **The application for renewal shall require the submission of]** applicable CEU's**[, as well as such other credentials or proof of continuing licensure, credentials or certification as may be necessary to meet the requirements set forth in section 3 above]** to be re-credentialed.

[4.2.1.2**]** The only professionals **[~~that will~~]** not **[~~be~~]** required to **[~~do~~ undergo]** this re-credentialing process are licensed physicians whose specialty is psychiatry and physicians who **[~~are~~ maintain]** Board Certifi**[~~ed~~cation]** Emergency Physicians.

[4.2.1.2.1**]** DSAMH will provide any changes in state mental health or associated resources to this group in a timely manner and when these services become available or are changed in any way.

5.0 Training, Credentialing and Re-credentialing Requirements for Licensed and Unlicensed Mental Health Professionals

5.1 **[~~Definitions~~ Training**

The following standards will apply to the credentialing and re-credentialing of Mental Health Screeners and sets forth the minimum qualifications and training requirements.

5.1.1 For licensed physicians other than psychiatrists" ~~Training Guidelines for credential mental health screener, licensed physicians other than psychiatrists" means~~] training guidelines for applicants **[~~who are licensed physicians other than psychiatrists~~]** will include content that may change over time and is up to DSAMH to direct**[, including acceptable CEUs generally related to psychiatric or crisis work]**.

[5.1.2 ~~"Training Guidelines for credentialed mental health screener,~~ **For licensed applicants~~" means~~]** training guidelines for applicants **[~~who are licensed professionals~~]** will include content that may change over time and is up to DSAMH to direct**[, including acceptable CEUs generally related to psychiatric or crisis work]**.

[5.1.3 ~~"Training Guidelines for credentialed mental health screener,~~ **For unlicensed applicants" ~~means unlicensed applicants will be trained under the same~~ training guidelines ~~as~~ for applicants ~~who are licensed plus applicants will be required to participate in 40 hours of supervised crisis internship in a mental health setting. This~~ will include content that may change over time and is up to DSAMH to direct, including acceptable CEUs generally related to psychiatric or crisis work]**.

5.2 Credentialing

5.2.1 Board Certified Emergency Physicians.

5.2.1.1 Compliance with qualifications specifi**[~~c~~ed in §3]** above;

[5.2.1.2 Compliance with training guidelines as specified in §5.1 above.]

5.2.2 Licensed physicians other than psychiatrists and Board Certified Emergency Physicians:

5.2.2.1 Compliance with qualifications specified above;

5.2.2.2 **[Compliance with training guidelines as specified in §5.1 above, including ~~C~~c]**ompletion of 4 hours of training by the DHSS Division of Substance Abuse and Mental Health; and

5.2.2.3 Satisfactory score on the credentialing examination.

5.2.3 Licensed Mental Health Professionals

5.2.3.1 Compliance with qualifications specified **[in §3]** above;

5.2.3.2 **[Compliance with training guidelines as specified in §5.1 above, including ~~C~~c]**ompletion of 40 hours of training by DSAMH; and

5.2.3.3 Satisfactory score on the credentialing examination.

5.2.4 Unlicensed Mental Health Professionals

5.2.4.1 Compliance with qualifications specified above;

5.2.4.2 **[Compliance with training guidelines as specified in §5.1 above, including C**c]ompletion of 40 hours of mental health screener training by DSAMH;

5.2.4.3 Satisfactory score on the credentialing examination**[~~; and~~**

~~5.2.4.4 Completion of 40 hours of crisis services under direct supervision of a psychiatrist or credentialed mental health screener.~~**]**

5.3 Re-Credentialing

5.3.1 Licensed Physicians other than psychiatrists and Board Certified Emergency Physicians:

5.3.1.1 Compliance with qualifications specified **[in §3]** above; and

5.3.1.2 [Compliance with training guidelines as specified in §5.1 above, including ~~C~~c]ompletion of 4 hours of training by DSAMH every two years.

~~[5.3.1.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.]~~

5.3.2 Licensed Mental Health Professionals

5.3.2.1 Compliance with qualifications specified above; and

5.3.2.2 [Compliance with training guidelines as specified in §5.1 above, including ~~C~~c]ompletion of 4 hours of training by DSAMH every two years

[5.3.2.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.]

5.3.3 Unlicensed Mental Health Professionals

5.3.3.1 Compliance with qualifications specified above; and

5.3.3.2 [Compliance with training guidelines as specified in §5.1 above, including ~~C~~c]ompletion of 8 hours of training by DSAMH every two years

[5.3.3.3 DSAMH will accept CEU's that are generally related to psychiatric or crisis work.

6.0 [~~Data~~ Credentialed Mental Health Screener Performance

~~6.1 Forms and Documentation required to detain, or undo a detainment, of an individual under this statute: Credentialed mental health screeners will be required to complete a DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form for the purpose of ensuring a standardized approach to assessing the needs of clients in crisis and documenting the decision premised upon that assessment. These forms will become part of the client's records as well as be submitted to DSAMH. Data will be required on all detainments and sent to DSAMH as soon as possible and within 24 hours by the credentialed MH Screener that signs the detainment order. These detainments will be reviewed on a case by case basis going forward.~~

~~6.2 Data that will be documented daily in relation to detainments: DSAMH, as part of DHSS, will record a number of variables into a database. This database will include administrative information, such as the client MCI number, the date of contact, where the contact occurred, what staff member was lead in this response by name, the nature of the crisis, what was done including alternatives to inpatient care, who signed the detainment order, where the individual went once the detainment order was signed, and who transported the client; and clinical information as collected on the DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form. In addition, if a detainment order was not signed, this database needs to document where the client went, to whom for care, what the plans were for follow-up, and transportation. DSAMH will also require a permanent data base that can render information on detainments every month going forward by April 2013.~~

~~6.3 Reports that will be publicly generated monthly on Delaware detainments: Aggregated data reports will be generated on detainments.~~

~~7.0~~ 6.1 ~~Essential~~] Conflict of Interest Statement:

The intent of the law is to ensure that no [~~client~~ **person**] is detained for any reason other than [~~their having~~ **experiencing symptoms associated with**] a mental condition that may result in danger to [~~that person~~ **self**] or others, and that any conflicts of interest as set forth in 16 **Del.C.** §5122 are disclosed on the **[DSAMH Crisis Intervention Assessment Tool and]** 24-hour [~~detention~~ **Emergency Admission**] form filed with DSAMH within 24 hours of signature of the detention order. DSAMH will collect and monitor all assessments, detentions and non-detentions **[performed by credentialed mental health screeners]**, whether a conflict of interest is disclosed or not, for purposes of ensuring that the intent of this law is met **[and that admissions are appropriate]**.

[6.2 Record Keeping, Forms and Documentation. The following standards will apply to the Forms and Documentation required to monitor and report on the performance of credentialed mental health screeners as it pertains to compliance with conflict of interest disclosure in actions to detain, or undo a detainment, of an individual under this statute.

6.2.1 Credentialed mental health screeners will be required to complete a DSAMH Crisis Intervention Assessment Tool and 24-Hour Emergency Admission Form for the purpose of ensuring a standardized approach to assessing the needs of clients in crisis and documenting the decision premised upon that assessment. These forms will become part of the client's records and sent to DSAMH as soon as possible and within 24 hours by the credentialed MH Screener that signs the detainment order.

6.3 Data Review and Reporting. Detainment Orders, Assessment Tools and Emergency Admissions forms will be reviewed and the data collected will be recorded in a database. This database will include administrative information, such as the client MCI number, the date of contact, where the contact

occurred, what staff member was lead in this response by name, the nature of the crisis, what was done including alternatives to inpatient care, who signed the detainment order, where the individual went once the detainment order was signed, and who transported the client; and clinical information, if a detainment order was not signed, documentation as to where the client went, to whom referred for care plans for follow-up, and transportation.

6.3.1 Reports from the DSAMH database will be publicly generated monthly showing aggregated data on detainments in Delaware.

6.3.2 Detainment data will be reviewed to monitor for anomalies in detainment rates to assure mental health screener performance improvement and compliance.

[~~8~~7].0 Suspension or Revocation of Mental Health Credential

[~~8~~7].1 **[The following outlines circumstances under which a credential may be suspended or revoked.]** DSAMH will monitor individuals and general facilities **[~~who~~ performing]** credentialed mental health screenings and **[~~who~~** detain**ing]** individuals for 24 hours under this regulation **[as specified in Section 6.0. Nothing in Section 6 relieves~~,~~ ~~C~~ c]**redentialed mental health screeners **[**are expected **of the requirement]** to keep their own records on their work to detain or not detain individuals that they assess. Copies of the screening form are sufficient documentation if the individual mental health screener or organization that supports these screeners keeps this information protected and confidential under federal law. Compliance with federal laws on this documentation is the responsibility of the individual who has been credentialed as a **[**Mental Health**]** Screener.

[7.1.1 **Failure of ~~All~~ any]** credentialed MH Screeners **[~~need~~]** to be aware of**[, and operate in compliance with,]** the federal **[and state]** laws pertaining to protection of health records[~~.~~ Failure to comply with this requirement will result in immediate suspension of th**[~~is~~e Mental Health Screener]** credential.

[~~8.2~~ 7.1.2 **~~If~~ Suspension or revocation of]** a professional license **[~~is revoked or suspended~~ will result in the immediate revocation of~~,~~]** the MH Screener credential**[~~is immediately revoked~~]**.

[7.1.3 **Loss of psychiatric supervision.]** For unlicensed mental health professionals who cease to work under the supervision of a psychiatrist licensed to practice medicine, the **[Mental Health]** Screener credential is immediately revoked.

[7.2] Compliance with notification of this revocation is the responsibility of the individual who has been credentialed as a **[Mental Health]** Screener.

[7.3] Reinstatement of [the Mental Health Screener credential of] an individual **[~~with a revoked credential~~ for whom a credential has been suspended or revoked]** will be at the discretion of DSAMH, in light of circumstances surrounding the original **[suspension or]** revocation.

[~~9~~8].0 Payment for Voluntary and Involuntary Admissions.

Payment to hospitals for voluntary and involuntary admissions of clients in crisis will be made pending approval by a psychiatrist designated by the Secretary of Health and Social Services**[. Approval will depend on ~~following~~ the ~~conduct~~ outcome]** of an independent review **[of forms and documentation as specified in Section 6.0. The review's specific purpose will be to ~~and~~ confirmation ~~that:~~]** the admission represents the most appropriate and least restrictive treatment for the client in crisis**[~~,~~;]** that the duration of stay for the admitted client is reviewed and deemed appropriate, and that the State is the payer of last resort.

[~~10~~9].0 Appeal Process.

Any individual who has been denied credentialing as a mental health screener or who has had **[~~their~~ a]** screening credential suspended or revoked can appeal this decision by writing to the DSAMH Director**[. ~~with their~~ Such an appeal,]** based on **[~~their~~]** knowledge and facts of this event**[, must be made]** within twenty (20) days of the denial. A response by the DSAMH Director will be forthcoming within thirty (30) days.

MEMO

To: Joint Finance Committee

From: Brian J. Hartman, on behalf of the following organizations:

Disabilities Law Program
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens
State Council for Persons with Disabilities

Subject: Division of Developmental Disabilities Services FY 14 Budget

Date: February 21, 2013

Please consider this memo a summary of the oral presentation of Brian J. Hartman, Esq. on behalf of the Disabilities Law Program ("DLP"), Developmental Disabilities Council ("DDC"), Governor's Advisory Council for Exceptional Citizens ("GACEC"), and the State Council for Persons with Disabilities ("SCPD"). We are addressing one (1) component of the DDDS budget, i.e., vocational programs for transitioning special education students, a/k/a "special school grads".

VOCATIONAL PROGRAMS FOR TRANSITIONING SPECIAL EDUCATION STUDENTS

Historically, the State has provided funding for vocational, day habilitation, and employment-related services for students with intellectual disabilities "aging out" of the special education system. Services are subsidized by Medicaid funds for many of the students. In FY 14, the Division projects that approximately one hundred and sixty-eight (168) special education graduates will be eligible for such services. We fully support the Department's request for inclusion of funds in the Governor's proposed budget [$1.4 million for part-year (9-month) funding] to serve these individuals.[1]

However, we also strongly encourage the timely development of a targeted strategic plan to promote the availability of meaningful vocational opportunities for these incoming DDDS clients. According to a national report published nine months ago, the percentage of Delaware DDDS clients employed in integrated settings has declined from 35% to 21% since 1999.[2] Statistics submitted to the Joint Finance Committee last year are generally corroborative, i.e., only 23% of DDDS clients were are in supported employment in FY12.[3] The balance were predominantly served in non-integrated pre-vocational (43%) and day habilitation (34%) settings. Id.

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[1]We likewise support the inclusion of $472,900 in the proposed budget to fully fund (on a 12-month basis) vocational programs for the 175 FY13 "graduates".

[2]University of Massachusetts, "State Data: The National Report on Employment Services and Outcomes, 2011 (June, 2012) at p. 111 [Attachment "A"].

[3]DDDS Presentation to JFC on FY13 Budget (February 22, 2012), slide 21 [Attachment "B"].

The initial employment setting for transitioning youth is critical to long-term employability. Six months ago, the National Council on Disability published a report on supported employment which included multiple "key findings":

- once an individual enters a sheltered workshop, only 5% ever leave to take a job in the community; and
- younger workers have a higher expectation of employment than older workers, underscoring the importance of offering supported employment to individuals exiting the special education system.[4]

Since the Division changed its eligibility standards in 2008, it has begun to serve more individuals who are prime candidates for competitive employment. For example, between FY09-12, the Division added sixty-nine (69) new clients with Asperger's who are eligible for DDDS services without intellectual limitations.

Delaware is uniquely positioned to expand meaningful employment opportunities for incoming DDDS clients. First, with enactment of the highly publicized "Employment First" legislation last summer, public agencies have an exciting new mandate to promote community-based employment options.[5] That legislation is fully consistent with position statements promoting non-segregated employment issued by the National Arc, the American Association of Intellectual and Developmental Disabilities, and the National Down Syndrome Congress. [6] Second, Governor Markell has identified employment for individuals with disabilities as his signature initiative within the National Governor's Association.[7] Third, Delaware enjoys progressive leaders within the Department of Social Services who are committed to offering its constituents viable opportunities to become part of mainstream America. In her testimony presented to a U.S. Senate Committee last summer, Secretary Landgraf stressed the importance of infusing the value of inclusion across all programs:

> I do not believe it is enough for us to be in mere compliance with the Americans with Disabilities Act and the Olmstead ruling, but we, as state leaders, must embrace the intent of the law beyond compliance, and embed inclusion and the benefits of diversity as a core value.[8]

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[4]National Council on Disability, "Report on Subminimum Wage and Supported Employment" (August 23, 2012) at pp. 7 and 16 [Attachment "C"]

[5]The anticipated impact of the legislation (H.B. No. 319) is highlighted in the July 17, 2012 News Journal article appended as Attachment "D".

[6]Copies of these position statements are appended as Attachment "E".

[7]The Governor supports a national "campaign" to implement best practices in employment of individuals with disabilities. [Attachment "F"]

[8]Secretary Landgraf's remarks are compiled in the accompanying article [Attachment "G"]. More recently, the Secretary issued a conforming October 24, 2012 memo fostering expansion of employment opportunities for DDDS clients [Attachment "H"].

Finally, the U.S. Department of Justice has affirmatively notified other states that the systemic lack of integrated employment options for individuals with disabilities is inconsistent with federal law and policy.[9] Indeed, the DOJ has specifically stressed the importance of having a formal plan "with clearly defined benchmarks for transitioning students into supported employment." Id., at p. 17. Delaware has the current opportunity to avert similar intervention by ensuring that the 168 "graduates" are offered viable, integrated, vocational options.

In conclusion, we recommend honoring the Department's request for $1.4 million to fund vocational services for the 168 "graduates". Concomitantly, we recommend the prompt development of a practical plan to ensure that incoming clients can be offered community-based vocational alternatives. In the meantime, to "jump start" employer interest in hiring DDDS clients, we have prepared proposed legislation to offer a State tax credit to employers hiring and sustaining the employment of Division clients.[10] The bill is patterned on legislation (H.B. No. 275) enacted in 2012 authorizing a similar tax credit for hiring veterans with a very modest fiscal note.[11]

Thank you for your consideration.

Attachments

F:pub/bjh/legis/budget/dddsbudjfcfy14
8g:leg/dddsbudjfcfy14

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[9]A copy of the U.S. DOJ's June 29, 2012 critical findings on Oregon's system is appended as Attachment "I".

[10]A copy of the draft legislation is included as Attachment "J".

[11]The H.B. No. 275 fiscal note and descriptive article are appended as Attachment "K". The proposed legislation would most likely have the biggest impact on the 43% of DDDS clients enrolled in "prevocational" programs. See Attachment "B".

DRAFT DDDS CLIENT EMPLOYER TAX CREDIT BILL
(BJH 2/17/13 DRAFT)

SPONSOR:

HOUSE OF REPRESENTATIVES/SENATE

147th GENERAL ASSEMBLY

HOUSE/SENATE BILL NO. -

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO DELAWARE TAX CREDITS.

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

Section 1. Amend Title 30 of the Delaware Code by making insertions as shown by underlining as follows:

Chapter 20B. Employer Tax Credit for Hiring Individuals with Developmental Disabilities.

§20B-100. Declaration of Purpose.

The purpose of this Act is to provide Delaware's employers an incentive to hire clients of the Division of Developmental Disabilities Services. Provision of a hiring incentive is intended to implement public policy established by §5503 of Title 16, §§740-747 of Title 7, and 7909A of Title 29 which promote meaningful employment in integrated work settings for individuals with developmental disabilities.

§20B-101. Definitions.

For purposes of this chapter:

(1) "Gross wages" means that part of the sum reported on Form W-2, or equivalent form of the United States Department of Treasury, Internal Revenue Service as "Medicare wages and tips" that is attributable to Delaware sources.

(2) "Qualified employee" means a client of the Division of Developmental Disabilities Services established by §7909A of Title 29 employed in an integrated setting as defined in §742(3) of Title 19.

(3) "Qualified employer" means an employer located in Delaware which hires and employs one or more qualified employees.

(4) "Secretary" means the Secretary of the Department of Finance as described in §8302 of Title 29.

(5) "Sustained employment" means a period of employment that is not less than 185 days during the taxable year.

§20B-102 Credit for wages paid to qualified employee.

(a) Subject to the limitations contained in §20B-103 of this title and to such return requirements as may be imposed by the State Bank Commissioner, the Insurance Commissioner, or the Secretary, qualified employers shall be eligible during the year in which a qualified employee is hired and for the 2 taxable years thereafter for credits against the taxes imposed by the following statutory provisions:

(1) Chapter 11 of Title 5;

(2) Chapter 19 of this title;

(3) Chapter 11 of this title;

(4) Sections 702 and 703 of Title 18.

(b) The amount of the credit against the tax shall equal 10%, but in no event exceed $1,500, of the gross wages paid by the qualified employer to a qualified employee in the course of that employee's sustained employment during the taxable year.

(c) To the extent a qualified employer's credits exceed the amounts otherwise due for the taxes and fees listed under §20B-102(a) of this title, such unused credits shall be paid to it in the nature of tax refunds.

§20A-104. Rules and Regulations.

The Director of Revenue is authorized to promulgate rules and regulations not inconsistent with this chapter and require such facts and information to be reported as the Director deems necessary for administration and enforcement of this chapter. No rule or regulation adopted pursuant to the authority granted in this section shall extend, modify or conflict with any law of this State or the reasonable implication thereof.

Section 2. This Act shall be effective for qualified employees hired on or after January 1, 2014.

SYNOPSIS

In 2012, enactment of H.B. No. 319 established the "Employment First Act" which promotes access to meaningful employment opportunities in integrated settings for individuals with disabilities. The percentage of clients of the Division of Developmental Disabilities employed in integrated settings has declined in recent years. This legislation is designed to offer an initial tax credit to employers as an incentive to hire Division clients. It is patterned on legislation enacted in 2012 (H.B. No. 275) which authorized a similar tax credit for employers hiring qualified veterans.

Print Article

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Tax Credits for Hiring Disabled Workers

By Carolyn Gray, eHow Contributor

Disabled workers are a segment of the working population that struggles to find work. Federal and state governments provide tax credits to businesses that hire disabled workers. Small businesses, in particular, may not be able to afford to hire disabled workers if it means renovating their office building and interior spaces for the disabled workers. Tax credits ease the financial burden for these small businesses and encourage them to seek out disabled workers as employees.

Federal Tax Credit: Disabled Access Credit

The federal government's Disabled Access Credit provides a tax credit to small businesses that incur expenditures in order to provide access to their building to disabled workers. To be eligible for the Disabled Access Credit, the Internal Revenue Service states that the small business must have earned no more than $1 million and employed not more than 30 employees during the previous year. These small businesses can claim the Disabled Access Credit for each year in which they incur expenses to remove barriers that prevent access to the building by disabled people.

Federal Tax Credit: Architectural/Transportation Tax Deduction (Barrier Removal)

The Barrier Removal Costs tax deduction, as defined in IRS Publication 535, allows up to $15,000 in any tax year for the cost to remove barriers for the disabled or elderly from a building. The facility or vehicle being modified must be owned or leased by the business and used in connection with the business. Structures that can be modified and receive this barrier removal deduction include the building, walkways, roads, parking lots and equipment. The vehicle must provide transportation to the public or the business's customers.

Federal Tax Credit: Work Opportunity Tax Credit

Employers who have hired disabled workers are eligible to receive a tax credit up to 40 percent of the first $6,000 of a newly hired disabled employee's first-year

wages. To be considered disabled, the employee must be certified disabled by a government agency, according to Internal Revenue Service instructions. The employer of the disabled employee will receive the tax credit if the employee worked for a minimum of 120 hours or 90 days. Employers should complete IRS Form 5884 to receive the Work Opportunity Tax Credit.

State Tax Credits for Hiring Disabled Workers

Most states provide information to small businesses about the federal tax credits available if they hire disabled workers. New York state is a state that takes it one step further and provides state tax credits to employers who hire disabled workers. The New York state Disabilities Employment Tax Credit gives a $2,100 tax credit for each disabled worker hired that is subtracted from the business's state taxes. Small businesses should check whether their states provide state tax credits for hiring disabled workers.

Resources

- CNN Money: Tax Credits for Hiring Disabled Workers
- SBA: Hiring People with Disabilities
- State of Arkansas: Department of Workforce Services
- Massachusetts EOLWD: Employing People with Disabilities

CAREERS for People with Disabilities

to help individuals with disabilities achieve the satisfaction of sustained, gainful employment in Westchester and Putnam Counties, New York.

Donate

Contact Us

914-741-JOBS (5627)

Search this website ... Search

Employer Incentives

CAREERS helps eligible employers learn about and apply for any tax credits or monetary give-backs for which they may qualify. These are some of the ways employers can benefit by hiring individuals with disabilities:

Work Opportunity Tax Credits ("WOTC")

This federal program is designed to encourage employers to hire people with disabilities and gives direct tax credits to private employers who create job opportunities for qualified people. The WOTC provides employers with a federal tax credit of up to $2,400, or a maximum of 40% of the first $6,000 in qualified first year wages paid to a worker with a disability.

Learn more

Workers with Disabilities Employment Tax Credit ("WETC")

This is a New York State initiative by which employers can receive a NYS tax credit of up to $2,100 for each individual hired. The tax credit equals 35% of the employee's first $6,000 in qualified wages, paid during the second year of employment. The employee must be certified as disabled by Adult Career and Continuing Education Services – Vocational Rehabilitation (ACCES-VR) and must have worked full-time for at least 180 days or 400 hours.

Learn more

Work Try-Out

A Work Try-Out (available through the New York State Education Department/ACCES-VR) provides employers with 100% wage reimbursement, requires minimal paperwork, can be approved in 3 days, and can last up to 160 hours of work. The purpose of the program is to allow individuals with little or no work experience the opportunity to try out jobs. The goal is for the Work-Try-Out to lead to permanent employment. On-site support may be available from CAREERS Employment Specialists.

Learn more

On-the-Job Training Monetary Incentive Program

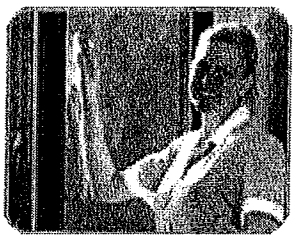
On-the-Job Training ("OJT") is designed to provide an individual with disabilities the skills necessary to perform a particular job, and affords employers the benefit of receiving reimbursement for part of wages paid. CAREERS Employment Specialists help develop and implement the plan, and advocate for both the employer and the employee. During the training period of up to four months, the trainee is placed on the employer's payroll and must receive the same benefits as other employees. The trainee is paid normal entry-level wages for that job, and the employer is reimbursed by ACCES-VR for this wage on a decreasing scale. Upon completion of this training period, it is expected that the trainee will have the skills to be hired permanently.

Learn more

Employer Info

- Americans with Disabilities Act (ADA)
- Employer Incentives
- Employers
- Partnering for Success
- Types of Jobs

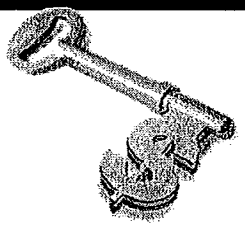
Possible Career Opportunities



There are many exciting opportunities.....

Learn more

Federal & State Tax Incentives



Federal Tax Incentives
Two Federal tax incentives support businesses when they remove architectural and other barriers. Another promotes employment of individuals with disabilities.

1. Architectural/Transportation Tax

Deduction: Any business can use this deduction to remove existing barriers in buildings or in transportation vehicles.
IR Code Section 190, Barrier Removal

Possibilities:

- Hiring a reader to tape record instructions for an employee who is blind
- Widening doors to allow individuals easier access to break rooms
- Re-painting a parking lot to allow more parking for people with disabilities

2. Disabled Access Credit: Small businesses use this tax credit to remove architectural barriers and to buy equipment, aids or services.
IR Code Section 44

Possibilities:

- Sign language interpreters for employees who need them at performance reviews
- Production of Braille or large print documents for instruction manuals
- Purchase of an adjustable desk for an individual who uses a wheelchair

3. Work Opportunity Tax Credit (WOTC):
Employers gain a tax credit for hiring workers from certain targeted groups, including individuals referred from vocational rehabilitation programs.
IR Code Section 51

State Tax Incentives

MD Disability Employment Tax Credit (MDETC)
Employers may take a credit in an amount to 30% of up to the first $6,000 ($1,800) of wages paid during the first year, and 20% of wages up to the first $6,000 paid during the second year of employment.

Employers can also benefit from a tax credit for work-related child care or transportation expenses paid by the employer. The MDETC allows a credit of up to $600 of qualified child care or transportation incurred during the first year of employment, and up to $500 for the second year.

The MDETC may be claimed concurrently with any available federal tax credit for which the employee may be eligible.

DORS

To learn more about federal tax incentives for hiring individuals with disabilities, contact the Mid-Atlantic ADA Center at 1-800-949-4232.

To find out more about how to use the Maryland Disability Employment Tax Credit, contact the DORS office nearest you, or call 410-554-9442 or (toll-free) 1-888-554-0334.

June 2008

DORS Home

- For Employers
  - What is DORS?
  - What Can DORS Do for Maryland Businesses?
  - How DORS Prepares a Workforce
  - On-the-job training reimbursements
  - Place a Job Order with DORS
  - Other Ways to Support Employment for People with Disabilities
  - Maryland's WorkTech
  - Workforce & Technology Center
  - State & Federal Tax Incentives
  - Free Information from the Job Accomodation Network
  - About Employees/ Applicants Who Are

For Employers

State & Federal Tax Incentives

Maryland Disability Employment Tax Credit (MDETC)

The MDETC encourages employers to hire qualified people with disabilities.

It allows a credit of an amount equal to 30% of up to the first $6,000 ($1,800) of wages paid during the first year and 20% of up to the first $6,000 ($1,200) of wages paid during the second year of employment.

Under the MDETC, there is also a tax credit for employer-paid child care or transportation expenses. This amounts to a credit of up to $600 of expenses during the first year and up to $500 for the second year.

For-profit employers may claim a credit against state income tax. Organizations

Quick Links

- DORS Locations
- Frequently Asked Questions

Related Links

- Comptroller of Maryland: Maryland Disability Tax Credit
- Department of Labor, Licensing & Regulation: MDETC
- ADA Tax Incentives for Businesses

Publications

- DORS Works for Maryland Businesses

Deaf or Hard of Hearing
- FAQ for Employers
- Disability Employment Links
- DORS Specialists Provide Quality Federal Employees

exempt from taxation under 501(c)(3) or (4) may claim a credit on income tax due on unrelated business income or withholding taxes.

Federal Tax Incentives

Three Federal tax incentives support businesses as they remove architectural barriers and accommodate employees and/or customers with disabilities.

1. Architectural/Transportation Tax Deduction
Any business can use this deduction to remove existing barriers in buildings or in transportation vehicles. *IR Code Section 190, Barrier Removal.*

Possibilities:

- Hiring a reader to tape record instructions for an employee who is blind.
- Widening doors to allow individuals easier access to break rooms.
- Re-painting a parking lot to allow for more parking for people with disabilities.

2. Disabled Access Credit
Small businesses use this tax credit to remove architectural barriers and to buy equipment, aids or services. *IR Code Section 44.*

Possibilities:

- Sign language interpreters for employees who need them during performance reviews.
- Production of Braille or large print for documents for instruction manuals.
- Purchase of an adjustable height desk for an individual who uses a wheelchair.
- Removing steps to closet where employees must go to get supplies.

3. Work Opportunity Tax Credit (WOTC)
Employers gain a tax credit for hiring workers from certain targeted low-income groups, including individuals referred from

- Facts About the MD Disability Employment Tax Credit
- IRS Publication 3966: Disability Tax Benefits & Credits

vocational rehabilitation programs. *IR Code Section 51.*

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Back to top of page