DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Regulatory Initiatives

Date: November 10, 2014

I am providing my analysis of ten (10) regulatory initiatives in anticipation of the November 13 SCPD P&L Committee meeting. Given time constraints, the commentary should be considered preliminary and non-exhaustive. The Delaware State website with electronic versions of the Delaware Code and Administrative Code has been inoperable since at least November 6 which compromised my research capability.

1. DPH Final Hospital Locked Bathroom Door Access Reg. [18 DE Reg. 390 (11/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in August, 2014. A copy of the August 28, 2014 SCPD memo is attached for facilitated reference. The Division of Public Health has now adopted a final regulation with no changes.

The Councils shared three (3) observations on the proposed regulation.

First, the Councils recommended placement of the standards in the "physical environment" section of the regulations rather than the "governing body" section. The Division responded that the governing body is responsible for all hospital operations so the bathroom standard remains there. This is counterintuitive. Based on the Division's rationale, all physical plant standards should be placed under "governing body".

Second, the Councils asked for clarification of the process for alerting hospitals to the new regulation and the time line for their adoption of policies and procedures given the October 1 effective date. The Division responded that it "has developed a plan to notify all licensed hospitals and ensure the implementation of the new regulations." No further information is provided.

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DELAWARE'S PROTECTION AND ADVOCACY SYSTEM FOR PERSONS WITH DISABILITIES

Third, the Councils noted that 1977 and 1981 versions of national standards are incorporated by reference. The Councils recommended as assessment to determine if the references should be updated. The Division responded that it "intends to review and update the hospital regulations in the near future".

Since the regulation is final, and the Division responded to each of the Councils' comments, I recommend no further action.

2. DMMA Final Delaware Healthy Children Program Premium Reg. [18 DE Reg. 375 (11/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in September, 2014. A copy of the September 29, 2014 SCPD memo is attached for facilitated reference.

The Councils endorsed the initiative which was designed to conform regulatory standards with changes in DHCP premiums already adopted in January, 2014. The new standards also incorporate pre-payment discounts for premiums. The Division of Medicaid & Medical Assistance has now acknowledged the endorsements and adopted a final regulation with no further changes.

Since the Division has adopted a final regulation in the form endorsed by the Councils, I recommend no further action.

3. DMMA Final DSHP 1115 Waiver Amendment Covering PROMISE [18 DE Reg. 186 (11/1/14)]

The SCPD, GACEC, and DLP commented on the proposed version of this regulation in September, 2014. A copy of the September 29, 2014 SCPD memo is attached for facilitated reference.

The DLP and Councils endorsed the regulation subject to two (2) recommendations.

First, the Division was encouraged to amend the "target criteria" to include "Major Neurocognitive Disorder Due to TBI". The Division declined to adopt a conforming amendment.

Second, the Division was encouraged to resolve ostensibly inconsistent references to choice of providers. The Division declined to adopt an amendment.

Given the potential value of the program to individuals with a TB diagnosis, I recommend that the Councils consider requesting the DHSS Secretary to review the Division's decision to not include TBI as a stand-alone, qualifying diagnostic category.

4. DOE Final CPR Instruction Regulation [18 DE Reg. 369 (11/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in September, 2014. A copy of the August 28, 2014 SCPD letter and the Department of Education's September 30, 2014 response are attached for facilitated reference.

First, the Councils recommended that the existing deadline for CPR and organ/tissue donation "awareness" be retained while deferring only the time frame for "hands-on" CPR instruction. The DOE responded that it understood that CPR awareness "has been implemented in most schools' curricula for the 2014-15 school year". [emphasis added] I continue to view the deferral of "awareness" instruction for another school year as unnecessary.

Second, the Councils had prompted the inclusion of the following provision in H.B. No. 249:

> The individualized education plan (IEP) or 504 plan of a student with a disability identified under Chapter 31 of this title may modify the content of instruction for CPR required by this section or, if such modification would be ineffective, exempt such student from application of this section.

Action on H.B. No. 249 was ostensibly deferred in favor of incorporating into §306 of the budget epilog a mandate to offer CPR training in curricula beginning in the 2015-16 school year. The DOE declined to incorporate the concept of content modification and exemption in the regulation:

> Regarding students with Individualized Education Programs (IEPs) stemming from physical or other limitations, we believe that any exception to the requirements of this regulation would be stipulated in the IEP. Secondly, we do not prefer to list exceptions in the regulations as we work to make the regulation as clear as possible. Lastly, we do not believe a complete exemption or modification of the instruction is appropriate, as the student with an IEP could still obtain some knowledge form the verbal instruction. Therefore, we will not add language to the regulation regarding student's (sic "students") with IEPs.

The DOE ignores a critical consideration. If a student cannot demonstrate competency in use of psychomotor skills in conducting CPR, the student may flunk the health education course which is a graduation requirement. See §1.1.3.4 of the regulation. OSEP has historically authorized states to delegate some authority regarding promotion/credits to IEP teams. See attached Letter to Anonymous, 35 IDELR 35 (11/9/2000) [IDEA does not prevent a state from assigning decisions regarding promotion and retention to IEP teams]. Therefore, while the DOE blithely touts the advantages of obtaining "some knowledge", it ignores the more compelling problem - students with disability-related psychomotor limitations will not graduate simply because they flunk the health education class based on inability to physically perform CPR. This is a very unfortunate result. The explicit authorization for IEP and Section 504 team modification or, as a last resort, exemption from part of the content of a course would deter "unfair" treatment of students with disabilities.

I recommend that the Councils promote revision of §306 of the budget epilog in the next legislative session to include an explicit authorization for IEP or 504 team exemption from demonstrating psychomotor competency in administering CPR.

5. DOE Final Charter School "Impact" Regulation [18 DE Reg. 366 (11/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in September. A copy of the September 15, 204 GACEC letter and October 31, 2014 DOE response is attached for facilitated reference.

First, the Councils recommended consideration of whether assessing a charter school's effect on the entire "education system of the state" was "overbroad". The DOE declined to amend the reference.

Second, the Councils recommended that the DOE include a definition of "programmatic offerings". The DOE declined to amend the reference.

Third, the Councils identified a grammatical error. The Department corrected the error.

Since the regulation is final, and the DOE responded to the Councils' commentary, I recommend no further action on this regulation. However, the Councils may wish to follow up on the following observation in my August 8, 2014 P&L memo:

> Parenthetically, the Department appears to have adopted a standard practice of not reproducing a summary of comments and its findings in the regulation itself. Instead, it sends letters to each commenting agency. This is ostensibly inconsistent with Title 29 Del.C. §10118(b) which requires publication of "a brief summary of the evidence and information submitted" and "a brief summary of its findings of fact with respect to the evidence and information". This statutory mandate is intended to provide the public with useful information on the basis for regulatory changes. In contrast, the identity of the two commenting special programs is not disclosed, nor the gist of their comments. This does not conform to the APA.

The Department continues to not publish a summary of the information submitted and its findings on the information in the Register. Instead, is sends a letter to each commenting entity. Thus, although the regulation recites that the Delaware Charter School Network submitted comments (at 366), one can only speculate about the evidence and information submitted and the DOE findings on the Charter School Network submission. To my knowledge, the DOE is the only State agency which adopts this approach that ostensibly violates State law and undermines the availability of regulatory history. The Councils may wish to consider sending a letter of concern to the current or incoming Attorney General in the near future.

6. DOE Prop. Teacher of Students Who Are Gifted or Talented Cert. [18 DE Reg. 350 (11/1/14)]

The Professional Standards Board is proposing some revisions to its regulation covering eligibility for a standard certificate for a Teacher of Students Who Are Gifted or Talented.

Some of the key changes are as follows:

In order to qualify for the "Gifted or Talented" standard certificate, the teacher would be required to already hold a standard certificate "in a subject (content), grade level, or area" (§3.1.3). In addition, the teacher would be required to meet <u>either</u> of the following standards:

> 4.1.1 Holding a bachelor's, master's, or doctoral degree form a regionally accredited college or university with a major or its equivalent in gifted or talented education, teaching gifted students or special education with a gifted or talented endorsement or specialization from a National Council Educator Preparation (CAEP) specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval board employed the appropriate standards; or
>
> 4.1.2. Completion of a minimum of fifteen (15) credits or their equivalent in professional development as approved by the Department, with a focus on special education for gifted or talented students or students who are gifted or talented in the following content areas:...

I have only a few non-substantive observations.

First, the DOE may wish to insert the word "and" at the end of §4.1.2.4. Ths is discretionary.

Second, §4.1.1 is a 69-word clause which is somewhat convoluted and difficult to follow. The DOE may wish to consider reformatting its content into distinct subparts for clarity.

I recommend sharing the above observations with the Professional Standard Board, DOE, and the SBE.

7. <u>DOE Prop. James H. Groves High School Regulation [18 DE Reg. 343 (11/1/14)]</u>

The Department of Education is proposing to adopt several revisions to its regulation covering enrollment in the James H. Groves High School. I have the following observations.

First, §2.3.4 recites as follows:

> 2.3.4 Students in the Groves in School Credit program shall not receive instruction during the school's regularly scheduled school day.

No rationale is provided for this categorical restriction. I recommend deletion of the across-the-board restriction. For example, if a student enrolled in Groves qualified for homebound instruction (e.g. based on illness or pregnancy), the student could not receive homebound between 9-3. Moreover, instructional planning is enhanced by flexibility in scheduling in contrast to adoption of brittle exclusions. If a student has a "free" period or "study" period during a school day, it makes no sense to categorically exclude the student from receiving Groves instruction during such periods.

Second, §2.4.1.3 a 16 or 17 year old with a pending or actual expulsion can be admitted to Groves under a waiver only if the expulsion is for "a nonviolent reason". There is no definition of "nonviolent reason". A student could have an excellent conduct record but for a single fight or incident. A student may have engaged in conduct qualifying as a DUI or leaving the scene of an accident [violent offenses under 11 Del.C. §9002(5) (f)] with no prospect for recurrence due to the lack of a license and vehicle. It would be preferable to allow the Director assessing an application to consider extenuating circumstances. There would still be a requirement that the applicant not be "a security threat".

Third, §2.4.1.2 bars a 16 or 17 year old subject to a pending or actual expulsion from admission to Groves unless the student confirms an intent to graduate from Groves. This makes little sense. A sixteen year old may intend to attend Groves for the period of the expulsion and then return to his/her high school.

Fourth, §2.4.1.4 bars a 16 or 17 year old subject to a pending or actual expulsion from admission to Groves unless the student submits a letter of recommendation from the principal or designee of high school of record. This should be deleted. It is akin to an employee being fired from a job and being required to obtain a letter of recommendation from the same employer to get another job. As a practical matter, the relationship between an expelled student and principal will often be "strained", making acquisition of a positive letter of recommendation somewhat quixotic.

Finally, the regulation should be designed to encourage, not discourage, enrollment in Groves. It is in the public interest that students attend school and pursue a diploma. To the extent that multiple barriers and hurdles to admission are imposed, 16-17 year olds will simply drop out of school altogether, an unfortunate result.

I recommend sharing the above observations with the DOE with a courtesy copy to the ACLU.

8. <u>DSS Prop. TANF State Plan Renewal Regulation [18 DE Reg. 354 (11/1/14)]</u>

The Division of Social Services (DSS) is soliciting comments on its renewal of the TANF program covering the period from October 1, 2014 through December 31, 2016. I reviewed the 23-page document and did not identify any significant concerns. I recommend endorsement.

9. <u>DOE Prop. Michael Ferguson Achievement Awards Program Reg. [18 DE Reg. 340 (11/1/14)]</u>

As background, the attached statute [14 Del.C. §153(c)] establishes a scholarship program known as the Michael C. Ferguson Achievement Awards. A maximum of 600 scholarships of $1,000 each are awarded annually as follows: 1) students with the 150 highest scores on assessment or assessments in the state assessment system without reference to any other indicators of performance; and 2) students with the 150 highest scores on assessment or assessments in the state assessment system who participate in free and reduced lunch programs in grades 8 and 10.

The Department of Education is directed to issue regulations to implement the program. The Department is now proposing several revisions to its existing program regulations. I have the following observations.

First, the DOE is striking the term "scholarship" from the regulation "to clarify that these are awards and not funds that need to be applied for as is done with scholarships." At p. 340. I recommend retention of the term "scholarship". Consider the following:

A. The enabling statute uses the term "scholarship".

B. The attached definitions of "scholarship" do not require an application. Many schools have entrance exams or placement tests and award scholarships based on the top scores. Students do not have to "apply" for the scholarships.

C. The dictionary definition of "scholarship" indicates that use of the term is apt. A "scholarship" is simply financial aid provided to a scholar because of academic merit. This is precisely descriptive of the program which is based on high achievement, i.e., scholarship.

D. The FY15 budget bill (S.B. No. 255; p. 121) still refers to this funding program as a "scholarship".

Second, if the DOE does delete the term "scholarship", it should strike the term from §4.1 for consistency.

Third, §1.2.2.2 should be amended by adding "percent (50%)" after the word "fifty". <u>Compare</u> §1.2.2.1.

Fourth, the awards are ostensibly not based on the highest summative/aggregate scores in English Language Arts and Math. Rather, they are based on highest separate scores in English Language Arts and Math. The DOE adds the following guidance: "The number of awards shall be as close to fifty percent (50%) in each area as possible." <u>See</u> §§1.2.1.1, 1.2.1.2, 1.2.2.1, and 1.2.2.2. I interpret this to mean that the DOE would prefer to confer awards to the top 75 students in English Language Arts and the top 75 students in Math in grades 8 and 11 testing. This overall approach may create an imprecise and arguably inequitable result. For example, if scores are generally higher in English Language Arts, does the DOE exclude the bottom tier of the English Language Arts top 75 students and grant scholarships to lower scoring students in Math? It may be simpler and more objective to change the overall approach. Instead of awarding scholarships to "150 students in the areas of English Language Arts and Mathematics", award scholarships to the top scoring 75 students in English Language Arts and top 75 students in Mathematics. This would be precise and permit elimination of the problematic "(t)he number of awards shall be as close to fifty percent (50%) in each area as possible."

Fifth, the enabling legislation indicates that the awards are given to top performing students on the state assessment system in grades 8 and 10. The existing regulation is consistent, i.e., awards are based on the performance of eighth and tenth grade students. However, the DOE is proposing to change references by substituting eleventh grade students for tenth grade students. I did not identify any budget epilog language which modifies the statutory reference to grade 10. The DOE may wish to consider whether it has the authority to substitute grade 11 for grade 10 given the explicit reference to grade 10 in the enabling law.

I recommend sharing the above observations with the DOE and SBE.

10. <u>OMB Prop. Downtown Development District Applications Reg. [18 DE Reg. 359 (11/1/14)]</u>

As background, the attached legislation (S.B. No. 191) was enacted in June, 2014 to provide incentives to spur development of "downtown development districts". Local governments are authorized to submit applications which undergo several layers of review. Developers participating in an approved local government initiative qualify for both local government and State government incentives. For example, a "Qualified District Investor" may receive a State grant to expand, rehabilitate or construct real property for residential, commercial, industrial or mixed use as part of implementation of an approved local government plan (lines 104-136).

I have the following observations.

First, the regulation identifies factors that reviewers would assess in determining whether to approve an application. The assessment criteria for approval of a plan and local incentives include the following respectively:

> 8.3.1.6: The District Plan promotes energy-efficient and environmentally sensitive development, and addresses the potential effects of flooding and sea level rise as applicable; ...
>
> 8.4.5: Promote energy-efficient and environmentally sensitive development and address the potential effects of flooding and sea level rise as applicable; ...

Obviously, the State wishes to ensure the long-term viability of projects by considering factors such as sea level rise. Given the groundswell of Delaware's aging population, it would be equally important to promote the physical accessibility of facilities described in an application. This could be facilitated by adoption of the following amendments:

> 8.3.1.6: The District Plan promotes energy-efficient<u>, accessible,</u> and environmentally sensitive development, and addresses the potential effects of flooding and sea level rise as applicable; ...

8.4.5: Promote energy-efficient, accessible, and environmentally sensitive development and address the potential effects of flooding and sea level rise as applicable; ...

Second, it is possible that the Architectural Accessibility Board (an OMB agency) would have jurisdiction over construction and renovation of some facilities. The AAB has jurisdiction over any facility or any alteration of a facility "constructed on behalf of the State" or "financed in whole or part by the State". See Title 29 Del.C. §§7902-7903. Since State financial grants are paid to developers, this may qualify as "financed in ... part by the State". Section 6.2 authorizes the Office of State Planning Coordination (an OMB agency) to obtain assistance from a "Reviewing Agency", defined as "any State Agency assigned by the Office to review and provide comments regarding an application or any portion thereof". Thus, even on a voluntary basis, construction plans could be forwarded to the AAB for input. However, it may be prudent to include an explicit reference to the AAB in §6.0. For example, the following provision could be added: "Without limitation, the Architectural Accessibility Board shall serve as a Reviewing Agency if the Application includes construction or renovation of facilities within the Board's jurisdiction." Alternatively, the AAB director or representative could be designated by the Governor as a member of the Cabinet Committee on State Planning Issues (S.B. No. 191, lines 50-52, 182).

I recommend sharing the above observations with OMB. Courtesy copies could be shared with the AARP and DHSS Secretary encouraging them to consider input. I also recommend soliciting the AAB director's perspective prior to submission of formal comments.

Attachments

E:leg/1114bils
F:pub/bjh/legis/2014p&l/1114bils

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: August 28, 2014

TO: Ms. Deborah Harvey
Division of Public Health

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

RE: 18 DE Reg. 119 [DPH Proposed Hospital Locked Bathroom Door Access Regulation (8/1/14)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to amend its hospital standards to ensure that hospital staff have ready access to a locked hospital bathroom in the event of an emergency. This is a result of enactment of H.B. 129 ("Christina's Law") which the Governor signed on June 10, 2014. DPH is implementing the statutory mandate by proposing the addition of the following subsection to its regulations covering hospital construction, maintenance, and operation:

> 4.4. Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.

The proposed regulation was published as 18 DE Reg. 119 in the August 1, 2014 issue of the Register of Regulations. SCPD has the following observations.

First, placement of this sentence in the personnel-related "§4.0 Governing Body, Organization and Staff" regulation is counterintuitive. If someone were looking for a standard on bathroom access, it may be more logical to place the sentence in "§3.0 Physical Environment".

Second, it's unclear what process will be used to alert hospitals of the new regulation and what time line applies to "development and implementation" of the policies and procedures. Are hospitals out of compliance if a policy is not operational on the effective date of the regulation (e.g. October 1, 2014) or do they enjoy some time to develop and implement the policies and procedures? DPH may wish to consider either inserting a firm effective date (e.g. December 1,

2014) or communicating an expectation through a sub-regulatory letter or guidance document.

Third, in reviewing the regulation, SCPD noted that 1977 and 1981 versions of national standards are incorporated by reference. See §§3.1 and 4.1. DPH may wish to review these references to determine if they should be updated. Literally, the 1977 and 1981 versions of standards are binding.

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

cc: The Honorable Rita Landgraf
Dr. Karyl Rattay
Ms. Deborah Gottschalk
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

18reg119 dph-hospital locked bathroom door access 8-28-14

SPONSOR: Rep. Kenton

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

HOUSE BILL NO. 129

1 WHEREAS, Christina Lee Ann Atkins, a Delaware high school freshman, went to the hospital on May 26, 2011
2 after feeling ill; and
3 WHEREAS, Christina experienced a medical emergency while locked in the hospital restroom; and
4 WHEREAS, Christina's mother alerted hospital staff after checking on Christina and hearing her gasp for air; and
5 WHEREAS, hospital staff made several unsuccessful attempts to unlock the bathroom door to assist Christina,
6 including efforts to remove the door from its hinges; and
7 WHEREAS, after approximately ten (10) minutes a hospital security guard was finally able to unlock the door;
8 and
9 WHEREAS, hospital staff were unable to revive Christina. She was fourteen (14) years old; and
10 WHEREAS, the efforts of Christina's parents, Chris and Bonnie Atkins, have been instrumental in the
11 development of House Bill No. 129 so that the events of May 26, 2011 are not repeated.
12 NOW, THEREFORE:
13 AMEND House Bill No. 129 by inserting the following after line 7:
14 Section 2. This Act shall be known as "Christina's Law."

SYNOPSIS

This amendment names House Bill No. 129 "Christina's Law" in honor of Christina Lee Ann Atkins.

SPONSOR: Rep. Kenton & Sen. Pettyjohn
Reps. D. Short, Smyk, Carson, Kowalko, Osienski, Walker;
Sens. Hocker, Lopez, Sokola

HOUSE OF REPRESENTATIVES

147th GENERAL ASSEMBLY

HOUSE BILL NO. 129
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO ACCESS TO HOSPITAL BATHROOMS.

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

Section 1. Amend § 1007, Title 16 of the Delaware Code by making insertions as shown by underlining as follows:

§ 1007. Rules, regulations and enforcement.

<u>(a)</u> The Department shall adopt, amend or repeal regulations governing the establishment and operation of hospitals. These regulations shall establish reasonable standards of equipment, capacity, sanitation and any conditions which might influence the health care received by patients or promote the purposes of this chapter.

<u>(b) The Department shall further adopt regulations to ensure that hospital staff have ready access to a locked hospital bathroom in the event of an emergency.</u>

Section 2. This Act shall be known as "Christina's Law."

HR : MJH : AFJ:0801470526
LC : MJC : RAY:4801470054

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MEMORANDUM

DATE: September 29, 2014

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

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

RE: 18 DE Reg. 183[DMMA Proposed Delaware Healthy Children Program Premium Reg.]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) proposal to amend its Delaware Healthy Children Program regarding cost sharing and payment. The proposed regulation was published as 18 DE Reg. 183 in the September 1, 2014 issue of the Register of Regulations.

Historically, Delaware has charged a monthly premium as a condition of eligibility. CMS guidance based on the Affordable Care Act has prompted the Division of Medicaid & Medical Insurance to modify its schedule of premiums effective January 1, 2014 as follows:

A. family income between 101%- 133% of the Federal Poverty Level - children transitioned to Medicaid with no premium;

B. family income between 134% - 166% of Federal Poverty Level - $15/month per family; and

C. family income between 167%-212% of Federal Poverty Level - $25/month per family.

These premium levels had already been implemented effective January 1, 2014. See Summary of Proposal at p. 184 and attached DMMA Administrative Notice 01-2014, last page. However, the Delaware Healthy Children State Plan had not been amended to conform to practice. The proposed regulation amends the Delaware Healthy Children Program plan to reflect the current

premium structure.

DMMA is also amending the plan to incorporate a pre-payment premium discount which has been implemented since the inception of the Program but not specifically included in the plan. The discount is described as follows:

> Pay three (3) months get one (1) premium free month; pay six (6) months get two (2) premium free months; pay nine (9) months get three (3) premium free months.

SCPD endorses the proposed changes since they are being prompted by CMS guidance and the changes benefit low-income families with children.

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

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

18reg 183 dmma-health children 9-29-14

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act
- Title XXI of the Social Security Act, *State Children's Health Insurance Program*
- 42 CFR Part 457, *State Children's Health Insurance Programs (SCHIPs)*
- 16 Delaware Code, Section 9909

Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the "State Children's Health Insurance Program (SCHIP)" by adding Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware's SCHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the Delaware Code.

Modified Adjusted Gross Income (MAGI) Conversion Plan

Under the Affordable Care Act, to complete the transition to the MAGI-based methodology, states developed MAGI-based income eligibility standards for the applicable eligibility groups that "are not less than the effective income levels" that were used to determine Medicaid and CHIP income eligibility as of the enactment of the Affordable Care Act. The conversion of current income eligibility standards to equivalent MAGI-based income eligibility standards account for any income disregards now used. Finally, under section 1902(e)(14)(E) of the Act, each state must submit to the Secretary for approval its proposed MAGI-equivalent income eligibility standards and the methodologies and procedures that support those proposed standards, for each applicable eligibility group. This submission is referred to as the state's "MAGI Conversion Plan". Delaware's conversion plan was approved on September 17, 2013.

The conversion to MAGI-based income eligibility standards impacts the percentages of the Federal Poverty Level (FPL) used to set the premium levels under CHIP.

Summary of Proposal

The Centers for Medicare and Medicaid Services (CMS) recently advised Delaware that the State needs to amend the Delaware Healthy Children Program (DHCP) state plan to update the premium levels to account for the MAGI-based conversion standards.

Therefore, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) will be submitting a state plan amendment to change the percentages of the Federal Poverty Level (FPL) applied to the premium levels and to describe the incentives for pre-payment of premiums, as follows:

1. Effective January 1, 2014, the ten dollar ($10.00) per family per month premium for families with incomes between 101% and 133% of the Federal Poverty Level (FPL) is obsolete. Children in these families transitioned to Medicaid effective January 1, 2014.
2. Effective January 1, 2014, the conversion to MAGI-based standards results in a premium of fifteen dollars ($15.00) per family per month for families with incomes between 134% and 166% of the FPL and a premium of twenty-five dollars ($25.00) per family per month for families with incomes between 167% and 212% of the FPL. These revised premium levels have been in practice since January 1, 2014, but had not been set forth in the CHIP state plan.

Section 8 of the DHCP State Plan and Section 18700 of the Division of Social Services Manual (DSSM) will be amended to reflect the above-referenced change to the premium levels.

In addition, based on agency review, DHSS/DMMA intends to amend the DHCP state plan at section 8.2.1 to update the language regarding incentives for pre-payment of premiums. The updated language reflects incentives for pre-payment of premiums that have been in practice since the inception of Delaware's CHIP program. These incentives are described at Section 18700 of the Division of Social Services Manual (DSSM).

STATE OF DELAWARE
DELAWARE HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID & MEDICAL ASSISTANCE
PLANNING AND POLICY DEVELOPMENT UNIT

MEMORANDUM

REPLY TO
ATTN. OF: Administrative Notice DMMA 01-2014

TO: All DMMA and DSS Staff

DATE:

SUBJECT: 2014 Federal Poverty Level and Medical Assistance Income Limits

BACKGROUND

The 2014 Federal Poverty Level guidelines were announced in the Federal Register on January 22, 2014. The Federal Poverty Level guidelines are used to compute income eligibility standards for:

- Parents/Caretaker Relatives
- Pregnant Women
- Infants
- Children
- Adults
- Delaware Healthy Children Program
- Qualified Medicare Beneficiary (QMB)
- Specified Low Income Medicare Beneficiary (SLMB)
- Qualifying Individual 1 (QI-1)
- Qualified Disabled Working Individual (QDWI)
- Delaware Prescription Assistance Program (DPAP)

DISCUSSION

The monthly countable income limits are effective January 1 for parents/caretaker relatives, pregnant women, infants, children, adults, Delaware Healthy Children Program, and QDWIs. The income limits are effective February 1 for the Delaware Prescription Assistance Program. The income limits are effective April 1 for QMBs, SLMBs, and QI-1s, who have title II income.

- Parents/Caretaker Relatives must have family income at or below 87% of poverty..

- Pregnant women and infants under age 1 must have family income at or below 212% of poverty. Pregnant women count as 2 (or more) family members.

- Children age 1 through age 5 (under age 6) must have family income at or below 142% of poverty.
- Children age 6 through age 18 (under age 19) must have family income at or below 133% of poverty.
- Adults must have family income at or below 133% of poverty.
- Children in the Delaware Healthy Children Program must have income at or below 212% of poverty.
- A QMB must have income at or below 100% of poverty.
- A SLMB must have income at or below 120% of poverty.
- A QI-1 must have income that is over 120% of poverty but does not exceed 135% of poverty.
- A QDWI must have income at or below 200% of poverty.
- For DPAP, an individual must have income at or below 200% of poverty
- For a family size greater than 10, add $4,060 to the annual income for each family member.

The attached charts show the income limits for the various medical assistance programs and the premium amounts for the Delaware Healthy Children Program.

ACTION REQUIRED

The new income limits will be updated in DCIS with the appropriate effective dates.

DCIS will identify any cases that were denied or closed due to income between 12/20/13 and the date the new income limits are put into production. Staff will receive a report of these cases and will need to run eligibility for these cases.

DIRECT INQUIRIES TO

Jill Williams
(302) 255-9609

January 28, 2014
Date

Dave Michalik
Dave Michalik
Chief Planning and Policy Development Unit
Division of Medicaid &
Medical Assistance

DM:jw

2014 Countable Income Limits for Federal Poverty Level Related Medical Assistance Programs

Family Size	Annual Income 100% FPL	Monthly Income 87% FPL Parents/Caretaker Relatives	Monthly Income 133% FPL Age 6 through 18 Adults	Monthly Income 142% FPL Age 1 through 5	Monthly Income 200% FPL DPAP	Monthly Income 212% FPL Pregnant Women Infants
1	11,670	847	1,294	1,381	1,945	2,062
2	15,730	1,141	1,744	1,862	2,622	2,779
3	19,790	1,435	2,194	2,342	3,299	3,497
4	23,850	1,730	2,644	2,823	3,975	4,214
5	27,910	2,024	3,094	3,303	4,652	4,931
6	31,970	2,318	3,544	3,784	5,329	5,649
7	36,030	2,613	3,994	4,264	6,005	6,366
8	40,090	2,907	4,444	4,744	6,682	7,083
9	44,150	3,201	4,894	5,225	7,359	7,800
10	48,210	3,496	5,344	5,705	8,035	8,518

Family Size	Monthly Income 100% FPL QMB	Monthly Income 120% FPL SLMB	Monthly Income 135% FPL QI-1	Monthly Income 200% FPL QDWI
1	973	1,167	1,313	1,945
2	1,311	1,573	1,770	2,622

Delaware Healthy Children Program
2014 Countable Income Limits
212% FPL

Family Size	Monthly Income
1	2,062
2	2,779
3	3,497
4	4,214
5	4,931
6	5,649
7	6,366
8	7,083
9	7,800
10	8,518

Delaware Healthy Children Program
Monthly Premium Based on Countable Family Income
% of FPL

Family Size	Monthly Income 134% – 176% Premium $15	Monthly Income 177% – 212% Premium $25
1	1,295 — 1,712	1,713 — 2,062
2	1,745 — 2,308	2,309 — 2,779
3	2,195 — 2,903	2,904 — 3,497
4	2,645 — 3,498	3,499 — 4,214
5	3,095 — 4,094	4,095 — 4,931
6	3,545 — 4,689	4,690 — 5,649
7	3,995 — 5,285	5,286 — 6,366
8	4,445 — 5,880	5,881 — 7,083
9	4,895 — 6,476	6,477 — 7,800
10	5,345 — 7,071	7,072 — 8,518

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

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

MEMORANDUM

DATE: September 29, 2014

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

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

RE: 18 DE Reg. 186 [Proposed DSHP 1115 Waiver Amendment Covering PROMISE]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) proposal to submit an application to the Centers for Medicare and Medicaid Services (CMS) to amend the Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver. A link in the Register of Regulations (at p. 187) connects to a 38-page document dated August 22, 2014 entitled "1115 Demonstration Amendment for State of Delaware PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment) Program Changes", hereinafter "Amendment". The proposal was published as 18 DE Reg. 186 in the September 1, 2014 issue of the Register of Regulations.

As background, the target population is described as "individuals meeting the Olmstead settlement BH target population as well as other Medicaid-eligible adults with serious mental illness and/or substance abuse disorder needs requiring HCBS to live and work in the most integrated setting." Amendment, p. 1. Specific eligibility standards are outlined at pp. 3-6.

The enhanced benefit package (pp. 7-8) includes the following fifteen (15) supports:

- care management
- benefits counseling
- community psychiatric support and treatment
- community-based residential supports, excluding assisted living
- financial coaching
- independent activities of daily living/chore
- individual employment supports

- non-medical transportation
- nursing
- peer support
- personal care
- psychosocial rehabilitation
- respite
- short-term small group supported employment
- community transition services

Individuals enrolled in the Pathways program would be categorically ineligible for enrollment in the PROMISE program. Amendment, p. 3. For individuals enrolled in the DSHP and DSHP+ program, case management and services would be coordinated. Amendment, p. 3.

SCPD endorses the initiative subject to consideration of the following.

First, SCPD highly recommends that Target Criteria A (pp. 3-5) be amended to include "Major Neurocognitive Disorder Due to TBI" (DSM-5), a/k/a Dementia Due to Head Trauma (294.1x) under DSM-IV. Consistent with Attachment "A", characteristics associated with Dementia Due to Head Trauma are described as follows:

> These symptoms include aphasia, attentional problems, irritability, anxiety, depression or affective liability, apathy, increased aggression, or other changes in personality. Alcohol or other Substance Intoxication is often present in individuals with acute head injuries, and concurrent Substance Abuse or Dependence may be present.

Concomitantly, Target Criteria B should be amended to include at least trauma-based "Major Neurocognitive Disorders".

On a practical level, individuals with a diagnosis of "Major Neurocognitive Disorder Due to TBI" will generally present with an array of symptoms at least equivalent to the included PTSD, OCD, and anxiety-based disorders. The former individuals also frequently have co-occurring physical/spinal cord deficits which could be addressed with many of the supports in the services menu, including personal care, nursing, and respite. Moreover, the diagnosis of Major Neurocogntive Disorder Due to TBI requires persistent and significant impairments:

> In DSM-5, not all brain injuries can be considered potentially causative of NCD (neurocognitive disorder). The diagnostic criteria for NCD due to TBI require that the TBI be associated with at least one of four features: loss of consciousness, posttraumatic amnesia, disorientation and confusion, or neurological signs, such as neuroimaging findings, seizures, visual field cuts, anosmia, or hemiparesis (Ref.5, p. 624). Furthermore, the NCD must have its onset either immediately after the TBI or after recovery of consciousness and must persist past the acute post-injury period. Thus, trauma that produced no cognitive or neurological changes at the time of the incident cannot produce an NCD under this scheme.

J. Simpson, M.D, Ph.D., DSM-5 and Neurocognitive Disorders, Journal of the American Academy of Psychiatry and the Law (June 1, 2014) (Attachment "B").

Second, there is some inconsistency/tension in the descriptions of choice of providers. Compare the following:

> All adults receiving PROMISE services will have a choice of practitioner among the contracted and qualified providers. At 8

> If the individual is identified as a CRISP individual, the individual will be enrolled in the PROMISE program only and will receive all services necessary for community living from the PROMISE program through CRISP. At 3.

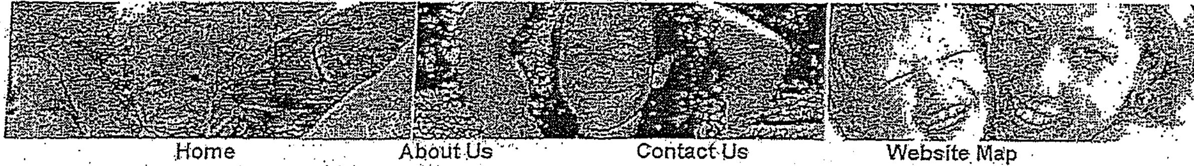
The Department may wish to conform the reference on p. 8 to acknowledge the "CRISP" exception described on p. 3.

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

cc: Mr. Stephen Groff
Ms. Kevin Huckshorn
Ms. Deborah Gottschalk
Mr. Glyne Williams
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

18reg186 dmma-promise 9-29-14

St. Louis Psychologists and Counseling Information and Referral



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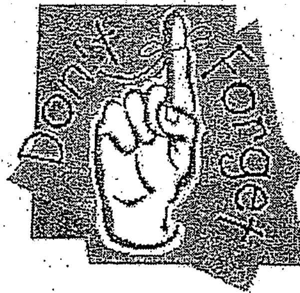
Information

Dementia Due to Head Trauma Symptoms and DSM-IV Diagnosis

Dementia Due to Head Trauma Symptoms and Diagnosis Overview:



Dementia Due to Head Trauma symptoms and diagnostic criteria follow below. While some of these Dementia Due to Head Trauma symptoms may be recognized by family, teachers, legal and medical professionals, and others, only properly trained mental health professionals (psychologists, psychiatrists, professional counselors etc.) can or should even attempt to make a mental health diagnosis. Many additional factors are considered in addition to the Dementia Due to Head Trauma symptoms in making proper diagnosis, including frequently medical and psychological testing considerations. This information on Dementia Due to Head Trauma symptoms and diagnostic criteria are for information purposes only and should never replace the judgment and comprehensive assessment of a trained mental health clinician.

Mental Health Diagnosis - DSM-IV Diagnosis and Codes: Alphabetical

Diagnostic Codes beginning with:

A, B, C, D, E-H,

I-M, N-O, P-R,

S, T-V

Misc. Criteria

Psychiatric and Weight Loss Medication Information:

Antidepressants

Anxiety Medication

Depression Medication

Psychiatric Medications

Weight Loss Medications

Popular Anxiety Medications:

Ativan

Valium:

Xanax

Popular Depression Medications:

Effexor

Elavil

Lexapro

Web Page Blocked!

You have

Ads By Google

Home

Psychology Topics of Interest:

ADD/ADHD

Addiction Recovery

Alcohol Abuse

Alzheimer's

Anger

294.1 Dementia Due to Head Trauma

The essential feature of Dementia Due to Head Trauma is the presence of a dementia that is judged to be the direct pathophysiological consequence of head trauma. The degree and type of cognitive impairments or behavioral disturbances depend on the location and extent of the brain injury. Posttraumatic amnesia is frequently present, along with persisting memory impairment. A variety of other behavioral symptoms may be

Attachment "A"

Antidepressants

Anorexia Nervosa

Anorexia Treatment

Anxiety Disorders

Anxiety Disorder Symptoms

Anxiety Information

Anxiety Medication

Bipolar

Bulimia Nervosa

Clinician Articles and Websites

Depression

Drug Treatment

Eating Disorders

Website Map/All Articles

evident, with or without the presence of motor or sensory deficits. These symptoms include aphasia, attentional problems, irritability, anxiety, depression or affective lability, apathy, increased aggression, or other changes in personality. Alcohol or other Substance Intoxication is often present in individuals with acute head injuries, and concurrent Substance Abuse or Dependence may be present. Head injury occurs most often in young males and has been associated with risk-taking behaviors. When it occurs in the context of a single injury, Dementia Due to Head Trauma is usually nonprogressive, but repeated head injury (e.g., from boxing) may lead to a progressive dementia (so called dementia pugilistica). A single head trauma that is followed by a progressive decline in cognitive function should raise the possibility of another superimposed process such as hydrocephalus or a Major Depressive Episode.

Information from Diagnostic and Statistical Manual of Mental Disorders DSM-IV

Also, See other Diagnosis and Symptoms of Delirium, Dementia, and Amnestic and Other Cognitive Disorders

Other Mental Health Diagnostic Symptoms and Criteria

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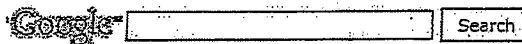

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www.jaapl.org

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DSM-5 and Neurocognitive Disorders

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Abstract

The newest edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) introduces several changes in the diagnostic criteria for dementia and other cognitive disorders. Some of these changes may prove helpful for clinical and forensic practitioners, particularly when evaluating less severe cognitive impairments. The most substantial change is that the cognitive disorder-not otherwise specified category found in prior editions has been eliminated. Those disorders that do not cause sufficient impairment to qualify for a diagnosis of dementia are now defined as neurocognitive disorders and placed on a spectrum with the more severe conditions. The concept of social cognition is also introduced as one of the core functional domains that can be affected by a neurocognitive disorder. This concept may be particularly significant in the evaluation of patients with non-Alzheimer's dementias, such as frontotemporal dementia. With the aging of the population and the increasing recognition of the possibility of long-lasting cognitive deficits after traumatic brain injury, the need for assessment of cognitive disorders in medicolegal contexts is certain to increase. Forensic psychiatrists who perform these evaluations should understand the conceptualization of Neurocognitive Disorders as presented in DSM-5 and how it differs from prior diagnostic systems.

The importance of dementia in the field of forensic psychiatry cannot be exaggerated. It affects numerous core areas of civil and criminal forensic practice, such as testamentary capacity, capacity to consent to medical treatment, competence to stand trial, and criminal responsibility, to name but a few. For many practicing forensic psychiatrists and psychologists, diagnosing dementia, determining its severity, and reaching a conclusion about its effect on the medicolegal capacity in question is a regular component of their work. As the average age of the population continues to increase in most industrialized countries, the demand for mental health professionals who have the expertise in dementia to address medicolegal concerns is certain to grow.

In addition to dementia, another type of acquired cognitive disorder, cognitive impairment after brain injury, is also becoming more and more relevant in the forensic arena. The population of people who have sustained brain trauma at some point in their lives is increasing. Part of the increase is related to 21st century military conflicts, where tactics such as placing improvised explosive devices under passing vehicles have produced a higher proportion of brain injuries than in previous wars. In addition, the survival rate for both military and civilian brain trauma has increased relative to earlier eras when medical technologies were less advanced.[1–3]

Neurologists, neuropsychologists, and psychiatrists have also begun to examine the potential cumulative effects on cognition of less drastic but repeated brain injuries. Persistent cognitive impairment resulting from repeated concussions (i.e., mild traumatic brain injuries) has been linked to chronic traumatic encephalopathy (CTE), a neuropathological finding associated with a dementing condition long known in boxers (*dementia pugilistica*) and now thought to have affected some professional athletes.[4]

Changes Introduced by DSM-5

The Diagnostic and Statistical Manual of Mental Disorder, Fifth Edition (DSM-5),[5] contains revisions of the diagnostic criteria and nomenclature for dementia and other cognitive disorders. The name of the diagnostic category

Attachment "B"

has been changed: the section entitled delirium, dementia and amnestic and other cognitive disorders in the fourth edition and subsequent text revision (DSM-IV[6] and DSM-IV-TR[7]) is now "neurocognitive disorders," or NCDs. The dementias, if the clinician prefers, can still be referred to by their traditional names (e.g., Alzheimer's dementia, vascular dementia, dementia due to Huntington's disease). All the diagnostic entities found in the prior section are subsumed under the new NCD rubric, and therefore cognitive impairments that are not severe enough to qualify for a diagnosis of dementia are now also defined as belonging to the category of NCDs. They are no longer referred to by the descriptor not otherwise specified (NOS) found in DSM-IV.

Under the previous classification system, cognitive impairments not meeting the criteria for dementia were labeled cognitive disorder NOS, or perhaps age-related cognitive decline. The non-DSM term mild cognitive impairment (MCI) has also been in widespread use in the elderly population, despite its limited clinical value. Patients identified as having MCI are known to progress to dementia at a higher rate than age-matched patients without MCI, but there are currently no therapeutic interventions to delay or prevent progression, nor are there any reliable predictors of which patients with MCI will develop dementia.[8]

In the new system, cognitive impairments that do not reach the threshold for a diagnosis of dementia are termed mild NCDs, whereas the dementias constitute nearly all of the major NCDs.

The diagnostic criteria for mild NCD include:

A. Evidence of modest cognitive decline from a previous level of performance in one or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual motor, or social cognition) based on:

1. Concern of the individual, a knowledgeable informant, or the clinician that there has been a mild decline in cognitive function; and

2. A modest impairment in cognitive performance, preferably documented by standardized neuropsychological testing or, in its absence, another quantified clinical assessment.

B. The cognitive deficits do not interfere with capacity for independence in everyday activities (i.e., complex instrumental activities of daily living such as paying bills or managing medications are preserved, but greater effort, compensatory strategies, or accommodation may be required [Ref. 5, p 605].

The concept of a continuum between mild and major NCDs is explicitly noted. "Major and mild NCDs exist on a spectrum of cognitive and functional impairment" (Ref. 5, p 607). "The distinction between major and mild NCD is inherently arbitrary, and the disorders exist along a continuum. Precise thresholds are therefore difficult to determine" (Ref. 5, p 608).

The use of standardized neuropsychological testing is specifically discussed in the context of distinguishing between major and mild NCDs. Evidence of impairment on standardized testing is Criterion A2 for both types of NCDs (substantial for major, modest for minor NCD), although other quantified clinical assessments can be used when standardized testing is not practical. It is noted that standardized testing is particularly important when evaluating patients with suspected mild NCD, and suggested cutoffs are provided: "For major NCD, performance is typically 2 or more standard deviations below appropriate norms (3rd percentile or below). For mild NCD, performance typically lies in the 1-2 standard deviation range (between the 3rd and 16th percentiles)" (Ref. 5, p 607).

The mild-major continuum will undoubtedly take some getting used to. Under the new schema, any cause of dementia can also produce mild NCD. Thus, both major and mild NCD due to Alzheimer's disease are diagnosable conditions. Clinicians may find it awkward to apply the Alzheimer's label to patients who do not meet criteria for dementia, as Alzheimer's has heretofore been essentially synonymous with senile dementia. This type of usage may be less confusing for mild NCD due to, for example, Parkinson's or Huntington's disease, in which other symptoms are often much more prominent than the cognitive impairments, particularly early in the course of illness.

Potentially adding to the confusion, the term mild has been retained as a specifier of severity for the major NCDs, along with moderate and severe. So, for example, in DSM–5 we find this sentence: "Apathy is common in mild and mild major NCD" (Ref. 5, p. 607). It seems unwieldy that the same adjective, mild, can be used either in reference to an NCD not severe enough to qualify as a dementia or when describing the severity of a particular clinical case of dementia (i.e., a major NCD). In other words, a patient can have mild NCD (not a dementia), mild major NCD, moderate major NCD, or severe major NCD (these latter three are all dementias). In theory, a patient might even progress through each of these stages over time. Granted, the mild major usage is not much different from the use of the mild specifier in major depressive disorder, but it seems to risk confusion among providers as well as consumers and their family members nonetheless.

Etiology of Neurocognitive Disorders

A further potential source of confusion or ambiguity of the NCD conceptualization is that for several of the most common dementia syndromes, the clinician is expected to qualify the diagnosis with the descriptor probable or possible. This is the case for those NCDs that lack a gold standard premortem diagnostic test: specifically, Alzheimer's disease, frontotemporal lobar degeneration (Pick's disease in DSM–IV and DSM–IV–TR), Lewy body disease, vascular disease, and Parkinson's disease. In cases of NCD due to traumatic brain injury (TBI), HIV infection, prion disease, or Huntington's disease, the probable and possible specifiers are not required, as the causative factor can be definitively identified during life.

There is no disputing the causative nature of TBI in some cases of major NCD. Although there is no close correlation between the severity of the TBI and the resultant cognitive impairment, the probability of developing a major NCD is undoubtedly greater with moderate and severe TBI than it is with mild TBI. On the other hand, the most common cause of mild NCD, and also the most likely to lead to eventual civil litigation in such cases, is TBI.

Head injuries are extremely common in society. Even though most of them either produce no brain injury at all or cause only transient impairment, the sheer number of events means that NCD due to TBI is far from rare. DSM–5 cites 1.7 million TBIs annually in the United States, with "1.4 million emergency department visits, 275,000 hospitalizations, and 52,000 deaths" (Ref. 5, p. 625). These numbers were taken from the U.S. Centers for Disease Control and Prevention's 2010 publication[9] on TBI in the United States, which includes a wealth of information on the demographics of TBI victims and the causes of TBI.

In DSM–5, not all brain injuries can be considered potentially causative of NCD. The diagnostic criteria for NCD due to TBI require that the TBI be associated with at least one of four features: loss of consciousness, posttraumatic amnesia, disorientation and confusion, or neurological signs, such as neuroimaging findings, seizures, visual field cuts, anosmia, or hemiparesis (Ref. 5, p 624). Furthermore, the NCD must have its onset either immediately after the TBI or after recovery of consciousness and must persist past the acute postinjury period. Thus, trauma that produced no cognitive or neurological changes at the time of the incident cannot produce an NCD under this scheme.

Diagnostic Criteria for Neurocognitive Disorders

There have also been some significant changes in the diagnostic criteria for the various NCDs. The criteria for delirium have been reworded to some degree, but overall, they are fairly similar to the previous criteria. One notable difference is the addition of attenuated delirium syndrome, an example of the diagnosis, other specified delirium. In this syndrome, "the severity of cognitive impairment falls short of that required for the diagnosis" (Ref. 5, p 602) or only some of the criteria for delirium are met.

In DSM–5, the amnestic disorders, whose appearance in the title of the section in previous editions implied a certain importance, have all but disappeared. In fact the only reference to these disorders is on the introduction page, which states:

> [T]he major NCD definition is somewhat broader than the term *dementia*, in that individuals with substantial decline in a single domain can receive this diagnosis, most notably the DSM–IV category of "Amnestic Disorder," which would now be diagnosed as major NCD due to another medical

condition and for which the term *dementia* would not be used [Ref. 5, p 591].

The diagnostic criteria for the major NCD category is where the substantial differences from the criteria for dementia in DSM–IV are found. In the new system, memory impairment is no longer a requirement in the diagnosis of a major NCD. Impairment in only one cognitive domain is enough to qualify for a diagnosis of a major NCD, except in the case of major NCD due to Alzheimer's disease, where two domains are still required, one of which must be memory impairment. This change may be useful, given the growing recognition that a significant percentage of people with NCDs, particularly those with conditions such as frontotemporal dementia, have a relatively intact memory, at least until later in the course of the illness.

New descriptions of the cognitive domains affected by NCDs are also introduced in DMS–5. In DSM–IV, the cognitive disturbances that could be seen in dementia (in addition to memory impairment) were all indeed cognitive: aphasia, apraxia, agnosia, and impaired executive functioning. DSM–5 includes these concepts in somewhat reworded form, and adds the domain of social cognition. Table 1 of the chapter (Ref. 5, pp 593–5) summarizes the six cognitive domains (complex attention, executive function, learning and memory, language, perceptual motor, and social cognition) and lists examples of signs and symptoms and possible methods of assessment.

Implications for Forensic Psychiatry

What effects might the new conceptualization of neurocognitive disorders have on the practice of forensic psychiatry? One potential change for the better is that the severe, disabling cognitive disorders (the dementias) may more clearly be viewed as lying on a continuum with the less severe disorders that do not reach the threshold for a diagnosis of dementia. Separating the universe of cognitive disorders into dementia and cognitive disorder NOS ran the risk of obscuring commonalities between the two. Cognitive disorder NOS, like all NOS diagnoses, also could carry the implication that the professional making the diagnosis in reality does not know very much about what is going on with the patient. From a medicolegal perspective, the new classification system may prove useful in emphasizing that mild NCDs differ from major NCDs only in degree, not in kind.

For patients with neurodegenerative diseases, meeting criteria for only mild NCD will in most cases unfortunately be nothing more than a transitional state on the inexorable path to a major NCD. However, in the case of cognitive disorders due to static insult(s), most commonly TBI, but possibly other events, such as stroke, anoxia due to cardiac arrest, acute toxic exposure, or medication overdose, the new diagnostic entity may have significant clinical and forensic implications. For example, the criteria for NCD due to TBI specified in DSM–5 could help researchers establish a more scientific ground for conditions that have been in some ways controversial, such as postconcussional syndrome and the aforementioned CTE, neither of which is mentioned in DSM–5.[4,10,11]

From a medicolegal perspective, a diagnosis of mild NCD sounds more definitive and thus may carry more weight in the courtroom than the former cognitive disorder NOS. Only time will tell how widespread the use of the mild NCD diagnostic category in the courtroom will become and how persuasive testimony about the impact of mild NCD on the legal issue at hand will be.

The recognition that some patients with dementia have relatively intact memory is likely to be important in both civil and criminal forensic matters. Previously, normal-range memory performance on neuropsychological tests in a subject thought to have dementia might lead the evaluator to instead lean toward a diagnosis of mood disorder or personality disorder. Under the new criteria, a diagnosis of dementia can be made without overt memory impairment (except in cases of Alzheimer's), with potential implications for the forensic opinion on many legal questions, such as undue influence, competence to stand trial, and criminal responsibility. It can be anticipated that patients whose dementia manifests in impaired judgment and executive function, but whose memory is intact, will now be identified more easily, and the impact of their impaired condition on their legal capacities will be better appreciated, with the requirement for formal memory deficits removed.

In addition to the inclusion of social cognition as one of the six domains potentially impaired by an NCD, forensic practitioners will be encouraged to note that legal involvement is specifically mentioned as one of the potential sequelae of frontotemporal NCD (Ref. 5, p 617). Behavioral and personality changes, including criminal acts and violations of social norms, are not uncommon in frontotemporal dementia (FTD). For example, a recent article in The *Journal* described several examples of aberrant and criminal behavior in a series of subjects who were subsequently found to have FTD. These included repetitive shoplifting despite the ability to pay, attempted child molestation, and hit-and-run.[12] The relatively early age at onset and often, preserved memory and other abilities in FTD can make these types of cases challenging to explain to family members, victims, and courts as being due to organic disease rather than willful bad behavior. The new language concerning this diagnosis may help in explaining FTD and its effects to those involved.

For legal questions such as negligence, malpractice, personal injury, or workers' compensation, where the presence of a diagnosable impairment (and its causation) is the primary focus, a forensic expert applying DSM-5 to diagnose mild NCD should be straightforwardly helpful to the finder of fact. A diagnosis of mild NCD is likely to be more difficult to discount in a legal context than the more nebulous cognitive disorder NOS. On the other side of the coin, applying DSM-5 criteria for NCD due to TBI could prevent those who lack sufficient symptoms (e.g., who do not demonstrate impairments on objective testing), whose initial injury did not have any of the required clinical features necessary to produce an NCD, or whose symptoms developed after an interval of documented normal function, from successfully claiming that their current difficulties are the result of the alleged brain trauma.

The factors become more complicated when the question is the impact of mild NCD on other functional or legal capabilities. Can mild NCD render someone incompetent or incapacitated? Would someone with mild NCD be more susceptible to undue influence? By definition, mild NCD does not interfere with capacity for independence in everyday activities, but does this lack of interference extend to drawing up a will or to refusing a life-saving medical procedure?

One could envision an attorney making the argument that Criterion B for mild NCD ("the cognitive deficits do not interfere with capacity for independence in everyday activities.... such as paying bills or managing medications ...") (Ref. 5, p 605) extends to the cognitive capacities at issue: for example, testamentary capacity. After all, if the testator is still cognitively capable of paying his bills, how could he at the same time lack knowledge of his assets (or heirs and other aspects of his finances)?

A similar case could be made for competence to stand trial. Given the functional independence (by definition) of a defendant with mild NCD, it might be challenging to establish that the diagnosis prevents him from having "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" or a "rational as well as factual understanding of the proceedings against him," the standard for competence to stand trial prescribed by the U.S. Supreme Court in *Dusky v. United States*.[13] (A complex case involving, for example, sophisticated financial crimes, might be an exception, where mild NCD could be sufficient to render the defendant incompetent.)

Conclusion

With the aging of the population, and the aftermath of 12 years of combat for U.S. military personnel, a clear understanding of the spectrum of cognitive disorders and of their diagnosis and management has never been more important for health care professionals. Forensic experts will undoubtedly encounter more and more cases involving traumatic brain injury and neurodegenerative disease in the years ahead.

The conceptualization in DSM-5 of mild neurocognitive disorder, and the elimination of the diagnosis of cognitive disorder, not otherwise specified, may be helpful to the forensic practitioner tasked with examining a person who is in the early stages of a dementing illness, or who has experienced a traumatic brain injury, and may help in the explanation of his condition and impairments to a finder of fact. Other potential benefits of the new system include the removal of the requirement of memory loss for a diagnosis of dementia, and the introduction of social cognition as a specified functional domain. However,

the actual effect of these changes on fact finders who hear expert testimony in civil and criminal matters is not yet known, and it will undoubtedly take some time before the implications of the changes in DMS-5 that affect the forensic evaluation of neurocognitive disorders are fully appreciated.

Footnotes

Disclosures of financial or other potential conflicts of interest: None.

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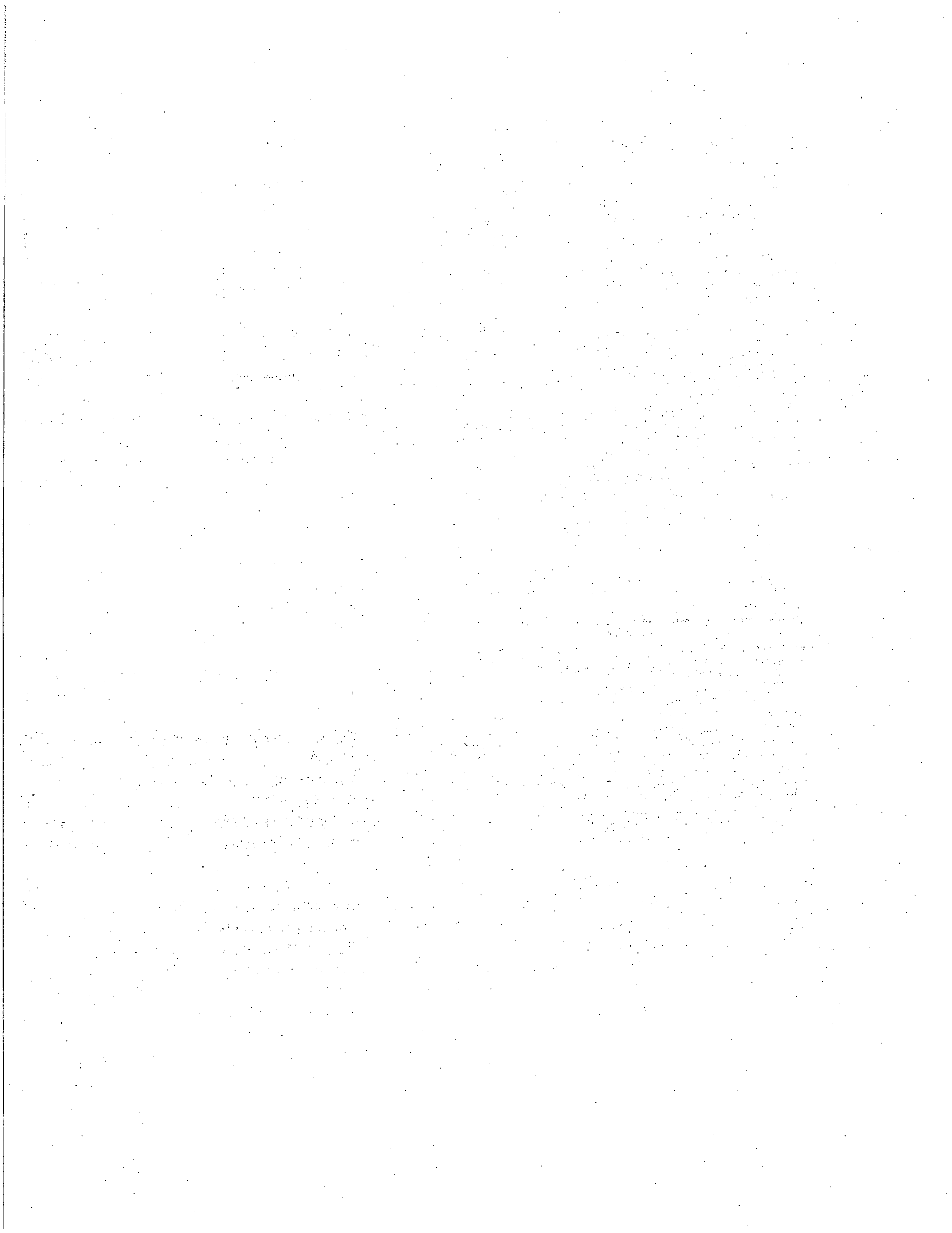

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
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VOICE: (302) 739-3620
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August 28, 2014

Ms. Tina Shockley, Education Associate – Policy Advisor
Department of Education
401 Federal Street, Suite 2
Dover, Delaware 19901

RE: DOE Proposed CPR Instruction Regulation [18 DE Reg. 104 (8/1/14)]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its *Comprehensive Health Education Program* regulation published as 18 DE Reg. 104 in the August 1, 2014 issue of the Register of Regulations.

As background, legislation (H.B. 299) was introduced in 2012 to require public school students, as a condition of receiving a diploma, to complete a CPR training program which incorporates psychomotor skills necessary to perform CPR and operation of an automated external defibrillator (AED). The bill was tabled in committee. It was revised and reintroduced as H.B. 249 in 2014. It was not released from committee. The rationale for the initiative is included in the attached preamble to H.B. 249. The attached fiscal note estimated an annual cost in the initial year of implementation of $38,935 to acquire training kits.

While proponents of "hands-on" CPR training were unsuccessful in securing enactment of their legislation, they were successful in incorporation of a CPR training mandate in the attached §306 of the FY15 budget bill (S.B. 255). See also Par. 10 at p. 104 of the proposed regulation. Section 306 also authorizes devotion of $40,000 to procure materials (e.g. training kits).

DOE is now proposing to implement §306 by amending its health education program regulation. The regulation already required at least two (2) hours of instruction in CPR awareness. This standard is being converted to an actual "instructional program which uses the most current evidence-based emergency cardiovascular care guidelines, and incorporates psychomotor skills learning into the instruction." In a nutshell, the intent is to train students to actually conduct CPR and use an AED. Schools would be required to implement the new training no later than the 2015-2016 school year.

SCPD has the following observations.

First, the existing regulation required schools to include CPR awareness and organ/tissue donation awareness components into the health education course no later than the 2014-15 school year. SCPD assumes many schools have already modified their curricula/instructional planning to meet that requirement. Indeed, the earliest the revised regulation could take effect is October 1, 2014 and the health classes will already be underway. The proposed regulation unnecessarily postpones such awareness instruction another year. It would make more sense to retain the existing deadline for the CPR and organ/tissue donation "awareness" instruction while deferring the "hands-on" CPR instruction to the 2015-16 school year.

Second, H.B. 249 contained the following provision prompted by the Council:

> (b) The individualized education plan (IEP) or 504 plan of a student with a disability ...may modify the content of instruction for CPR required by this section or, if such modification would be ineffective, exempt such student from application of this section.

This concept has not been incorporated into the proposed regulation. Obviously, there may be students with orthopedic or physical limitations who may lack the "psychomotor skills" to perform CPR and operate an AED. SCPD strongly recommends that DOE include a provision equivalent to the above excerpt from H.B. 249. This is particularly important since successful completion of the health course is a categorical requirement of graduation.

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

Sincerely,

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

cc: The Honorable Mark Murphy, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Dr. Karyl Rattay, Division of Public Health
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Paula Fontello, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Ilona Kirshon, Esq., Department of Justice
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

18reg104 doe-CPR instruction regulation 8-28-14 doc

SPONSOR: Rep. Ramone & Rep. D. Short & Rep. B. Short & Sen. Cloutier;
Reps. Hudson, Gray, Wilson, Mitchell; Sens. Hocker, Lopez

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 249

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO CARDIOPULMONARY RESUSCITATION EDUCATION.

1 WHEREAS, 80 percent of cardiac arrests occur at home; and

2 WHEREAS, across the United States nearly 300,000 out-of-hospital sudden cardiac arrests occur annually; and

3 WHEREAS, effective bystander CPR provided immediately after sudden cardiac arrest can double or triple a

4 victim's chance of survival, but only 32 percent of cardiac arrest victims get CPR from a bystander; and

5 WHEREAS, a study published in a recent issue of Circulation: Cardiovascular Quality and Outcomes showed that

6 people who view a CPR-instructional video are significantly more likely to attempt life-saving resuscitation; and

7 WHEREAS, hands-only CPR (CPR with just chest compressions) has been proven to be as effective as CPR with

8 breaths in treating adult cardiac arrest victims; and

9 WHEREAS, through the teaching of lifesaving CPR and AED skills, Delawareans who suffer an out-of-hospital

10 cardiac arrest will have a much improved chance of surviving sudden cardiac arrests.

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

12 Section 1. Amend Chapter 41, Title 14 of the Delaware Code by making deletions as shown by strike through and

13 insertions as shown by underline as follows:

14 § 4137. Cardiopulmonary Resuscitation Graduation Requirement.

15 (a) Beginning with the Class of 2017 all students must have participated in a CPR educational program to be

16 granted a high school diploma from a Delaware high school, regardless of whether the school is public, non-public, or a

17 charter school. This CPR educational program must incorporate both the psychomotor learning and skills necessary to

18 perform cardiopulmonary resuscitation and the use of an automated external defibrillator. A licensed teacher shall not be

19 required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide, or oversee such instruction. But

20 any course which results in a certification being earned is required to be taught by an authorized CPR/AED instructor, and

21 the course must use:

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0801470408

Released: 03/12/2014 09:43 AM

22 (1) an instructional program developed by the American Heart Association or the American Red

23 Cross; or

24 (2) an instructional program which is nationally recognized and is based on the most current

25 national evidence-based Emergency Cardiovascular Care guidelines for cardiopulmonary resuscitation and the use

26 of an external defibrillator.

27 (b) The individualized education plan (IEP) or 504 plan of a student with a disability identified under

28 Chapter 31 of this title may modify the content of instruction for CPR required by this section or, if such modification

29 would be ineffective, exempt such student from application of this section.

SYNOPSIS

This bill requires Delaware students to learn CPR to be granted a high school diploma from a Delaware high school beginning with the Class of 2017.

147TH GENERAL ASSEMBLY

FISCAL NOTE

BILL: HOUSE BILL NO. 249

SPONSOR: Representative Ramone

DESCRIPTION: AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO CARDIOPULMONARY RESUSCITATION EDUCATION.

ASSUMPTIONS:

1. Effective upon signature of the Governor.
2. This bill requires Delaware students in public and non-public schools to learn CPR to be granted a high school diploma from a Delaware high school beginning with the Class of 2017 (current year freshman).
3. The American Heart Association produces CPR in Schools Training Kits that can be used to meet the requirements of the legislation at a cost of $599/per kit. The kits can serve 10 students at a time where each manikin can withstand a maximum of 300,000 compressions lasting at least 3 years.
4. Public schools with an enrollment of 200 students or greater are assumed to receive 2 CPR kits while public schools with an enrollment of less than 200 students are assumed to receive 1 CPR kit. Non-public schools are not included in the estimated cost given the legislation is unclear whether they should receive state support to implement the training.

	Total 9th Grade Enrollment	# of CPR kits for schools with greater than 200 students	# of CPR kits for schools with less than 200 students	Total # of CPR Kits
Public Schools	9,755	52 (26 schools)	13 (13 schools)	65 (39 schools)

5. Based on feedback from the American Heart Association, costs may be minimized if public schools are able to work with local emergency medical service agencies, health care providers, and other organizations to obtain loaned equipment.

Cost:

Fiscal Year 2015: $38,935

Fiscal Year 2016: $0

Fiscal Year 2017: $0

Office of Controller General
March 20, 2014
MJ:MJ
0271470016

(Amounts are shown in whole dollars)

1 Section 305. Section 1 of this Act appropriates $1,938.9 to Public Education, Department of Education
2 (95-01-01) for World Language Expansion. To provide an opportunity for students to become more competitive in
3 the global economy, this appropriation shall assist in evaluating and implementing additional foreign language
4 offerings in schools. The department shall submit quarterly reports to the Director of the Office of Management and
5 Budget and the Controller General indicating program expenditures and accomplishments to date.

6 Section 306. Section 1 of this Act provides appropriations to Public Education, Department of Education
7 (95-01-01) for the operation and administration of the department. Of this amount, or utilizing other non-state
8 sources of funding, $40.0 shall be made available by the Department of Education for disbursement to school
9 districts, vocational technical school districts and charter schools for cardiopulmonary resuscitation (CPR)
10 instruction. Said funding, beginning in the 2015-16 school year, shall be used for materials needed to incorporate
11 psychomotor skills learning into instruction as required by 14 Administrative Code, Section 851, 1.1.3.4.

12 Section 307. The Department of Education is authorized to perform a comprehensive, annual review of the
13 delivery of special education services within the public school system. The department is authorized to establish 1.0
14 FTE within its existing complement of positions for the purposes of coordinating, among various stakeholders, said
15 review and managing the implementation of recommended initiatives. Said review shall include, but not be limited
16 to: the provision and funding of assistive technology in the classroom; the coordination and distribution of
17 information on services available for children with disabilities that cross multiple state agencies; and creating a
18 strategic plan for special education services. The Department of Education shall convene an oversight group on a
19 semi-annual basis to provide status updates on said review as well as to share initiatives for implementation that may
20 have a fiscal impact. The oversight committee shall consist of the members of the Interagency Resource
21 Management Committee (IRMC), a representative from the Governor's Office and the Co-Chairs of the Joint
22 Finance Committee.

23 Section 308. Section 1 of this Act provides an appropriation to Public Education, Department of Education
24 (95-01-01) for State Testing Computers. The New Castle County Vocational Technical School District is authorized
25 to use its Fiscal Year 2015 State Testing Computers allocation to offset Fiscal Year 2014 local expenses incurred for
26 upgrading school testing technology that is consistent with the allowable uses of said state appropriation.

27 Section 309. Notwithstanding the provisions of 14 Del. C. § 1305(m), (n) and (o), for those employees
28 who have achieved certification from the National Board for Professional Teaching Standards (NBPTS) and serve as

Delaware Department of Education

DEPARTMENT OF EDUCATION

The Townsend Building
401 Federal Street Suite 2
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Mark T. Murphy
Secretary of Education
Voice: (302) 735-4000
FAX: (302) 739-4654

September 30, 2014

Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities (SCPD)
Margaret M. O'Neill Building
410 Federal Street, Suite 1
Dover, DE 19901

Dear Ms. McMullin-Powell:

The Delaware Department of Education (DDOE) is in receipt of your August 28, 2014 letter with comments regarding the proposed regulation currently published as **DE Admin Code** 851 K to 12 Comprehensive Health Education Program. The Department received letters from the American Heart Association (AHA), Governor's Advisory Council on Exceptional Citizens and your organization. These organizations expressed similar concerns, and all comments were taken into consideration before final revision and publication.

SCPD Comment

First, the existing regulation required schools to include CPR awareness and organ/tissue donation awareness components into the health education course no later than the 2014-15 school year. SCPD assumes many schools have already modified their curricula/ instructional planning to meet that requirement. Indeed, the earliest the revised regulation could take effect is October 1, 2014 and the health classes will already be underway. The proposed regulation unnecessarily postpones such awareness instruction another year. It would make more sense to retain the existing deadline for the CPR and organ/tissue donation "awareness" instruction while deferring the "hands-on" CPR instruction to the 2015-2106 school year.

DDOE Response

The Department amended the regulation to clarify language regarding the incorporation of *psychomotor skills learning into CPR instruction* and to clarify the date of implementation which shall be no later than the 2105-2016 school year. The regulation's effective date will not permit us to implement the psychomotor skills learning requirement for the 2014-2015 school year. Please note that it is DDOE's understanding that *CPR awareness* has been implemented in most schools' curricula for the 2014-2015 school year. We also wished to avoid any conflicts with implementation of similar regulations. Therefore, the implementation timeframe (2015-2016), as stated in the proposed regulation, will remain unchanged.

SCPD Comment

Second, H.B. 249 contained the following provision prompted by the Council:

> (b) The individualized education plan (IEP) or 504 plan of a student with a disability...may modify the content of instruction for CPR required by this section or, if

THE DELAWARE DEPARTMENT OF EDUCATION IS AN EQUAL OPPORTUNITY EMPLOYER. IT DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, DISABILITY, AGE, GENETIC INFORMATION, OR VETERAN'S STATUS IN EMPLOYMENT, OR ITS PROGRAMS AND ACTIVITIES.

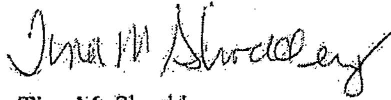
such modification would be ineffective, exempt such student from application of this section.

DDOE Response

Regarding students with Individualized Education Programs (IEPs) stemming from physical or other limitations, we believe that any exception to the requirements of this regulation would be stipulated in the IEP. Secondly, we do not prefer to list exceptions in the regulation as we work to make the regulation as clear as possible. Lastly, we do not believe a complete exemption or modification of the instruction is appropriate, as the student with an IEP could still obtain some knowledge from the verbal instruction. Therefore, we will not add language to the regulation regarding student's with IEPs.

DDOE appreciates the time and effort that GACEC has provided in connection with the development and promulgation of this regulation.

Sincerely,



Tina M. Shockley
Education Associate – Policy Advisor

TMS/tms

cc: Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council
Dr. Karyl Rattay, Division of Public Health
Mark T. Murphy, Secretary of Education
Teri Quinn Gray, State Board of Education
Donna Johnson, State Board of Education
Dani Moore, State Board of Education
Susan Haberstroh, Department of Education
Mary Ann Mieczkowski, Department of Education
Chris Kenton, Department of Education
Luke Rhine, Department of Education
Peg Enslen, Department of Education
Kyle Hodges, State Council for Person with Disabilities
Brian Hartman, Esq.
Paula Fontello, Esq.
Terry Hickey, Esq.
Ilona Kirshon, Esq.

[5] Plaintiffs also observe that this Court's ruling concerning the Holt IEP, requiring that Emma be placed at Dimondale Elementary, has secured their preferred placement remedy and obviates the need for the Court to make a specific placement ruling in the East Lansing case.

35 IDELR 35

Letter to Anonymous

No. N/A

Office of Special Education Programs

November 9, 2000

470.010 Authority to Set Standards
470.045 Joint SEA/LEA Responsibilities
290.020 State/Local Relations

Summary

Part B of the IDEA does not address standards for retention or promotion of students with disabilities. Rather, the establishment of such standards for all students, including those with disabilities, is a state and/or local function. OSEP stated that it does not view those retention and promotion decisions that are decided separately from placement issues to be the sole basis for a due process hearing. However, DP is appropriate when there are FAPE questions that have a direct impact on retention/promotion. OSEP emphasized that a placement decision is not synonymous with a decision regarding promotion or retention. As long as there is compliance with the IDEA, a state has flexibility to shape its retention/promotion policies and procedures in the manner it believes best fits the needs of students with disabilities.

Kenneth R. Warlick, Director

Dear [ ]

Thank you for your letter regarding the student accountability standards requirements in the State of North Carolina and your concern that such requirements may adversely impact the quality of education made available for children with disabilities under Part B of the Individuals with Disabilities Education Act (IDEA). This letter responds to your initial inquiry and your most recent undated correspondence received December 20, 1999. The questions you raise are restated below along with our responses.

1. May an IEP [Individualized Education Program] team determine whether a child should be promoted or retained based on his or her individual needs?

Response: Part B of the IDEA specifically does not address standards for retention or promotion of students with disabilities. Rather, the establishment of standards for promotion and retention for all students, including students with disabilities, is a State and/or local function. Generally, the IDEA would not require that the IEP team make decisions regarding promotion or retention of a child with a disability. However, the IDEA does not prevent a State or local educational agency from assigning this decisionmaking responsibility to the IEP team. It also is important to note that a retention or promotion decision is not synonymous with a placement decision for IDEA purposes.

2. If an IEP team does make such a determination, may a principal unilaterally overrule its decision based on State law?

Response: As stated in the response to question 1, above, because the IDEA does not address promotion and retention standards, there is nothing to require or prevent a State from allowing the principal to unilaterally apply those standards to a child with a disability. However, it is important to note that placement decisions, which are generally separate from promotion or retention decisions, are to be made by a group of persons knowledgeable about.1he child the meaning of the evaluation data, and the placement options. 34 CFR §300.552(a)(1). The group also must include the parents unless the agency documents its inability to obtain parental participation. 34 CFR §300.501(c). In addition, when determining the educational placement of a child with a disability, the public agency must ensure that the child is not removed from education in ageappropriate regular classrooms solely because of needed modifications to the general curriculum. 34 CFR §300.552(e).

3. If an IEP team overrules a parent's objections to retention (or promotion), does the parent have the right to request a due process hearing, and would the hearing officer's decision be determinative unless appealed as provided for under IDEA 97? (Would the H.O. [hearing officer] have jurisdiction over a promotion decision for a disabled child?)

Response: Under Part B of IDEA, the parent may request a due process hearing on matters relating to the identification, evaluation or educational placement of their child with a disability, or the provision of a free appropriate public education (FAPE) to their child. In general, the hearing officer has jurisdiction to determine whether, based on the specific facts and circumstances presented, the matters raised relate to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. The hearing officer's decision is final unless it is appealed to a federal or State court of competent jurisdiction in accordance with State law. Generally, hearing officers have broad discretion in fashioning appropriate remedies for violations of Part B of the IDEA.

In general, this office does not view retention and promotion decisions that are separate from placement decisions as being the sole basis for a due process hearing request. However, there may be FAPE issues that have a direct impact upon retention and promotion decisions, and these issues can be the basis for a hearing request. For example, if a student does not receive the services that are specified on his or her IEP that were designed to assist the student in meeting the promotion standards, the child's parents could challenge the lack of services as a denial of FAPE and a hearing officer's remedial order could encompass the provision of compensatory services and require a subsequent reconsideration of the retention decision.

You may want to contact the Exceptional Children Division of the North Carolina Department of Public Instruction (NCDPI) for more information regarding the filing of a request for a due process hearing or of a State complaint. The address is:

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1055-520X/01/$2+$1.50.

E. Lowell Harris, Director

Exceptional Children Division

Department of Public Instruction

301 N. Wilmington Street,

Education Building, #570

Raleigh, NC 27601-2825

Telephone: (919) 715-1565

4. Is there an inherent conflict between the state's requirements that the child's advocates be required to demonstrate that the child has made "adequate progress to meet requirements at upper grade levels" and the bulk of IDEA caselaw that suggests that it would be the school's burden of responsibility to show that the child could not receive FAPE in the LRE? (Does "LRE" imply being grouped with age appropriate peers in order to facilitate social development is a legitimate factor to be considered in the placement of a disabled child?)

Response: As set out in response to questions 1 and 2, above, a placement decision is not synonymous with a decision regarding promotion or retention. As long as there is compliance with the requirements of the IDEA, the State has the flexibility to shape its policies and procedures in a manner it believes best serve the needs of the children in the State.

5. Is the requirement mandating a "functional curriculum" for every disabled child exempted from the promotion standard conflict with the IDEA'97 requirement that individual decisions must be based on the individual's needs developed in the assessment process?

Response: The IDEA requires that each child's IEP include a statement of the special education, related services and supplementary aids and services to be provided to the child or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals, to be involved and progress in the general curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children. 34 CFR §300.347.

The term "functional curriculum" is not defined in the North Carolina Accountability Standards document you reference in your letters and is not part of the definitions common to the IDEA. As set out in the North Carolina Accountability Standards document, the IEP team is responsible for determining whether a student with a disability can "participate in the State Standard Course of Study." Therefore, the document appears to be consistent with the IDEA requirement that the IEP team make the determination regarding the extent of participation in the general curriculum.

6. Would it not be a violation of the IDEA '97 to discriminate against children with disabilities who are exempted from the promotion standards as a consequence of their disability by simultaneously excluding them from support services ("interventions/remediation and other opportunities, benefits, and resources") available to all students who are NOT disabled?

Response: As set out in response to question 5, above, the IEP must include a statement of the special education, related services and supplementary aids and services to be provided to the child or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided. This requires an individualized determination and not one that is dependent upon what nondisabled students may or may not receive.

However, allegations of discrimination, or denials of benefits or services on the basis of disability, generally fall within the jurisdiction of the Department's Office for Civil Rights (OCR). OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) which applies to programs and activities that receive Federal financial assistance and Title II of the Americans with Disabilities Act of 1990 (Title II) as it relates to state and local government services, regardless of whether they receive Federal funds. Both Section 504 and Title II prohibit discrimination against persons with disabilities solely on the basis of their disability, and require the provision of appropriate educational services to elementary and secondary school students with disabilities. If you have specific information related to an allegation of discrimination, or a denial of specific services or benefits on the basis of disability, then you should contact the regional Office for Civil Rights at the following address:

Alice Wender, Director

Office for Civil Rights

District of Columbia Office

U.S. Department of Education

1100 Pennsylvania Avenue, NW, Rm. 316

P.O. Box 14620

Washington, D.C. 20044-4620

Telephone: (202) 208-2525;

Enclosed also for your review is some information that also may be helpful to you; materials issued by the National Information Center for Children and Youth with Disabilities (NICHCY) concerning special education resources specific to North Carolina and the name and address of the Parent Training Information Center in your State. NICHCY is a national information clearinghouse that provides free information to assist parents, educators, and others in helping children with disabilities become participating members of the school and community. The Parent Training and Information Centers were established to make parent-to-parent training an in ormation services available to parents of children with disabilities across the country. The purpose of these services is to enable families to participate more fully in the educational needs of their children. Another invaluable source of information is the U.S. Department of Education Individuals with Disabilities Education Act (IDEA)'97 Homepage at http://www.ed.gov/offices/OSERS/IDEA/index.html. We hope you find this information to be of assistance.

If there are further questions or concerns, please contact Linda Whitsett of my staff at (202) 205-8013. Thank you for writing.

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STATE OF DELAWARE

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

September 15, 2014

Tina Shockley
Education Associate – Policy Advisor
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: <u>18 DE Reg. 177 [DOE Proposed Charter School "Impact" Regulation (September 1, 2014)]</u>

Dear Ms. Shockley:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to promulgate regulations to comply with Senate Bill No. 209 signed by the Governor on June 25, 2014. As background, many legislators were concerned with the "impact" on school districts created by new charter schools and the expansion of existing charter schools. An opposing view was adopted by former Mayor James Baker in an April 30 article and an April 9 News Journal editorial which questioned why policymakers were elevating the interests of institutions over the interests of children.

The DOE proposal generally conforms to the statute; however, Council would like to share a few observations.

First, in §2.1, the definition of "impact" includes consideration of the effect of charter schools on "the education system of the state". Council would like to note that reasonable persons may differ on whether Title 14 <u>Del.C.</u> §511 actually authorizes consideration of the effect of the charter school on the entire education system in the state. Section 511(b)(3) authorizes consideration of the effect "on the schools and the community from which the charter school's new students will likely be drawn." Perhaps a specialized charter school (e.g. military; drama/dance) could draw students from across the state and outside the local community. The Department of Education and State Board of Education may wish to consider whether the reference to "the education system of the state" conforms to the enabling statute.

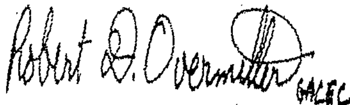
Second, in §3.10.1.1.2, the regulation allows consideration of "programmatic offerings". Council assumes that this could include non-academic offerings (e.g. clubs; vocational co-op opportunities; specialized arts). Council recommends adding a definition of "programmatic offerings" to §2.0 in order to prevent uncertainty and clarify that non-academic offerings can be considered. The definition could read as follows:

> Programmatic offerings means academic, non-academic and extracurricular components and options identified in the application.

Third, in §3.10.5, there is a plural pronoun (their) with a singular antecedent ("Board"). Consider substituting "its" for "their".

Thank you for your consideration of our comments and recommendations. Please contact me or Wendy Strauss at the GACEC office if you have any questions on our observations.

Sincerely,



Robert D. Overmiller
Chairperson

RDO:kpc

CC: The Honorable Mark Murphy, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Susan Haberstroh, Department of Education
Michael Watson, Department of Education
Mary Ann Mieczkowski, Department of Education
Michelle Whalen, Department of Education
Paula Fontello, Esq.
Terry Hickey, Esq.
Ilona Kirshon, Esq.

Enclosures

Lawmakers concerned about charter school applications

Matthew Albright, The News Journal 11:07 p.m. EDT April 4, 2014

(Photo: Daniel Sato/The News Journal)

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A group of New Castle County lawmakers has written a letter to top state education officials expressing "deep concerns" about proposed new charter schools, fearing the "significant hardship" they could place on traditional school districts.

Red Clay School District alone stands to lose as many as 800 students and $2.6 million if all the charter applications currently under consideration are approved, the lawmakers write in the letter.

There are five charter schools seeking approval from the state. Four would begin in the 2015-2016 school year and all of them would be in New Castle County.

The letter, sent Thursday night and addressed to Secretary of Education Mark Murphy and the State Board of Education, is signed by three state senators and 17 of the state's 41 representatives. All but one of the legislators who signed it are from New Castle County.

"As members of the General Assembly and representatives of the families and students who will be impacted by these potential new charters, we too have deep concerns about their effects on the Red Clay School District, the other school districts of New Castle County and the community at large," it says.

The letter emphasizes that state law requires charter school authorizers – almost always the State Department of Education – to consider the impact the charter would have on the local schools and community.

"The charters that the state approves must, at the very least, provide our students with a wholly unique and high-quality education," it says. "It is not clear that these five charters, especially those that will impact the public school districts of New Castle County, will meet those expectations."

Kendall Massett, executive director of the Delaware Charter School Network, said the charters looked forward to working out what's best for students.

"Our mission is to promote autonomy and choice in public education as a whole. Growth in itself is not the goal of the charter movement, nor is it to adversely affect district schools," Massett said in a statement. "Last year's legislation struck the right balance, inviting robust public comment like this while also taking the entire picture into account, including the positive impact that it could have on children."

The lawmakers stopped short of explicitly asking Murphy and the board to reject the applications.

Rep. Kim Williams, D-Newport, organized the letter. A former Red Clay Board Member, she said the legislators want to add weight to concerns raised by district administrators about the impact of the new schools.

"I don't want to speak for the other legislators, but we shared the letter with them and asked them to sign on if they agreed with it, and I think the letter speaks for itself," Williams said. "We're trying to make sure that the department and the board know how serious these issues are."

Donna Johnson, executive director of the State Board of Education, said the letter will be added to the public record that is part of the charter school approval process.

Johnson said it would be inappropriate for board members to comment on the issue until they reviewed the entire record for the applications. Murphy and the board will decide at the April 17 board meeting whether to approve the schools.

"It's important that [the lawmakers] concerns are considered as part of a thorough process to determine whether the schools meet the rigorous legal requirements for approval, and, most importantly, if they would have a positive impact on our students," Department of Education spokeswoman Alison May said in a statement.

State law says if a school meets all the requirements for approval, the state must do so. If Murphy or the board were to reject an application, they would need to cite specific reasons to do so.

DELAWARE

Philipina Lutterodt, 14, smiles after answering a question correctly in her English class at Moyer Academy in Wilmington on Thursday. SUCHAT PEDERSON/THE NEWS JOURNAL

4-18-14

State approves four charters, rejects one

Two other charters placed under scrutiny; Moyer change approved

By Matthew Albright
The News Journal

State officials approved four new charter schools Thursday, rejected one application, placed two charters set to open this fall under tight scrutiny over enrollment concerns and allowed an existing school to shrink its enrollment targets.

The four charter school proposals approved by Secretary of Education Mark Murphy and the State Board of Education are: Freire Charter School, Delaware STEM Academy, Great Oaks Charter School and the Mapleton Charter School at Whitehall.

All of them are set to open in Fall 2015 except for Whitehall, which would open in 2016, and all are in New Castle County.

"The charters that we are recommending for approval today represent a geographic diversity of locations — two schools in Wilmington, one in southern New Castle County and one in [Appoquinimink]," Murphy said. "They are providing unique instructional models that are not currently available to students."

Murphy rejected an application from Pike Creek Charter School, saying he agreed with the state's Charter School Accountability Committee that the school was not on solid financial footing.

The approvals mean a major expansion of the charter footprint in Delaware. If all four schools meet their enrollment targets, they would add about 2,360 charter seats.

There are currently 11,078 students in charters statewide, a number that was already expected to grow as existing schools expanded.

The approvals come despite worries about the impact they might have on traditional school districts. A group of 20 state lawmakers wrote to Murphy and the board earlier this month expressing "deep concerns," saying Red Clay School District alone stands to lose 800 students and $2.6 million if the charters were all approved.

Several state board members raised those questions.

"At what point do we start looking on the cumulative impact all these schools will have on a district?" asked Randall Hughes. "Does that become something we think about? Can it?"

Department officials said state law does not allow them to reject an application based solely on its impact on other schools. That stirred a heated discussion between several of the board members.

"If next year we were to have 20 charter schools come before this board, and they all use this format, they will all be approved," said Pat Heffernan. "I just want to make that very clear to the public."

Heffernan questioned whether it made sense for the state to approve any charter as long as it met the state's standards. He pointed out that Mapleton is designed to complement the Town of Whitehall, a planned private development.

"Maybe somebody wants to open a clown school, and because they filled out a form right we would have to approve it," Heffernan said. "I think we need to think about whether this process allows us to make productive decisions about public policy."

At the same time as it opened the door to new charters, the state put two schools already approved to open this fall on notice for low enrollment numbers.

Academia Antonia Alonso had only 107 students fully signed up by Thursday, or only 36 percent of its planned enrollment. Delaware MET had only 93 students fully signed up, or about 34 percent of planned enrollment.

That puts them on shaky financial ground.

Murphy and the board placed both schools on formal review, which will spur the accountability committee to scrutinize them. Formal review could lead to a revocation of a school's charter or corrective actions, but Thursday's vote was only a first step in the process.

"We are aware of the many effects this could have on a lot of people," said Jennifer Nagourney, head of the state's charter school office. "We are trying to takes steps as far in advance as possible."

Design Lab Charter High School, another charter set to open in the fall, was also scheduled to face possible review, but the department took it off the board's agenda. Design Lab officials have asked the state to allow it to open a year later.

Delaware MET could also choose to ask for a delay, but Academia has already received one and cannot request another.

Also Thursday, state officials approved New Moyer Academy's request to shrink its enrollment targets by about half, from 455 students to 255 next school year.

Contact Matthew Albright at malbright@delawareonline.com or at (302) 324-2428. Follow him on Twitter @TNJ_malbright.

EDUCATION

4-29-14
NJ

Lawmakers want more consideration of charters' impact

By Matthew Albright
The News Journal

As Delaware's charter school footprint grows, some lawmakers want state officials to be able to reject new charters based solely on the impacts they would have on existing schools.

"Right now we just have this process where charter after charter after charter is opening, but we're not really looking at what this means for the larger system," said Sen. Bryan Townsend, D-Newark. "This is not about being anti-charter at all. It's just that we've got to have some coordination of our resources, and we've got to make sure we're being as efficient as possible."

State Sen. Bryan Townsend

Townsend said he is circulating a bill with colleagues in the General Assembly and plans to file it this week. A draft copy of the bill included Rep. Kim Williams, D-Newport, and Sen. Patricia Blevins, D-Elsmere, as sponsors.

A law passed last year allows state officials to consider the impact on existing schools when approving new charters, but explicitly prevents them from rejecting one based solely on that impact.

Two weeks ago, the board and Secretary of Education Mark Murphy approved four new charter

See CHARTER, Page A6

COMMENT

As our schools fail, so do we fail our children

DELAWARE VOICE
JAMES M. BAKER

I had the pleasure of serving as mayor of the city of Wilmington from 2001 to 2013. I am also an African-American who lived through the 1960s as a young man in my 20s. Both experiences vere a continual lesson for me in the narriage between poor education and ırban plight.

In February, the White House inroduced the "My Brother's Keeper" nitiative. The fact sheet revealed soıering statistics. Data shows that boys nd young men of color, regardless of ocioeconomic background, continue to e disproportionately at risk.

Large disparities remain in reading roficiency, with 86 percent of Africanmerican male students and 82 percent of Hispanic male students reading below proficiency levels by the fourth grade compared to 58 percent of white males reading below proficiency levels. The only future for these young people is frustration and hopelessness – if not a life of unemployment or poverty, then a life of crime.

The impact of a failing public school system has taken its toll on the city and state, and our at-risk children continue to pay the price. The city has seen a 60 percent dropout rate for city students for years with very little improvement.

Fourth-graders at Warner Elementary School on 801 W. 18th St. in Wilmington have proficiency rates of 41 percent in reading and 35 percent in math, compared to state averages of 72 percent and 70 percent respectively. Warner is 93.5 percent low income.

Fourth-graders at Shortlidge Elementary School on 100 W. 18th St. are 43 percent proficient in reading and 40 percent in math. Shortlidge is 93.3 percent low income.

In contrast, fourth-graders at Kuumba Academy Charter School on 519 N. Market St. in Wilmington are 92 percent proficient in reading and 76 percent in math. Kuumba is 85.2 percent low income. Eighth-graders at Prestige Academy on 1121 Thatcher St. in Wilmington are 77 percent proficient in reading and 76 percent in math. Prestige is 81.5 percent low income.

Unbelievable and nonsensical

So why are some lawmakers proposing legislation that will make it nearly impossible for new charter schools to open and well-performing charter schools to expand? This is both unbelievable and nonsensical. Considering the numbers cited above, would you deliberately work to impede the progress of charter schools?

I support any method that gives our children the best education and best chance for a successful life. I genuinely believe that charter schools offer that opportunity.

Legislators should be focusing on creating more high-quality education options, not limiting the growth of charter schools.

The numbers tell the story – charter schools are making a difference for at-risk students in the city and district schools are not.

This proposed legislation is detrimental to students and to poor, urban African-American children in particular. As a citizen and former public servant, I refuse to say and do nothing while low-performing schools are allowed to continue to exist in our state and in the city of Wilmington.

James M. Baker was mayor of Wilmington from 2001 to 2013.

EDUCATION

5-8-14

Bill gives state more power to study charters

Senate-bound legislation tries to clarify impact guidelines

By Jon Offredo
The News Journal

The Delaware State Board of Education can study more closely the impact charter schools have on surrounding districts and impose conditions on them under legislation sent to the full Senate on Wednesday.

The legislation, embraced by lawmakers and education groups as it cleared the Senate Education Committee, replaced a more controversial bill that allowed board officials to reject new charters based on the impact they would have on existing schools. The original bill was crafted in response to frustrations from several board members that charter school applications had to be approved as long as they met the right criteria, no matter how they affected surrounding district schools in terms of student loss, overlapping of programs or focus.

Charter school advocates argued that the original proposal would have denied students and parents the option to enroll in schools they think could better serve their kids.

The bill's sponsor, Sen. Bryan Townsend, D-Newark, said the legislation gives board members the latitude to understand how proposed charters and charter expansions would affect the overall education system.

"The bill in my mind gets at the issue of the state board of education being able to take a holistic view of the education system," he said.

The state Department of Education would define the meaning and process for considering impacts of charter schools on districts in the application review process under the new legislation. The State Board

See CHARTER, Page A5

READ MORE
Find past stories about charter schools and other education issues at delawareonline

Delaware Department of Education

DEPARTMENT OF EDUCATION

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401 Federal Street Suite 2
Dover, Delaware 19901-3639
DOE WEBSITE: http://www.doe.k12.de.us

Mark T. Murphy
Secretary of Education
Voice: (302) 735-4000
FAX: (302) 739-4654

October 31, 2014

Mr. Robert D. Overmiller, Chairperson
Governor's Advisory Council for Exceptional Citizens
George V. Massey Station
516 West Loockerman Street
Dover, DE 19904

Dear Mr. Overmiller:

The Delaware Department of Education (DDOE) is in receipt of your September 15, 2014 letter with comments regarding the proposed regulation currently published as **DE Admin Code** 275 Charter Schools. The Department received letters from the State Council for Persons with Disabilities, your organization, as well as the Delaware Charter Schools Network. These organizations expressed concerns related to the definition of "Impact", and about the need to enable successful charter schools to renew for a ten-year term. All comments were taken into consideration before final revision and publication.

GACEC Comment
First, in §2.1, the definition of "impact" includes consideration of the effect of charter schools on "the education system of the state". Council would like to note that reasonable persons may differ on whether Title 14 Del. C. §511 actually authorizes consideration of the effect of the charter school on the entire education system in the state. Section 511(b)(3) authorizes consideration of the effect "on the schools and the community from which the charter school's new students will likely be drawn." Perhaps a specialized charter school (e.g. military; drama/dance) could draw students from across the state and outside the local community. The Department of Education and State Board of Education may wish to consider whether the reference to "the education system of the state" conforms to the enabling statute.

DDOE Response
The Department considered your comment, but believes that the definition does not need further clarification in the regulation.

GACEC Comment
Second, in §3.10.1.1.2, the regulation allows consideration of "programmatic offerings". Council assumes that this could include non-academic offerings (e.g. clubs; vocational co-op opportunities; specialized arts). Council recommends adding a definition of "programmatic offerings" to §2.0 in order to prevent uncertainty and clarify that non-academic offerings can be considered. The definition could read as follows:

> Programmatic offerings means academic, non-academic, and extracurricular components and options identified in the application.

THE DELAWARE DEPARTMENT OF EDUCATION IS AN EQUAL OPPORTUNITY EMPLOYER. IT DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, DISABILITY, AGE, GENETIC INFORMATION, OR VETERAN'S STATUS IN EMPLOYMENT, OR ITS PROGRAMS AND ACTIVITIES.

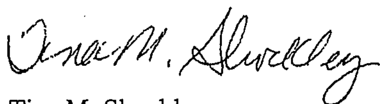
DDOE Response
The Department does not agree that this needs to be clarified further, and therefore will not add the definition to the regulation.

GACEC Comment
Third, in §3.10.5, there is a plural pronoun (their) with a singular antecedent ("Board"). Consider substituting "its" for "their".

DDOE Response
Thank you for bringing this grammatical error to our attention. We will correct this is the published final version of the regulation.

DOE appreciates the time and effort that GACEC has provided in connection with the development and promulgation of this regulation.

Sincerely,



Tina M. Shockley
Education Associate – Policy Advisor

TMS/tms
cc: Mark T. Murphy, Secretary of Education
Teri Quinn Gray, State Board of Education
Donna Johnson, State Board of Education
Dani Moore, State Board of Education
Susan Haberstroh, Department of Education
Michael Watson, Department of Education
Michelle Whalen, Department of Education
Mary Ann Mieczkowski, Department of Education
Wendy Strauss, Governor's Advisory Council for Exceptional Citizens
Kathie Cherry, Governor's Advisory Council for Exceptional Citizens
Brian Hartman, Esq.
Paula Fontello, Esq.
Terry Hickey, Esq.
Ilona Kirshon, Esq.

14 Del.C. § 153

West's Delaware Code Annotated Currentness
Title 14. Education
Part I. Free Public Schools
Chapter 1. Department of Education
Subchapter III. State Public Education Assessment and Accountability System

§ 153. Matriculation and academic promotion requirements

(a) The Department shall identify 4 levels of individual student performance relative to the state content standards on the assessments administered pursuant to § 151(b) and (c) of this title to fulfill the following 3 important functions:

(1) Determine the level or levels of individual performance sufficient to demonstrate a proficient level of performance relative to the state content standards;
(2) Determine the level or levels of individual performance sufficient to demonstrate superior and proficient performance meriting recognition for outstanding and standards-level achievement pursuant to subsection (c) of this section; and
(3) Determine the level or levels of individual performance inadequate to demonstrate a proficient level of performance relative to the state content standards and which warrant requiring students performing at such levels to participate in academic improvement activities as specified in subsection (d) of this section.

(b) The Department may approve other individual student indicators that may be used to determine a student's performance relative to the state content standards. Such indicators shall:

(1) Provide a measure of individual student performance relative to the state content standards; and
(2) Include performance on district-administered assessments pursuant to subsection (e) of this section, performance on end-of-course assessments, student classroom work products, or classroom grades supported by evidence of student work that demonstrates a student's performance level pursuant to subsection (a) of this section.

(c) The Department, by regulation, shall establish a program to recognize superior and proficient student performance on the assessments administered pursuant to § 151(b) and (c) of this title. Such a program for superior and proficient performance shall include: the award of certificates and plaques and the endorsement of student transcripts. The program shall also include the award of funds which may be used by students who demonstrate superior performance to defray the costs of post-secondary education. Scholarships awarded pursuant to this program shall be known as the Michael C. **Ferguson** Achievement Awards and shall be administered by the Delaware Higher Education Office. A maximum of 600 scholarships at $1,000 each may be awarded to students annually in the following manner: the students with the 150 highest scores on assessment or assessments in the state assessment system without reference to any other indicators of performances and the students with the 150 highest scores on assessment or assessments in the state assessment system who participate in free and reduced lunch programs in grades 8 and 10. The Department of Education will promulgate rules and regulations to implement this program.

(d) The Department shall require that students whose performance on the reading and mathematics assessments administered pursuant to § 151(b) and (c) of this title is inadequate to demonstrate a proficient level of performance relative to the state content standards, benchmarked to the extent practicable to accurately reflect the point in the school year that students actually are administered the statewide assessment, participate in academic improvement activities as follows:

(1) A 3rd, 5th or 8th grade student whose performance on the reading portion of the assessments administered pursuant to § 151(b) and (c) of this title is Below the Standard, Level II on the statewide assessment, shall not advance to the next grade unless:

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schol·ar·ship (skŏl′ər-shĭp′)

n.

1. The methods, discipline, and attainments of a scholar or scholars.
2. Knowledge resulting from study and research in a particular field. See Synonyms at knowledge.
3. A grant of financial aid awarded to a student, as for the purpose of attending a college.

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scholarship (ˈskɒləʃɪp)

n

1. academic achievement; erudition; learning
2. (Education)
   a. financial aid provided for a scholar because of academic merit
   b. the position of a student who gains this financial aid
   c. (*as modifier*): *a scholarship student.*
3. the qualities of a scholar

Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003

schol•ar•ship (ˈskɒl ərˌʃɪp)

n.

1. the qualities, skills, or attainments of a scholar.
2. a gift of money or other aid to enable a student to pursue his or her studies.
3. the accumulated knowledge of a group of scholars.

[1525–35]

syn: See learning.

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Thesaurus

Legend: Synonyms Related Words Antonyms

Noun 1. **scholarship** - financial aid provided to a student on the basis of academic merit

economic aid, financial aid, aid - money to support a worthy person or cause
prize, award - something given for victory or superiority in a contest or competition or for winning a lottery; "the prize was a free trip to Europe"

2. **scholarship** - profound scholarly knowledge

encyclopaedism, encyclopedism, eruditeness, erudition, learnedness, learning
education - knowledge acquired by learning and instruction; "it was clear that he had a very broad education"
letters - scholarly attainment; "he is a man of letters"

Based on WordNet 3.0, Farlex clipart collection. © 2003-2012 Princeton University, Farlex Inc.

scholarship

noun

1. grant, award, payment, exhibition, endowment, fellowship, bursary *scholarships for women over 30*
2. learning, education, culture, knowledge, wisdom, accomplishments, attainments, lore, erudition, academic study, book-learning *I want to take advantage of your lifetime of scholarship.*

Collins Thesaurus of the English Language – Complete and Unabridged 2nd Edition. 2002 © HarperCollins Publishers 1995, 2002

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Translations

Select a language: Spanish / Español

scholarship [ˈskɒləʃɪp]

A. *N*

Back

147th General Assembly
Senate Bill # 191

Primary Sponsor: Henry

Additional Sponsor(s): Sen. Bushweller & Sen. Marshall & Rep. Keeley & Rep. Bolden & Rep. Scott

CoSponsors: Sens. Blevins, Ennis, McDowell, Sokola, Townsend; Reps. Bennett, Potter, Ramone, Spiegelman, Paradee, D. Short, D.E. Williams, Wilson

Introduced on : 04/03/2014

Long Title: AN ACT TO AMEND TITLES 22, 29, 30, AND 31 OF THE DELAWARE CODE RELATING TO **DOWNTOWN** DEVELOPMENT DISTRICTS.

Synopsis of Orginal Bill: (without Amendments)

Healthy and vibrant **downtowns** are critical components of Delaware's economic well-being and quality of life. The **Downtown** Development Districts Act is intended to leverage state resources to spur private investment in commercial business districts and surrounding neighborhoods; to improve the commercial vitality of our **downtowns**; and to increase the number of residents from all walks of life in **downtowns** and surrounding neighborhoods.
This Act establishes "**Downtown** Development Districts," a small number of areas in our cities, towns, and unincorporated areas that will qualify for development incentives and other state benefits. Municipalities must apply for District designation. In the case of unincorporated areas, counties must apply. Applications will be evaluated by the Cabinet Committee on State Planning Issues, which will make recommendations to the Governor. Following the initial round of applications, the Governor must designate at least 1 but no more than 3 Districts. Designation of the first 3 Districts must include 1 District in each county. Under the Act, no more than 15 Districts may be designated at any one time.
As part of the application process, municipalities or counties must offer local incentives. The factors to be considered by the Committee when evaluating applications include, among others, (1) the municipality's or unincorporated area's need for District designation; (2) the quality of the District Plan; and (3) the quality of the local incentives offered. The Office of State Planning Coordination will prepare applications, establish criteria to determine what areas qualify as DDDs, and provide assistance to municipalities and counties during the application process.
Under the Act, investors (both non-profit and for-profit) who make qualified real estate improvements in a District would be entitled to receive **Downtown** Development District (DDD) Grants of up to 20 percent of their "hard costs" such as exterior, interior, and structural improvements. The incentive is modeled after a similar program in Virginia, which has been extremely successful in leveraging significant amounts of private capital in under-served areas. Investors would need to invest at least $25,000 in a building or facility to qualify, and the 20 percent incentive would only qualify with respect to investments above $25,000. For example, an investor making $45,000 worth of qualifying investments in a District would be entitled to a DDD Grant of up to $4,000 (i.e., 20% of $20,000). The Act gives DSHA the authority to cap the amount of Grants and to establish further conditions and limitations.
In addition, because Delaware's Historic Preservation Tax Credit Program has proven to be a powerful tool both in preserving important historic structures and revitalizing neighborhoods, the Act also provides that 30% of the state's yearly allocation of HPTCs will be reserved for projects in **Downtown** Development

Districts. If by April 1 of each year any such credits are not allocated to projects in DDDs, such credits will be made available to any eligible project statewide.

Current Status: Signed On 06/05/2014

Volume Chapter 79:240

Date Governor acted: 06/05/2014

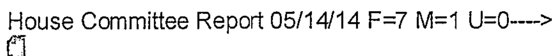
Full text of Legislation: (in HTML format) Legis.html Email this Bill to a friend

Full text of Legislation: (in MS Word format) Legis.Docx (Microsoft Word is required to view this document.)

Fiscal Notes/Fee Impact: F/N (Complete)

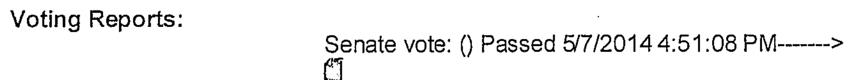
Committee Reports:

Senate Committee report 04/30/14 F=0 M=6 U=0----->

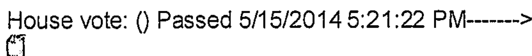


House Committee Report 05/14/14 F=7 M=1 U=0---->

Voting Reports:



Senate vote: () Passed 5/7/2014 4:51:08 PM------->



House vote: () Passed 5/15/2014 5:21:22 PM------->

Fiscal Notes:

Actions History:

Jun 05, 2014 - Signed by Governor
May 15, 2014 - Passed by House of Representatives. Votes: Passed 39 YES 0 NO 0 NOT VOTING 2 ABSENT 0 VACANT
May 15, 2014 - Necessary rules are suspended in House
May 14, 2014 - Reported Out of Committee (HOUSING & COMMUNITY AFFAIRS) in House with 7 Favorable, 1 On Its Merits
May 08, 2014 - Introduced and Assigned to Housing & Community Affairs Committee in House
May 07, 2014 - Passed by Senate. Votes: Passed 21 YES 0 NO 0 NOT VOTING 0 ABSENT 0 VACANT
Apr 30, 2014 - Reported Out of Committee (COMMUNITY/COUNTY AFFAIRS) in Senate with 6 On Its Merits
Apr 03, 2014 - Assigned to Community/County Affairs Committee in Senate

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SPONSOR: Sen. Henry & Sen. Bushweller & Sen. Marshall & Rep. Keeley & Rep. Bolden & Rep. Scott
Sens. Blevins, Ennis, McDowell, Sokola, Townsend;
Reps. Bennett, Potter, Ramone, Spiegelman, Paradee, D. Short, D.E. Williams, Wilson

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 191

AN ACT TO AMEND TITLES 22, 29, 30, AND 31 OF THE DELAWARE CODE RELATING TO DOWNTOWN DEVELOPMENT DISTRICTS.

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

1 Section 1. Amend Title 22 of the Delaware Code by inserting a new Chapter 19 therein and by making deletions
2 as shown by strike through and insertions as shown by underline as follows:
3 Chapter 19. The Downtown Development Districts Act.
4 Subpart I. Establishment, Amendment, and Termination of Districts.
5 § 1901. Purpose. Healthy and vibrant downtowns are critical components of Delaware's economic well-being and
6 quality of life. The purpose of this chapter is to leverage the resources of state government in a limited number of
7 designated areas in Delaware's cities, towns, and unincorporated areas in a multifaceted effort:
8 (a) To spur private capital investment in commercial business districts and surrounding neighborhoods;
9 (b) To stimulate job growth and improve the commercial vitality of such districts and neighborhoods;
10 (c) To help build a stable community of long-term residents in such districts and neighborhoods by improving
11 housing opportunities for persons of all incomes and backgrounds; increasing homeownership rates; building a diverse
12 array of successful businesses; and reducing the number of vacant houses; and
13 (d) To help strengthen neighborhoods, while harnessing the attraction that vibrant downtowns hold for talented
14 young people, innovative small businesses, and residents from all walks of life.
15 § 1902. Definitions. As used in this chapter:
16 (1) "Committee" means the Cabinet Committee on State Planning Issues established pursuant to 29 *Del.C.* §§
17 9101 *et seq.*
18 (2) "District Plan" means the strategic plan or other detailed description of the overall strategy for the development
19 of a proposed district submitted by the municipality or unincorporated area as part of its application for District designation.
20 (3) "DSHA" means the Delaware State Housing Authority.

21 (4) "Downtown" means that portion of a city, town, or unincorporated area that traditionally comprises its
22 downtown or central business district, as determined by such city, town, or unincorporated area in accordance with
23 guidelines promulgated by the Office.
24 (5) "Downtown Development District" or "District" means an area within a municipality or unincorporated area
25 designated as a Downtown Development District in accordance with the provisions of this chapter.
26 (6) "Municipality" means any incorporated town or city of this State.
27 (7) "Office" means the Office of State Planning Coordination.
28 (8) "Unincorporated area" means an area of the State having a concentration of population that is not a
29 municipality and that is eligible to apply for and receive District designation in accordance with rules promulgated by the
30 Office.
31 § 1903. Applications for District designation.
32 (a) At the request of the Governor, the Office shall solicit applications from municipalities and unincorporated
33 areas to have an area designated as a Downtown Development District. Such application shall include a description of the
34 area to be included; the need for District incentives; the District Plan; local incentives offered; and such other information
35 as may be required by the Office.
36 (b) The Office of State Planning Coordination shall administer the application process and establish criteria to
37 determine what areas qualify as Downtown Development Districts. The Office is authorized to take such actions as may be
38 necessary or convenient to fulfill its responsibilities hereunder, including but not limited to promulgating rules and
39 regulations relating to the establishment, amendment, and termination of Districts and providing assistance to
40 municipalities and unincorporated areas in connection with the application process.
41 (c) The criteria for designating areas as Downtown Development Districts shall include:
42 (1) The need and impact of such a designation for such area, including but not limited to income, unemployment
43 rate, homeownership rate, and prevalence of vacant or abandoned housing units in such municipality or unincorporated
44 area. Need and impact factors shall account for at least 50 percent of the consideration given to applications for District
45 designation;
46 (2) The quality of the municipality's or unincorporated area's District Plan;
47 (3) The quality of the local incentives offered; and
48 (4) Such other criteria as may be determined by the Office.
49 § 1904. Review and approval of applications.

50 (a) Applications for District designation shall be evaluated by the Cabinet Committee on State Planning Issues,
51 which shall recommend to the Governor those applications with the greatest potential for accomplishing the purposes of
52 this chapter.

53 (b) Upon receipt from the Committee of any recommended application, the Governor (i) may designate
54 immediately the recommended area as a District; (ii) may designate the recommended area as a District effective one year
55 from the date of such determination by the Governor; or (iii) may deny such application.

56 (c) The initial round of applications shall result in the immediate designation of at least one but no more than three
57 Districts.

58 § 1905. Designation, renewal, and amendment of Districts.

59 (a) No more than 15 Districts shall be designated at any one time. Designation of the first three Districts shall
60 include one District in each county.

61 (b) Districts shall be designated for an initial 10-year period. Upon recommendation of the Committee, the
62 Governor may renew Districts for up to two five-year renewal periods. Recommendations for renewals shall be based on
63 the performance of District responsibilities by the municipality (or county in the case of an unincorporated area); the
64 continued need for such a District; and its effectiveness in creating capital investment, increasing population, creating jobs,
65 improving housing stock, providing enhanced retail and entertainment opportunities, and otherwise improving the quality
66 of life within such District.

67 (c) Any municipality (or county in the case of an unincorporated area) having a District within its borders shall be
68 responsible for providing the local incentives specified in its application, providing timely submission of reports and
69 evaluations as required by rule or regulation, implementing an active local Development District program within the
70 context of overall economic and community development efforts, and fulfilling such other responsibilities as may be
71 required by law, rule, or regulation in connection with such District.

72 (d) Each District shall be required to submit regular reports and information to the Office as may be necessary to
73 evaluate such District's effectiveness and compliance with this section.

74 § 1906. Local incentives.

75 (a) Any municipality or unincorporated area submitting an application for District designation shall propose local
76 incentives that address local economic and community conditions, and that will help achieve the purposes set forth in §
77 1901 of this chapter. Such local incentives may include but are not limited to a reduction in fees or taxes. In addition, the
78 application may also contain proposals for regulatory flexibility, which may include but are not limited to permit process
79 reforms, special zoning districts, or exemptions from local ordinances.

80 (b) All incentives proposed in the application shall be binding upon the municipality (or county in the case of an
81 unincorporated area) upon designation of the District. The extent and duration of such incentives shall be consistent with
82 the requirements of the Delaware Constitution and the United States Constitution.
83 (c) A municipality or county may establish eligibility criteria for local incentives that differ from the criteria
84 required to qualify for the incentives provided in this chapter.
85 § 1907. Amendments to District boundaries and incentives.
86 A municipality or county may apply to the Office to amend the boundaries of the District or to amend one or more
87 District incentives, provided that any revised incentive proposed by the municipality or county shall be equal or superior to
88 the incentive for which the amendment is sought. All proposed amendments are subject to approval by the Committee.
89 § 1908. Formal Review and Termination of Districts.
90 (a) If a municipality (or a county in the case of an unincorporated area) fails to fulfill its obligations pursuant to §
91 1905 or as otherwise set forth in this Act, then the Office may recommend to the Committee that the District be placed
92 under formal review or that its District designation be terminated.
93 (b) Except in instances where a city, town, or municipality fails to provide local incentives in accordance with §
94 1906 hereunder, the Office (1) may not recommend placing any District under formal review for at least 2 years following
95 the initial designation of such District, and (2) may not recommend terminating the designation of any District for at least 1
96 year following the placement of the District on formal review by the Committee.
97 (c) In no event shall the Office recommend formal review or termination of any District without providing
98 sufficient notice and opportunity to be heard to such District.
99 (d) The Committee may approve any recommendation by the Office to place a District under formal review or to
100 terminate a District's designation upon the affirmative vote of three-fifths of the members of the Committee.
101 (e) The Office may promulgate regulations to authorize the continuation of previously authorized District
102 incentives for a reasonable period following termination of the District; provided, however, that no new incentives shall be
103 authorized for any entity after the date of termination.
104 Subpart II. Downtown Development District Grants.
105 § 1921. Qualifications for Downtown Development District Grants.
106 (a) Subject to the limitations set forth in this subpart, any Qualified District Investor making a Qualified Real
107 Property Investment in a District shall be entitled to a Grant in an amount up to 20 percent of the Qualified Real Property
108 Investments made by such Qualified District Investor in excess of the Minimum Qualified Investment Threshold.
109 (b) For purposes of this chapter:

110 (1) "DDD Grant" or "Grant" shall mean a Downtown Development District Grant as set forth in paragraph (a)
111 hereunder.
112 (2) "Facility" means a complex of buildings, co-located at a single physical location within a District, all of which
113 are necessary to facilitate the conduct of the same residential, trade, or business use. This definition applies to new
114 construction as well as to the rehabilitation and expansion of existing structures.
115 (3) "Minimum Qualified Investment Threshold" means the minimum level of Qualified Real Property Investments
116 required to be made by a Qualified District Investor in a building or facility in order to qualify for a DDD Grant, as
117 determined by DSHA. Notwithstanding the foregoing, for the fiscal year ending June 30, 2015, the Minimum Qualified
118 Investment Threshold shall be $25,000 with respect to a single residential or mixed-use building or a facility. No more
119 often than once per year, DSHA may amend the Minimum Qualified Investment Threshold with respect to uses (residential,
120 commercial, industrial, etc.), types of projects (rehabilitation, new construction, etc.), or other criteria determined by DSHA
121 to be necessary or convenient to accomplish the purposes of this chapter.
122 (4) "Qualified District Investor" means an owner or tenant of real property located within a District who expands,
123 rehabilitates or constructs such real property for residential, commercial, industrial or mixed use. In the case of a tenant, the
124 amounts of qualified real property investment specified in this section shall relate to the proportion of the building or
125 facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a common interest
126 community, as such term is defined in 25 *Del.C.* § 81-103(11), the amounts of qualified real property investments specified
127 in this chapter shall relate to that proportion of the building for which the owner holds title and not to common elements.
128 (5) "Qualified Real Property Investment" means the amount in excess of the Minimum Qualified Investment
129 Threshold that is properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable
130 real property placed in service during the calendar year within a District. Specific inclusions and exclusions from the
131 definition of "Qualified Real Property Investments" shall be determined by DSHA, but such definition shall generally
132 include expenditures associated with (i) any exterior, interior, structural, mechanical or electrical improvements necessary
133 to construct, expand or rehabilitate a building or facility for residential, commercial, industrial, or mixed use; (ii)
134 excavations; (iii) grading and paving; (iv) installing driveways; (v) landscaping or land improvements; and (vi) demolition.
135 Notwithstanding the foregoing, no investment in the rehabilitation, expansion, or construction of any building or facility in
136 a District shall be a Qualified Real Property Investment unless it is performed in accordance with the District Plan.
137 § 1922. Limitations and Conditions.
138 (a) The availability of Downtown Development District Grants in any given year shall be subject to appropriation
139 by the General Assembly.

140 (b) In addition to its other powers and responsibilities hereunder, DSHA is expressly authorized to establish such
141 other limitations and conditions with respect to Grants as may be necessary or convenient to accomplish the purposes of
142 this chapter, including but not limited to:

143 (1) Amending the Minimum Qualified Investment Threshold;

144 (2) Establishing caps or limits on DDD Grants available to any Qualified District Investor, alone or in combination
145 with other local, state, or federal incentives for any individual building or facility (including but not limited to State
146 Historic Preservation Tax Credits pursuant to Chapter 18 of Title 30);

147 (3) Establishing additional qualifying criteria with respect to uses (residential, commercial, industrial, etc.) or
148 types of projects (rehabilitation, new construction, etc.);

149 (4) Incentivizing particular types of uses or projects in one or more Districts; and

150 (5) Establishing such other limitations and conditions in one or more Districts as DSHA shall determine from time
151 to time.

152 (c) DSHA may establish or amend the foregoing limitations and conditions no more often than once per year.

153 § 1923. Policies and procedures for allocation of Downtown Development District Grants.

154 (a) Qualified District Investors shall be eligible to receive DDD Grant provided for in this chapter to the extent that
155 they apply for and are approved for grant allocations through DSHA.

156 (b) The accuracy and validity of information on Qualified Real Property Investments shall be subject to
157 verification procedures in accordance with rules promulgated by DSHA on forms supplied by DSHA and in accordance
158 with dates specified by DSHA.

159 § 1924. Administration.

160 (a) DSHA shall have the primary responsibility for administering the DDD Grant program. In connection
161 therewith, DHSA's powers and duties shall include but not be limited to the following:

162 (1) Adopting such rules and procedures as may be necessary or desirable to effectuate the provisions of this
163 chapter;

164 (2) Administering, enforcing, and interpreting such rules and procedures;

165 (3) Allocating Grant funds in accordance with the provisions of this chapter; and

166 (4) Monitoring the implementation and operation of this subpart.

167 (b) Beginning no later than December 31, 2015, DSHA shall issue an annual report to the Governor and the
168 General Assembly evaluating the effectiveness of the Grant program established hereunder.

169 (c) DSHA may delegate to, and receive assistance from, other entities including the Office, DEDO, and other state
170 agencies in carrying out its responsibilities hereunder.

171 Section 2. Amend Title 29, § 9101(a) of the Delaware Code by making deletions as shown by strikethrough and
172 insertions as shown by underline as follows:

173 § 9101 Cabinet Committee on State Planning Issues.

174 (a) A Cabinet Committee on State Planning Issues is established and shall serve in an advisory capacity to the
175 Governor. It shall be comprised of the following members or their respective designees:

176 (1) The Secretary of the Department of Natural Resources and Environmental Control.

177 (2) The Secretary of the Department of Transportation.

178 (3) The Secretary of the Department of Agriculture.

179 (4) The Director of the Delaware Economic Development Office.

180 (5) The Director of the Delaware State Housing Authority.

181 (6) The Secretary of the Department of Safety and Homeland Security.

182 (7) Such others as the Governor may designate.

183 Section 3. Amend Title 29, § 9101(c) of the Delaware Code by making deletions as shown by strikethrough and
184 insertions as shown by underline as follows:

185 (c) The Committee shall consider matters relating to the orderly growth and development of the State, including,
186 but not limited to:

187 (4) Recommendations on land use planning actions that are subject to review and comment pursuant to Chapter 92
188 of this title; ~~and~~

189 (5) Preparing the Strategies for State Policies and Spending document and maps, which shall serve as the primary
190 policy guide that summarizes the State's land use goals, policies and strategies and directs state spending into investment
191 levels that support the most efficient use of state resources, be they physical, fiscal, or natural, except that county and
192 municipal governments shall retain their existing autonomy with respect to the land use designations set forth in their
193 proposed and/or adopted comprehensive plans. The Strategies for State Policies and Spending shall be updated at least
194 every 5 years, provided that the Governor may extend the deadline at his or her discretion~~.~~; and

195 (6) Performing such other duties and responsibilities with respect to Downtown Development Districts as set forth
196 in Chapter 19 of Title 22.

197 Section 4. Amend Title 29, § 9101(h) of the Delaware Code by making deletions as shown by strikethrough and
198 insertions as shown by underline as follows:

199 The Office of State Planning Coordination shall render local planning technical assistance. The Office of State
200 Planning Coordination may serve as the lead agency to engage other state agencies, local governments, and other
201 governmental and nongovernmental organizations for the purposes of coordinating planning activities, promoting liaison
202 between various state agencies and local governments, building capacity through training and sharing of digital and other
203 information, developing infrastructure plans and master plans, addressing specific growth and design issues, and such other
204 actions as are appropriate to achieve the purposes of this chapter. The Office of State Planning Coordination shall develop
205 and promote cooperation and coordination among state agencies and local governments to ensure effective and efficient
206 planning and infrastructure investment. The Office of State Planning Coordination may make grants available to county and
207 municipal governments to assist them in achieving any of the objectives outlined in this section, provided that funded
208 activities and deliverables are in compliance and in harmony with the Strategies for State Policies and Spending. The Office
209 of State Planning Coordination shall further have such authority and responsibility with respect to Downtown Development
210 Districts as set forth in Chapter 19 of Title 22.

211 Section 5. Amend Title 30, § 1812(6) of the Delaware Code by making deletions as shown by strikethrough and
212 insertions as shown by underline as follows and renumbering the remaining sections accordingly:

213 (6) "Downtown Development District" means an area of a city or down that has been designated by the Governor
214 as a Downtown Development District in accordance with Chapter 19 of Title 22.

215 Section 6. Amend Title 30, § 1816(a) of the Delaware Code by making deletions as shown by strikethrough and
216 insertions as shown by underline as follows:

217 (a) The maximum amount of credit awards under this chapter in any fiscal year shall not exceed $5,000,000. One
218 hundred thousand dollars of the credit awards in a fiscal year must be reserved for distribution to qualified resident curators.
219 If in any fiscal year there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will
220 be available in the next fiscal year for award to persons qualifying under § 1813(a)(1) or (2) of this title. In any ~~1~~ one year,
221 ~~$2,000,000~~ $1,500,000 of tax credits shall be reserved for projects receiving a credit of not more than $300,000. In
222 addition, in any one year, $1,500,000 of tax credits shall be reserved for projects located in Downtown Development
223 Districts, of which $500,000 shall be reserved for projects in such Districts receiving a credit of not more than $300,000.
224 On April 1 of each year, any unused balance of the ~~$2,000,000 pool~~ foregoing pools of tax credits shall be available to any
225 eligible project. However, should a credit award exceed the actual credit claimed, the amount of the excess credit award
226 shall not be available for a subsequent award.

227 Section 7. Amend Title 31, § 4002(a) of the Delaware Code by making deletions as shown by strikethrough and
228 insertions as shown by underline as follows:

229 § 4002 Purpose.

230 (a) It is the purpose of this chapter that DSHA have the authority and capacity to:

231 (9) Advise and inform the Governor and the public on the affairs and problems relating to housing and community

232 development and revitalization, and make recommendations to the Governor for proposed legislation pertaining thereto;

233 ~~and~~

234 (10) Administer such provisions of the Downtown Development District Act as set forth in Chapter 19 of Title 22;

235 and

236 (11) Operate DSHA's financial affairs in a prudent and sound manner.

237 Section 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the

238 invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision

239 or application; and, to that end, the provisions of this Act are declared to be severable.

SYNOPSIS

Healthy and vibrant downtowns are critical components of Delaware's economic well-being and quality of life. The Downtown Development Districts Act is intended to leverage state resources to spur private investment in commercial business districts and surrounding neighborhoods; to improve the commercial vitality of our downtowns; and to increase the number of residents from all walks of life in downtowns and surrounding neighborhoods.

This Act establishes "Downtown Development Districts," a small number of areas in our cities, towns, and unincorporated areas that will qualify for development incentives and other state benefits. Municipalities must apply for District designation. In the case of unincorporated areas, counties must apply. Applications will be evaluated by the Cabinet Committee on State Planning Issues, which will make recommendations to the Governor. Following the initial round of applications, the Governor must designate at least 1 but no more than 3 Districts. Designation of the first 3 Districts must include 1 District in each county. Under the Act, no more than 15 Districts may be designated at any one time.

As part of the application process, municipalities or counties must offer local incentives. The factors to be considered by the Committee when evaluating applications include, among others, (1) the municipality's or unincorporated area's need for District designation; (2) the quality of the District Plan; and (3) the quality of the local incentives offered. The Office of State Planning Coordination will prepare applications, establish criteria to determine what areas qualify as DDDs, and provide assistance to municipalities and counties during the application process.

Under the Act, investors (both non-profit and for-profit) who make qualified real estate improvements in a District would be entitled to receive Downtown Development District (DDD) Grants of up to 20 percent of their "hard costs" such as exterior, interior, and structural improvements. The incentive is modeled after a similar program in Virginia, which has been extremely successful in leveraging significant amounts of private capital in under-served areas. Investors would need to invest at least $25,000 in a building or facility to qualify, and the 20 percent incentive would only qualify with respect to investments above $25,000. For example, an investor making $45,000 worth of qualifying investments in a District would be entitled to a DDD Grant of up to $4,000 (*i.e.*, 20% of $20,000). The Act gives DSHA the authority to cap the amount of Grants and to establish further conditions and limitations.

In addition, because Delaware's Historic Preservation Tax Credit Program has proven to be a powerful tool both in preserving important historic structures and revitalizing neighborhoods, the Act also provides that 30% of the state's yearly allocation of HPTCs will be reserved for projects in Downtown Development Districts. If by April 1 of each year any such credits are not allocated to projects in DDDs, such credits will be made available to any eligible project statewide.

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