



DISABILITIES LAW PROGRAM

COMMUNITY LEGAL AID SOCIETY, INC.

100 W. 10th Street, Suite 801

Wilmington, Delaware 19801

(302) 575-0660 TTY (302) 575-0696 Fax (302) 575-0840

www.declasi.org

MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Legislative and Regulatory Initiatives

Date: February 3, 2014

I am providing my analysis of eleven (11) legislative and regulatory initiatives in anticipation of the February 13, 2014 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DMMA Final Medicaid Pregnant Women & Infants Income Cap Reg. [17 DE Reg. 845 (2/1/14)]

The SCPD commented on the proposed version of this regulation in December, 2013. A copy of the Council's December 23, 2013 memo is attached for facilitated reference.

The SCPD endorsed the initiative subject to consideration of one amendment. The proposed regulation recited that "Delaware will disregard an equal amount to the difference". The Council suspected that the reference should be "Delaware will disregard an amount equal to the difference."

The Division of Medicaid and Medical Assistance has now adopted a final regulation with no changes. It notes that the above language "reflects CMS guidance".

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

2. DMMA Final Medical Facilities Performing Invasive Procedures Reg. [17 DE Reg. 848 (2/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in October, 2013. The Division of Medicaid and Medical Assistance has now adopted a final regulation incorporating approximately twenty-one (21) amendments in response to of the Councils' twenty-six (26) comments.

To facilitate review of changes, the Councils' comments are reproduced below followed by the Division's response or result in italics.

1. In §2.0, definition of "accredited facility", second sentence, [the Council] recommends insertion of "the" between "from" and "facility".

Response: The word was inserted.

2. In §2.0, definition of "accredited organization", second sentence, [the Council] recommends the following revision - "...organization requires facilities to complete self-assessments and expert surveyors to conduct thorough reviews."

Response: The sentence was revised to correct grammar.

3. In §2.0, the definition of "certified registered nurse anesthetist" is simply "an individual currently licensed under 24 Del.C. Ch. 19." This definition is problematic since it would literally mean anyone licensed under that chapter (LPN; RN; APN) qualifies as a nurse anesthetist under the regulations. There is no separate license or certification of a nurse anesthetist mentioned in Chapter 19, only a passing reference in §1902(b)(1).

Response: The definition was amended.

4. In §2.0, definition of "general anesthesia", [the Councils] recommend not capitalizing "(t)he in Par. (2) and inserting "and" before "(4)".

Response: The suggested changes were adopted.

5. In §2.0, definition of "invasive medical procedure", the reference to "major conduction anesthesia or sedation" is surplusage since the terms are included in the definition of "anesthesia.

Response: No change was made.

6. In §2.0, [the Councils] recommend inserting "and" before "(2)".

Response: The suggested change was adopted.

7. In §2.0, the definitions of "physician" and "physician assistant" are identical. Consider the following revisions:

"Physician" means an individual currently licensed as a physician under 24 Del.C. Ch. 17.

"Physician Assistant" means an individual currently licensed as a physician assistant under 24 Del.C. Ch. 17.

Response: The suggested changes were adopted.

8. In §2.0, definition of “time-out”, the reference to “site” is not intuitive. It suggests that the team does not know its location.

Response: No change was made.

9. In §3.2, insert a comma after “anesthetist”.

Response: The comma was inserted.

10. In §3.5.1.11, delete “and”.

Response: The word was deleted.

11. In §3.5.1.12, substitute a semicolon for the period.

Response: The suggested change was made.

12. In §3.5.1.13, insert “which” between “cart” and “include”.

Response: The suggested change was made.

13. In §3.5.1.13.2, substitute a semicolon for the period. Compare §6.2.2.2.

Response: The suggested change was made.

14. In §3.5.2, substitute “; and” for the period.

Response: The suggested change was made.

15. In §4.6, substitute “prohibit licensed individuals” for “prohibit a licensed individual” since there is otherwise a plural pronoun (“their”) which refers back to a singular noun (“individual”)

Response: The Division adopted an alternative revision.

16. In §4.11, delete the comma after “accreditation”.

Response: The suggested change was made.

17. In §5.1, delete the comma after “environment”.

Response: The suggested change was made.

18. In §6.2.7, add a semicolon.

Response: The suggested change was made.

19. In §6.2.8, delete “and”.

Response: The suggested change was made.

20. In §6.2.9, insert a semicolon.

Response: The suggested change was made.

21. Delete §§6.2.10.1 and 6.2.10.2 while amending §6.2.10 to read as follows: “A separate anesthesia record for each administration of anesthesia which must include:”

Response: The suggested changes were made.

22. Renumber §§6.2.10.2.1 through 6.2.10.2.9 as 6.2.10.1 through 6.2.10.9. Substitute “; and” for the period after the renumbered 6.2.10.9.

Response: DMMA renumbered the above sections but did not substitute “; and” for the period.

23. Delete the comma after “near”.

Response: The suggested change was made.

24. Section 8.2.1.1.1 categorically caps the duration of an order of closure to 90 days in the absence of a request for continuance of the date of a Departmental hearing. This is problematic.

A. Under §§8.3.3.3.1 and 8.3.3.3.1.1, a hearing could routinely occur on the 80th day after issuance of the closure order and §8.3.3.3.1.3 suggests that the hearing decision could be issued on the 110th day. During days 91-109, the closure order would no longer be in effect and the facility could reopen. If a continuance were granted per 8.2.1.1.1, this time period would be extended and the facility could reopen for an even longer period.

B. Under §8.3.3.1, if the facility takes no action on an order of closure, the order of closure remains in effect. It is not capped at 90 days per §8.2.1.1.1.

Response: No change was made.

25. Section 9.3.1 addresses unannounced inspections. [The Councils] recognize that §9.3.1.1 mirrors the statute. However, the Department’s licensing authority might also authorize unannounced inspections at any time. As written, §9.3 would arguably bar the Department from initiating an unannounced inspection in the absence of a complaint or DPR referral. The Division may wish to add a catch-all provision (§9.3.1.3) to read as follows: “Anytime as otherwise authorized by law or applicable regulation.”

Response: No change was made.

26. The exclusion in §9.5.1.1 is contrary to the statutory definition of “facility”. See Title 16 Del.C. §122(3)y.3.C. If the Stockley Center, Mary Campbell Center, or other long-term care facility engaged in invasive procedures (including dental and podiatry procedures), they should be required to comply with the regulation.

Response: No change was made.

Since the regulation is final, and the Division addressed each of the Councils’ comments, I recommend no further action.

3. DOE Final Uniform Definitions for Student Conduct Regulation [17 DE Reg. 835 (2/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in October, 2013. A copy of the October 25, 2013 SCPD letter is attached for facilitated reference. Instead of publishing the comments and its responses in the Register, the Department of Education included only the following recital in the final regulation:

The Department considered all comments and made changes as determined appropriate. A letter to each of the entities related to their comments will be forthcoming.

At 835.

This approach is contrary to the Administrative Procedures Act. The Act requires the following:

All regulations, except those specifically exempted, shall be adopted according to the requirements of this chapter.

Title 29 Del.C. §10113(a).

(b) At the conclusion of all hearings and after receipt within the time allowed of all written materials, ... the agency shall determined whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include:

(1) A brief summary of the evidence and information submitted;

(2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended;...

Title 29 Del.C. §10118(b).

The DOE has published a regulation with no summary of evidence and information submitted and with no summary of its findings. This is unfortunate and a disservice to the public. The Councils may wish to consider an inquiry to the Register of Regulations and/or the Attorney General’s Office to prompt “guidance” to the DOE in this context. Other agencies are compliant. See, e.g., Department of Health & Social Services’ approach in 17 DE Reg. 848 (February 1, 2014).

Given the lack of a summary of information submitted and findings, my review of the final regulation is based solely on the regulatory text. As of February 2, I infer the Councils have not received a DOE letter related to their comments. The Councils' commentary is reproduced below followed by an italicized description of any change in the regulatory text. Revisions are highlighted with an asterisk ("*"). There were approximately twelve (12) revisions prompted by the commentary.

Alcohol: [The Councils] assume the main concern for possession of alcohol in schools is ingestion. I recommend adding an explicit exclusion for disinfectant wipes. *See, e.g.*, http://www.clorox.com/products/clorox-disinfecting-wipes/?utm_source=bing&utm_medium=cpc&utm_term=Clorox+Disinfecting+Wipes&utm_campaign=CDW+Branded. Such wipes, which contain alcohol, are promoted for classroom, locker, and restroom use and can be carried in a purse or pocket.

Result: No change was made.

Commission by a student: [The Councils] recommend inserting "intentionally" between "has" and "engaged". This would clarify that a physical act, without the requisite mens rea, should not justify expulsion or placement in an alternate setting.

Result: No change was made.

Drug Like Substance: This definition is "overbroad". Literally, it would cover chocolate; sugar; cough drop containing sugar; Cold-eze (Zinc and sugar); Gatorade; candy, and any product with caffeine (coffee; tea; Coke; Pepsi). [The Councils] recommend deletion. Note that the definition of "drug" already covers "counterfeit controlled substance".

Result: No change was made.

Look Alike Substance: This definition is likewise overbroad. Substances capable of "altering a state of mind or feeling" include chocolate, sugar, candy and any product with caffeine. This definition could be invoked to justify expulsion if a student possessed or distributed benign substances.

Result: No change was made.

Possession: [The Councils] recommend incorporating the notion that the student knows or is aware of the presence of an item.

Result: No change was made.

Sexual Act: The definition of "sexual act" may be somewhat graphic to include in a student handbook for young students. [The Councils] recommend deleting the term. It's content would ostensibly be covered by the definition of "sexual offense". Moreover, most of the defined conduct is also covered by the definition of "sexual intercourse".

Result: No change was made.

Sexual Offense: [The Councils] recommend substituting “1353” for “1353(2)” since the conduct proscribed by §1353(1) could occur within a school environment.

**Result: The suggested change was made.*

Use: [The Councils] recommend insertion of “voluntarily” between “be” and “under”.

Result: No change was made.

Arson: This definition is “overbroad”. It is not consistent with the definition used in the criminal code, which limits arson to the burning of buildings. See 11 Del. C. §§ 801-803. It overlaps with the definition of “reckless burning” which covers fires not involving buildings. For example, if a student is caught smoking a cigarette in the restroom, which causes “alarm”, that should not be characterized as “arson”. Likewise, if a student burns another student’s homework, that should be punishable but not punishable as “arson”.

**Result: The definition was amended to only cover damaging a building by fire or explosion.*

Bullying: This definition is based on Title 14 Del.C. §4112D. Consistent with prior commentary, both the statutory and conforming regulatory definition are “overbroad” and infringe on students’ First Amendment rights.

Result: No change was made.

Criminal Mischief (Vandalism): The definition is not restricted to school-based behavior. It should be limited to behavior that occurs on school grounds or at a school event. If the DOE includes vandalism behavior that occurs outside of the school grounds, the student must pose a proximate risk to the school community.

**Result: The definition was revised to only cover vandalism “in the school environment”.*

Criminal Sexual Offense, Commission of: [The Councils] recommend substituting “1353” for “1353(2)” since the conduct proscribed by §1353(1) could occur within a school environment.

**Result: The suggested change was made.*

Dangerous Instrument(s) Possession/Concealment/Sale: This definition is “overbroad”. It is not limited to school grounds and covers conduct which may be perfectly legal. For example, if a student merely arranges for the sale of a bow and arrow or a knife in which delivery will occur off school grounds, that should not justify school discipline.

**Result: The definition was revised to only cover possession “in the school environment”.*

Deadly Weapon(s) Possession/Concealment/Sale: This definition is “overbroad”. It is not limited to school grounds and covers conduct which may be perfectly legal. For example, if a student possesses a slingshot or knife off school grounds, that should not justify school discipline.

**Result: The definition was revised to only cover possession “in the school environment”.*

Defiance of School Authority: This definition is “overbroad”. The term “uncivil” is defined the dictionary as “impolite” or “unmannerly”. Being “impolite” or “unmannerly” towards school personnel is not conceptually equivalent to “defiance” which connotes some act of obdurate “refusal”. [The Councils] recommend deletion of Subsection (2) of the definition, limiting the scope of the definition to a refusal. The definition of “disorderly conduct” can cover actions which are problematic but do not involve a “refusal” to comply with a reasonable directive.

Result: No change was made.

Disorderly Conduct: This definition is based on Title 11 Del.C. §1301. However, it omits the term “intentional” which is an important component in the statute. [The Councils] recommend insertion of “intentional” prior to “conduct”. [The Councils] also recommend limiting the definition to occurrences within the “school environment” which is previously defined.

**Result: The word “intentional” was not added. The definition was revised to only cover conduct “in the school environment”.*

Disruption of the Educational Process: [The Councils] recommend deletion of this definition. The conduct legitimately intended to be proscribed should already be covered by other definitions (e.g. disorderly conduct; defiance). The standard is so general that it could easily run afoul of student First Amendment rights. See, e.g., the attached articles describing barring of Delaware student with pink hair as “disruptive” and the “protest” manifested by hundreds of students wearing “hoodies” which could easily be considered “disruptive”.

**Result: The definition was deleted.*

Gambling: Gambling does not warrant potential expulsion or alternative placement. If a student is over 18 and carrying a lottery ticket, or even bets a friend a dollar that the Phillies will win, the student should not potentially be subject to such dire disciplinary consequences. Under this definition, in-class bingo games for candy or other prizes could be implicated. This should be stricken from the regulation.

Result: No change was made.

Harassment: This definition does not “track” the Delaware statute, Title 11 Del.C. §1311. It omits any requirement of “intent” which is a “cornerstone” of the statute. Proscribing any action which “offends the dignity or self-esteem of individuals or groups” is extremely “overbroad”.

**Result: The definition was revised to more closely conform to the statutory definition.*

Inhalant Abuse: There is no exclusion for prescribed medications. Consider adding “unless prescribed for an individual student by a licensed practitioner”.

Result: No change was made.

Repeated Violations of Student Code of Conduct: Literally, a single, minor violation of a behavior contract qualifies as “repeated violations” of the Code of Conduct. This is not logical. Query why the same “5 or more violations” standard should not apply to behavior contracts?

**Result: The reference to a violation of a behavior contract was deleted.*

Sexual Assault: This definition is “overbroad”. For example, it “counts” harassment as an “assault”. Harassment includes merely suggesting that another engage in sex knowing that the suggestion is an unwelcome annoyance. See Title 11 Del.C. §763. Characterizing a “suggestion” as an actual “assault” on someone is unreasonable. Moreover, the definition characterizes “any unwanted sexual behavior” as an “assault”. There are many forms of sexual behavior that do not rise to the level of an “assault”. Finally, the reference to “include but are not limited to” exacerbates the undue breadth of the definition.

Result: No change was made.

Sexual Misconduct: Since there is no definition of “sex act”, this definition could result in expulsion if students kiss or hug. If two 18 year old students kissed at their high school prom, application of this standard could result in expulsion.

Result: No change was made.

Teen Dating Violence: The DOE may wish to consider whether the conduct covered by this definition could be converted to a “stalking” definition. The use of the term “teen violence” suggests that it only applies to “teens” and “dating” which typically occurs in non-school contexts.

Result: No change was made.

Terroristic Threatening: The term “crime” should not be capitalized. Subsection (2) of the definition is not included in the relevant statute (Title 11 Del.C. §621). It is not intuitive that an act which is not a “threat” is characterized as terroristic threatening.

**Result: Some language within the definition was modified*

Use and/or Possession of drugs and/or Alcohol and/or Drug Paraphernalia: I recommend deletion of “or any prohibited substance”. There are definitions of drug, alcohol, and drug paraphernalia. Adding “any prohibited substance” is outside the scope of the standard and could result in the inclusion of extraneous substances under this definition.

**Result: The term “any prohibited substance” was deleted and conduct is limited to that occurring in the school environment.*

Consistent with the introductory remarks, the Councils may wish to consider an inquiry to the Register of Regulations and/or the Attorney General's Office to prompt "guidance" to the DOE on including a summary of evidence/information submitted and findings in final regulations.

4. DMMA Prop. "Outlier" Hospital Medicaid Reimbursement Regulation [17 DE Reg. 812 (2/1/14)]

Hospitals are eligible for an enhanced Medicaid payment for "high cost outliers" when the cost of care at discharge exceeds a certain threshold. DMMA offers the following description:

State Medicaid agencies may pay hospitals for Medicaid inpatient stays using a prospective payment system. To protect hospitals against large financial losses from extraordinarily high-cost cases, State agencies may supplement base payments with an additional payment referred to as a Medicaid inpatient hospital cost outlier payment (Medicaid outlier payment). Medicaid outlier payments are calculated using formulas that vary by State.

At 813.

In early 2009, hospitals were eligible for an outlier payment if the cost of discharge exceeded three times the hospital operating rate per discharge. If that threshold were met, the hospital would be reimbursed at the discharge rate plus 79 percent of the difference between the outlier threshold and the total cost of the case. In September, 2009, DMMA issued a proposed regulation to reduce hospital compensation for outliers to save \$4.9 million. See attached 13 DE Reg. 373 (9/1/09) (proposed) and 13 DE Reg. 656 (11/1/09) (final). The SCPD submitted the attached September 29, 2009 commentary expressing "reservations" with reduced payments. For example, the Council noted that "the reduction in compensation provides an incentive to hospital to discharge earlier in the recovery process and/or exercise any discretion involving treatment in favor of 'bare bones' or minimally adequate services." DMMA responded that "the revised outlier methodology will not affect the quality of care to our Medicaid beneficiaries." See 13 DE Reg. At 657. At that time, DMMA raised the threshold for eligibility from three to four times the hospital operating rate per discharge. It also lowered the compensation for this smaller class of cases from 79 percent to 70 percent of the difference between the outlier threshold and the total cost of care. Id.

This month, the Division proposes to reduce hospital outlier compensation further. Expected cost saving to the State are highlighted at 17 DE Reg. 813 and include \$1,291,034 in Federal Fiscal Year 2015 (October 1, 2014 - September 30, 2015). The new threshold for eligibility will be five times the hospital operating rate per discharge. The compensation for the resulting smaller class of eligible cases will be reduced from 70 percent to 65 percent of the difference between the outlier threshold and the total cost of care. See 17 DE Reg. 814.

The SCPD lacks sufficient information on hospital finances to provide definitive commentary on the proposal. However, I recommend that the Council share the above observations and reiterate the concerns expressed in its September 29, 2009 letter. The Council may wish to forward a courtesy copy of its commentary to the A.I. duPont Hospital for Children and/or the NeMours Foundation.

5. DelDOT Prop. External Equal Opportunity Complaint Regulation [17 DE Reg. 833 (2/1/14)]

The SCPD commented on an earlier version of this proposed regulation in September, 2012. In November, 2012, DelDOT forwarded a letter to the SCPD noting its plans to revise the proposed regulation and republish it in the winter of 2013. The Council issued a “reminder” email to DelDOT in December, 2013 which prompted publication of the proposed standards this month.

In general, the new standards conform to the Federal Highway Administration Office for Civil Rights guidance entitled “Procedures Manual for Processing External Complaints of Discrimination” [hereinafter “OCR Procedures Manual”] relied upon by the Council in its 2012 commentary.

I have the following observations and suggested amendments.

First, in §2.1.1.2, substitute “individual with a disability” for “handicapped person” and substitute “her or his disability” for “his handicap”. See attached updated version of federal law. See also Title 29 Del.C. §608.

Second, the word “Handicap” also appears in §2.1.2.9. However, the federal regulation ostensibly still uses the term so its use may be apt.

Third, in §2.1.3, use of the word “refine” is somewhat odd. Consider the following substitute: ..Orders further define, interpret, and implement Civil Rights...”.

Fourth, §2.1.3 contains references to 2 of the 3 executive orders contained in the OCR Procedures Manual at p. 4. The reference to Executive Order 12250 is omitted. DelDOT may wish to review whether this omission is inadvertent or the Executive Order is no longer in force.

Fifth, in §3.0, definition of “Discrimination”, DelDOT should consider substituting “means” for “involves”. See Register of Regulations Style Manual, §3.1.2, available at <http://regulations.delaware.gov/>. Moreover, the last 3 lines purport to be a sentence. However, the language lacks a predicate (verb).

Sixth, in §3.0, definition of “Investigative report”, the second sentence is not a definition but a substantive standard. The Register recommends that such regulatory standards not be included in definitions. See Register of Regulations Style Manual, §3.1.1.

Seventh, in §4.4.3.7, substitute “its” for “their” since the pronoun refers to a singular “agency”.

Eighth, §5.9.3.8 does not appear in the list of bases justifying dismissal in the OCR Procedures Manual (p. 9). DelDOT may wish to reassess whether this subsection conforms to federal guidance.

Ninth, §§5.11.2.2 and 5.11.2.3 contain three (3) references to “State”. This may be “underinclusive”. A complaint could be filed against a local government entity or a private entity such as a contractor.

I recommend sharing the above observations with DelDOT.

6. H.B. No. 167 (Public Employment: Consideration of Criminal Record)

This bill was introduced on May 30, 2013. On January 28, 2014, it passed the House with amendments. As of January 30, it awaited action in the Senate Labor and Industrial Relations Committee.

The bill, as amended, would make it unlawful for “any public employer to inquire into or consider the criminal record, criminal history, or credit score of an applicant for employment during the initial application process, up to and including the first interview.” “Public employer” means “the State of Delaware, its agencies, or political subdivisions.” Employers could consider criminal history and credit information after the first interview and disqualify an applicant “where the exclusion is job related for the position in question and consistent with business necessity.” Vendors doing business with the State would be encouraged to adopt similar policies. Some entities are exempt, including police agencies, the Department of Correction, Department of Justice, Public Defender’s Office, and the Courts. The legislation would be effective 180 days after enactment.

The impetus for this legislation is compelling.

As the preamble recites, at least 40 cities, 7 counties, and 7 states have passed similar measures. The 7 states are Massachusetts, Connecticut, Hawaii, California, Minnesota, Colorado, and New Mexico. See attached November 11, 2012 News Journal article, “Baker gets rid of felon job box”, which also describes the City of Wilmington’s adoption of a conforming ordinance. Philadelphia adopted its ordinance in 2011 and Baltimore adopted its ordinance in 2007. See attached May, 2011 News Journal article, “Phila. limits questions about criminal record”. “Ban the box” legislation is pending in New Jersey, Michigan, North Carolina, and Ohio. See attached January 14, 2014 CNN article, “A growing movement to protect convicted job applicants”. New Castle County Executive Tom Gordon adopted a “ban the box” policy through Executive Order No. 2014-03 on January 28, 2014. See attached press release.

The Delaware Department of Correction processes 23,000 intakes and 23,000 releases every year. See above January 14, 2014 CNN article, “A growing movement to protect convicted job applicants”. Federal statistics show that 1 in 3 black men and 1 in 6 Hispanic men will be incarcerated during their lifetime compared to 1 in 17 white men. See attached April, 2012 News Journal article, “Criminal background check policy updated”. One of the results of disproportionate representation of minorities in the criminal justice system is high rates of unemployment upon release based on a criminal record. The bill’s prime sponsor, Rep. J.J. Johnson, offered the following perspective:

House Bill 167 is not a “hire the felons” bill, but a “foot in the door” bill. He noted that more than two-thirds of the men and women released from prison end up back there within three years, and the lack of a stable job contributes greatly to that recidivism.

Delaware House Democrats Newsletter (January 17, 2014) at 2. Similar views are shared in the attached excerpt from the Governor’s recent State of the State address and June 6, 2013 News Journal editorial, “Public robbed of a reformed employee”. Given the high correlation between mental illness and substance abuse, criminal history checks also disproportionately impact persons with disabilities convicted of drug possession.

Delaware has been implementing other initiatives in recent years to remove barriers to employment by those with criminal histories. See attached March 24, 2012 News Journal article, “Making probation a positive recognized at awards event”. See also S.B. No. 59, enacted in 2011, which reduced or eliminated waiting periods for persons convicted of crimes to obtain restoration of a professional license.

I recommend a strong endorsement subject to consideration of some amendments.

First, it would be preferable to clarify that the bill establishes minimum protections for job applicants which local governments may exceed by ordinance or executive order. For example, the amended legislation literally permits consideration of three factors in the hiring decision: 1) nature and gravity of offense or conduct; 2) time that has passed....; and 3) nature of job held or sought. A local government might wish to include other considerations. For example, the New Castle County executive order requires consideration of “remorse” and “evidence of rehabilitation”. Moreover, a local government might prefer to categorically disallow consideration of misdemeanors more than 5 years old (akin to the original version of H.B. No. 167). Local governments should not be hamstrung in their authority to adopt standards offering greater protection to job applicants.

Second, the original bill (lines 32-36) limited consideration of criminal histories to convictions. To the contrary, the amended legislation ostensibly authorizes exclusion of applicants based on arrest record. H.A. No. 2 allows a public employer to disqualify an applicant from employment based on “criminal history” (which would include arrests without conviction). This is contrary to EEOC guidance. See attached January 12, 2012 EEOC press release and News Journal article, “Pepsi Beverages settles race discrimination case”, describing \$3.1 million settlement when company’s policy of not hiring individuals with arrest records pending prosecution disproportionately excluded black applicants. See also attached EEOC guidance (pp 12-14) holding that an arrest without conviction is generally not an acceptable reason to deny employment. The bill would benefit from a conforming amendment limiting consideration to convictions.

7. H.B. No. 214 (Down Syndrome Information Dissemination)

This legislation was introduced on June 27, 2013. It was passed by the House with one amendment on January 30, 2014.

The bill would require hospitals, physicians, and covered health care providers receiving positive test results for Down Syndrome to provide the expectant parent with a DHSS-provided information packet. DHSS would include in the information packet materials related to support programs and child development, life expectancy, and treatment options. DHSS would meet with representatives of the Down Syndrome Association of Delaware annually to ensure the information being distributed is up-to-date. The Department would also report to the Joint Finance Committee annually “detailing the persons to whom the information...has been distributed.”

I recommend an endorsement subject to consideration of a four (4) amendments.

First, the word “department” in line 9 should be capitalized.

Second, at lines 16-17, the following could be inserted: ...Down Syndrome organizations, the Infants and Toddlers Early Intervention Program established by Chapter 2 of this title, and other educational and support programs. “ The Infants and Toddlers Program is manifestly the most important and comprehensive support program for children age 3 with Down Syndrome. An explicit reference is therefore justified.

Third, the word “department” inserted by H.A. No. 1, line 3, should be capitalized.

Fourth, lines 4-5 of H.A. No. 1 are problematic.

A. Since the requirement that information be distributed is contained in subsection “(a)”, the contrary reference to “subsection “(b)” at line 5 is simply inaccurate.

B. The requirement “of detailing the persons to whom the information...has been distributed” could result in the unnecessary disclosure of names and personal information in a very sensitive context. There is no need for the JFC to receive a report identifying the specific persons receiving the information. It would be preferable to substitute the following: “...the Joint Finance Committee with statistical information on the number of persons receiving the information both directly from the Department and from health care entities identified in subsection (a).”

I recommend sharing the above observations and recommendations with policymakers.

8. H.S. No. 1 for H.B. No. 218 (Prescription Pick-up)

The original version of this legislation was introduced on June 30, 2013. I forwarded an informal, multi-point critique of the legislation to DHSS and multiple councils on January 23, 2014. DHSS identified similar concerns which were shared with the sponsors. As a result, a substitute bill was introduced on January 29 which adopts a simpler and more flexible approach to safeguards in receiving prescriptions.

The crux of the substitute bill is the addition of the following provision to an existing statute covering prescriptions:

(e) A ultimate user shall be permitted to prohibit or limit a person other than the ultimate user from receiving a prescription on the ultimate user's behalf from a pharmacy.

The Department of State, which oversees pharmacies, would issue regulations to implement this provision which would be applicable on January 1, 2015.

I have the following observations.

First, the substitute bill is a major improvement over the original version. It authorizes ultimate users to restrict receipt of prescription drugs on their behalf without imposing categorical restrictions which could result in hardship to individuals with disabilities.

Second, the Department of State may not be as acquainted with aspects of the regulations which could affect the elderly or persons with disabilities (e.g. guardian authority; residential licensing standards) as the Department of Health & Social Services. Therefore, the reference could be changed to "the Department of State, in consultation with the Department of Health and Social Services, shall promulgate..." For similar approaches in the Delaware Code, see Title 5 Del.C. §929(c) and 14 Del.C. §303(b).

Third, Section 2, which contains the regulatory authorization, should be incorporated into amended §4739 so it appears in the Code. Compare H.B. No. 129. For example, Section 2 could be deleted and a new subsection (f) added at line 17 to read as follows: "The Department of State, in consultation with the Department of Health and Social Services, shall promulgate such rules, regulations, and standards as are necessary to implement subsection (e) of this section."

I recommend sharing the above observations with policymakers, DHSS, and the AARP.

9. H.B. No. 230 (Family Financial Protection Act)

This legislation was introduced on January 23, 2014. As of January 30, it awaited action in the House Economic Development/Banking/Insurance/Commerce Committee.

The bill is based on model legislation authored by the National Consumer Law Center ("NCLC"). It is extremely comprehensive (25 pages) and establishes many protections applicable to consumer contracts and debt collection. "Consumer debt is defined as a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes (lines 21-23). The synopsis highlights a dozen features favoring consumers.

The following features would benefit individuals with disabilities.

First, individuals can incur a disability (including TBI) through defective products or services. Suppliers have an incentive to include contract provisions designed to prevent any recourse for injuries or harm. The bill disallows such provisions (lines 53-54). This benefits not only the aggrieved consumer but Delaware public assistance programs as well. If a consumer is severely injured, the consumer often loses employment and joins the Medicaid rolls if there is no source of compensation from the entity responsible for the injury.

Second, the bill requires a seller of consumer debt to provide certain information to the buyer or assignee, including the following: a) any illness or disability claimed by the consumer or known to the seller; b) whether the consumer has a disability; and c) whether the consumer is known to receive income (e.g. Social Security Disability; SSI) exempt from garnishment or attachment (lines 115-120). This may deter assignees of debt from claiming ignorance of the disability status of a consumer and pursuing protected income and benefits. Debt collector garnishment and attachment of Social Security and SSI benefits has been a significant historical problem. See attachments.

Third, the scope of consumer property exempt from execution is expanded. One explicit rationale for the additional protections is to permit individuals to compile resources to meet "medical needs" (line 358). Other justifications include prevention of homelessness and reduction of the "burden upon society of supporting impoverished debtors and their families" (lines 360-361). Property exempt from execution includes the following: a) personal health aids (lines 410-411); b) medications (line 411); c) necessary provisions, i.e., those "reasonably essential for everyday living, including any special needs by reason of health or physical or mental infirmity" (lines 379-380, 409); d) motor vehicles adapted for special use because of disability up to \$25,000 (lines 416-417); e) all public assistance benefits and disability benefits (lines 428-429); and f) health insurance, disability insurance, long-term care insurance policies and medical expense accounts (lines 430-431).

The legislation may result in some inconsistencies with other Code provisions. Such an analysis is beyond the scope of this analysis. However, there are a few discrete references that merit amendment:

A. Line 68 contains the following incomplete reference: "[cite to state usury cap]". I do not believe Delaware has a usury cap.

B. Line 530 refers to "mount" rather than "amount".

C. Line 695 refers to "Title". The reference should ostensibly be to "chapter".

I recommend endorsing at least the concept of the legislation.

10. H.B. No. 228 (Child Placement Review Act)

This legislation was introduced on January 23, 2014. As of February 2, it had been reported out of the House Health & Human Development Committee and awaited action by the full House.

As background, current Delaware law [Title 31 Del.C. Ch. 38] establishes a child placement review process with several components to ensure conformity with federal law, including the federal Adoption and Safe Families Act of 1997 [hereinafter “Federal Act”] (lines 19-20; 144-146). Panels conduct reviews of case plans to ensure they adequately address the child’s safety, best interests, and special needs. See Title 31 Del.C. §3810(1). The panels also assess the appropriateness of placements and progress toward achieving stability and permanency. See Title 31 Del.C. §3810(3)(4)(5). The focus of panels on child safety, best interests, special needs, and permanency is required by the above Federal Act. See lines 19-20 and 144-146 and attached 42 U.S.C. §675. The latter statute requires panels to assess case plans which must include comprehensive information about the child , including school performance, medical problems, medications, and programs and services to prepare for independent living. See 42 U.S.C. §675(5). The synopsis to H.B. No. 228 suggests that it is a “housekeeping” measure:

SYNOPSIS

The intent of this bill is to make adjustments to the existing code to be consistent with current practices, clarify ambiguities and eliminate sections that no longer apply.

Unfortunately, instead of promoting a more robust review system, the legislation weakens the review process.

First, the existing State law mirrors the Federal Act by focusing on promoting permanency, health, safety, on-going care to meet physical, mental and emotional needs, and best interests:

§3801. Purpose

Establishing an independent voluntary, citizen organization whose mission is to advocate on behalf of Delaware’s children in out of home placement and to identify and periodically review children in the care and custody of a placement agency is in the best interests of the health and welfare of all citizens of Delaware. The purposes of this chapter are to provide a citizen based independent monitoring of Delaware children in the care and custody of a placement agency to ensure that they receive continuing efforts to obtain permanent homes, adequate provision for their stability, health, and safety; and ongoing care addressing their physical, mental, and emotional needs; and to advocate as necessary for the paramount concerns of best interest and safety for the children.

[emphasis supplied]

H.B. No. 228 strikes this section in its entirety and truncates the focus to a single domain - permanency (lines 12-15). This is inconsistent with both the Federal Act and the balance of the Chapter. Compare 42 U.S.C. §675(5) and Title 31 Del.C. §§3813, 3814, and 3809(7).

Second, the current law requires panel members to have community service or professional expertise so panels will possess ample background in assessing case plans, special needs, and placement options. Panel members are derived from a board with the following credentials:

§3804 Qualifications of Board members.

(a) A board member must be a citizen of Delaware who has demonstrated an interest in children and their welfare through community service or professional experience or who possesses a background in law, sociology, psychology, psychiatry, education, theology, social work, medicine or related fields.

See also Title 31 Del.C. §3803(b).

H.B. No. 228 strikes this language in its entirety as well. It substitutes an anemic background standard:

Members shall include persons who have demonstrated interest in children (lines 79-80).

The effect is to dilute the expertise and knowledge base of panelists. In turn, this will result in superficial, perfunctory reviews since panelists lack the background to assess special needs, placement options, etc. A high percentage of children in foster care have disabilities. Indeed, an estimated 30-45% are special education students. See National Council on Disabilities, “Youth with Disabilities in the Foster Care System: Barriers to Services and Proposed Policy Solutions” (February 26, 2008) [http://aypf.org/publications/documents/ncd96_FosterYouth_w_cover.pdf]; and attached NASDSE, “Foster Care and Children with Disabilities” (February, 2005).

The complexity of the needs of foster children, and alarming statistics on outcomes of the foster care system, were highlighted in H.B. No. 163 which was signed by the Governor on September 18 2013. The findings reflected in that bill underscore the need for robust reviews of service plans and services.

Finally, the panel reports are not “placed on a shelf”. The reports, with findings and recommendations, are filed with the Family Court (lines 23-25). In turn, the Court is required to review the report and consider the recommendations. See Title 31 Del.C. § 3815(e). If the quality of the reports is weak, this adversely affects the Court’s ability to act on behalf of the child in an informed manner.

Apart from the above substantive concerns, the legislation may benefit from correction of several errors.

A. In line 40, the term “chapter” should be “section”.

B. In line 52, the term “they are” should be “the member is” to avoid use of a plural pronoun (“they”) with a singular antecedent (“member”).

C. Lines 83-84 contain a bar on “discrimination” which deletes the list of prohibited bases (e.g. race, sex, disability). This creates unnecessary ambiguity. For example, is discrimination based on “familial status” barred by this provision? Compare Title 6 Del.C. §4603(b) [includes term] with Title 19 Del.C. §711(a) [omits term]. The current statute bars discrimination based on “socioeconomic status” (line 84). This basis does not generally appear in other Delaware anti-discrimination laws. What is the effect of striking it from this section?

D. Although Title 1 Del.C. §109(d)(1) contemplates including the entire section of a statute being amended in legislation, H.B. No. 228 is “oddly” formatted. Lines 120-129 contain 3 of 8 subparts to §3809. Lines 130-136 contain 2 of 8 subparts to §3810. Lines 153-166 contain 5 of 8 subparts to §3814. This approach makes it difficult to follow changes.

E. Lines 168-169, read literally, require submission of a panel report to either placement agencies, parents, and guardian ad litem/CASA. The word “or” at the end of line 169 should be deleted and the word “and” substituted.

F. In line 177, the term “the person’s” should be substituted for “their” to avoid use of a plural pronoun (“their”) with a singular antecedent (“person”).

I recommend sharing the above observations with policymakers.

11. H.B. No. 33 (Public School Alarm Systems)

This bill was introduced on March 7, 2013. As of February 3, it remained in the House Appropriations Committee. Two amendments have been placed with the bill by its prime sponsor.

Background is provided in the attached June 13, 2013 News Journal article and attached fiscal note. The legislation is designed to improve school safety by requiring the installation and maintenance of an alarm system in each public school capable of notifying law enforcement of an emergency that can be activated from at least one location in each school. According to the article, the legislation is supported by the Secretary of the Department of Homeland Security. The Secretary noted that “many (schools) have a security system in place, which would make installation and maintenance relatively inexpensive.” The article also describes the prime sponsor’s observations that the alarm system could be activated based on a range of events, including shootings, fights, and confrontations. The amendments suggest some vacillation on whether the alarms must be silent and whether they must be directly linked to law enforcement. H.A. No. 1 would allow schools to decide if alarms would be silent and directly linked to law enforcement. H.A. No. 2 would require alarms to be silent but not necessarily directly linked to law enforcement.

The fiscal note is, relatively speaking, modest. Installation would cost \$110,500 to \$331,500 in State funds and monitoring is projected to annually cost public schools \$79, 560, i.e., \$30/month per building times 221 buildings. This cost compares favorably with other pending legislation (H.B. No. 221) which would result in retrofitting classroom doors so they are lockable from both inside and outside the classroom. See attached materials describing H.B. No. 221. The fiscal note on that initiative is \$3,994,500, more than 10 times the cost of installation of the alarm systems.

I recommend endorsement of the concept of H.B. No. 33. The alarm system would enhance timely law enforcement response to school emergencies.

Attachments

8g:legis/214bils
F:pub/bjh/legis/2014p&l/214bils



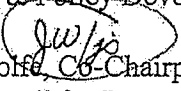
STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

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

MEMORANDUM

DATE: December 23, 2013

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

FROM: 
Jamie Wolfe, Co-Chairperson
State Council for Persons with Disabilities

RE: DMMA Proposed & Emergency Medicaid Pregnant Women & Infants Income
Cap Regulation [17 DE Reg. 584 & 597 (12/1/13)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) emergency and proposed regulations regarding the Division's intentions to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to increase the Federal Poverty Level (FPL) for pregnant women and infants under age one (1) in Medicaid to 212% of the FPL. The emergency and proposed regulations were published as 17 DE Reg. 584 and 597, respectively, in the December 1, 2013 issue of the Register of Regulations.

As background, based on changes in federal law, DMMA was prompted to modify its calculation of the Medicaid countable income cap for pregnant women and infants under age 1. This resulted in an anomaly, i.e., pregnant women and infants under age 1 would be eligible with countable income up to 209% of the federal poverty level (FPL) but children between 1 and 18 would be eligible with countable income up to 212% of the FPL. DMMA would like to have the same standard so it is proposing to adopt the 212% FPL standard for both groups. CMS recommended that DMMA effect the revisions "immediately" (p. 598) so DMMA is issuing both an emergency and proposed regulation. DMMA indicates there is no negative financial impact on the State resulting from the proposed change. At p. 599.

Since the proposal would increase access to the Medicaid program with no negative financial impact, SCPD endorses the proposed regulation subject to consideration of a potential amendment. Both the emergency and proposed regulations recite that "Delaware will disregard an equal amount to the difference...". SCPD suspects that DMMA may have intended to recite that "Delaware will disregard an amount equal to the difference..."

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

cc:

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

17reg584&597 dmma 12-23-13



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

October 25, 2013

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

Ms. Susan K. Haberstroh, Ed.D.
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: 17 DE Reg. 367 [DOE Proposed Uniform Definitions for Student Conduct]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt a new regulation regarding *Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion*. The proposed regulation was published as 17 DE Reg. 367 in the October 1, 2013 issue of the Register of Regulations. As background, legislation (H.B. 42) was enacted in 2011 requiring the DOE to promulgate such regulations and the DLP submitted the attached August 10, 2012 comments to a pre-publication draft of the regulations. SCPD has the following observations and recommendations on the proposed definitions.

Alcohol: SCPD assumes the main concern for possession of alcohol in schools is ingestion. SCPD recommends adding an explicit exclusion for disinfectant wipes. See, e.g., http://www.clorox.com/products/clorox-disinfecting-wipes/?utm_source=bing&utm_medium=cpc&utm_term=Clorox+Disinfecting+Wipes&utm_campaign=CDW+Branded. Such wipes, which contain alcohol, are promoted for classroom, locker, and restroom use and can be carried in a purse or pocket.

Commission by a student: SCPD recommends inserting "intentionally" between "has" and "engaged". This would clarify that a physical act, without the requisite mens rea, should not justify expulsion or placement in an alternate setting.

Drug Like Substance: This definition is "overbroad". Literally, it would cover chocolate; sugar; cough drop containing sugar; Cold-eze (Zinc and sugar); Gatorade; candy, and any product with caffeine (coffee; tea; Coca-cola; Pepsi). SCPD recommends deletion. Note that the definition of "drug" already covers "counterfeit controlled substance".

Look Alike Substance: This definition is likewise overbroad. Substances capable of "altering a state of mind or feeling" include chocolate, sugar, candy and any product with caffeine. This definition could be invoked to justify expulsion if a student possessed or distributed benign substances.

Possession: SCPD recommends incorporating the notion that the student knows or is aware of the presence of an item.

Sexual Act: The definition of “sexual act” may be somewhat graphic to include in a student handbook for young students. SCPD recommends deleting the term. It’s content would ostensibly be covered by the definition of “sexual offense”. Moreover, most of the defined conduct is also covered by the definition of “sexual intercourse”.

Sexual Offense: SCPD recommends substituting “1353” for “1353(2)” since the conduct proscribed by §1353(1) could occur within a school environment.

Use: SCPD recommends insertion of “voluntarily” between “be” and “under”.

Arson: This definition is “overbroad”. It is not consistent with the definition used in the criminal code, which limits arson to the burning of buildings. See 11 Del. C. §§ 801-803. It overlaps with the definition of “reckless burning” which covers fires not involving buildings. For example, if a student is caught smoking a cigarette in the restroom, which causes “alarm”, that should not be characterized as “arson”. Likewise, if a student burns another student’s homework, that should be punishable but not punishable as “arson”.

Bullying: This definition is based on Title 14 Del.C. §4112D. Consistent with prior commentary, both the statutory and conforming regulatory definition are “overbroad” and infringe on students’ First Amendment rights.

Criminal Mischief (Vandalism): The definition is not restricted to school-based behavior. It should be limited to behavior that occurs on school grounds or at a school event. If the DOE includes vandalism behavior that occurs outside of the school grounds, the student must pose a proximate risk to the school community.

Criminal Sexual Offense, Commission of: SCPD recommends substituting “1353” for “1353(2)” since the conduct proscribed by §1353(1) could occur within a school environment.

Dangerous Instrument(s) Possession/Concealment/Sale: This definition is “overbroad”. It is not limited to school grounds and covers conduct which may be perfectly legal. For example, if a student merely arranges for the sale of a bow and arrow or a knife in which delivery will occur off school grounds, that should not justify school discipline.

Deadly Weapon(s) Possession/Concealment/Sale: This definition is “overbroad”. It is not limited to school grounds and covers conduct which may be perfectly legal. For example, if a student possesses a slingshot or knife off school grounds, that should not justify school discipline.

Defiance of School Authority: This definition is “overbroad”. The term “uncivil” is defined the dictionary as “impolite” or “unmannerly”. Being “impolite” or “unmannerly” towards school personnel is not conceptually equivalent to “defiance” which connotes some act of obdurate “refusal”. SCPD recommends deletion of Subsection (2) of the definition, limiting the scope of the definition to a refusal. The definition of “disorderly conduct” can cover actions which are

problematic but do not involve a “refusal” to comply with a reasonable directive.

Disorderly Conduct: This definition is based on Title 11 Del.C. §1301. However, it omits the term “intentional” which is an important component in the statute. SCPD recommends insertion of “intentional” prior to “conduct”. Council also recommends limiting the definition to occurrences within the “school environment” which is previously defined.

Disruption of the Educational Process: SCPD recommends deletion of this definition. The conduct legitimately intended to be proscribed should already be covered by other definitions (e.g. disorderly conduct; defiance). The standard is so general that it could easily run afoul of student First Amendment rights. See, e.g., the attached articles describing barring of Delaware student with pink hair as “disruptive” and the “protest” manifested by hundreds of students wearing “hoodies” which could easily be considered “disruptive”.

Gambling: Gambling, as defined, is overbroad and does not warrant potential expulsion or alternative placement. If a student is over 18 and carrying a lottery ticket, or even bets a friend a dollar that the Phillies will win, the student should not potentially be subject to such dire disciplinary consequences. Under this definition, in-class bingo games for candy or other prizes could be implicated. SCPD recommends that DOE either consider elimination of the definition or adoption of a more restrained definition which would be limited to criminal enterprises or large-scale commercial enterprises (e.g. complex football pools).

Harassment: This definition does not “track” the Delaware statute, Title 11 Del.C. §1311. It omits any requirement of “intent” which is a “cornerstone” of the statute. Proscribing any action which “offends the dignity or self-esteem of individuals or groups” is extremely “overbroad”.

Inhalant Abuse: There is no exclusion for prescribed medications. Consider adding “unless prescribed for an individual student by a licensed practitioner”.

Repeated Violations of Student Code of Conduct: Literally, a single, minor violation of a behavior contract qualifies as “repeated violations” of the Code of Conduct. This is not logical. Query why the same “5 or more violations” standard should not apply to behavior contracts?

Sexual Assault: This definition is “overbroad”. For example, it “counts” harassment as an “assault”. Harassment includes merely suggesting that another engage in sex knowing that the suggestion is an unwelcome annoyance. See Title 11 Del.C. §763. Characterizing a “suggestion” as an actual “assault” on someone is unreasonable. Moreover, the definition characterizes “any unwanted sexual behavior” as an “assault”. There are many forms of sexual behavior that do not rise to the level of an “assault”.

Finally, the reference to “include but are not limited to” exacerbates the undue breadth of the definition.

Sexual Misconduct: SCPD had previously recommended deletion of “sexual act” and therefore the definition of “sexual misconduct” would be effected. This latter definition is overbroad and could result in expulsion if students kiss or hug. If two 18 year old dents kissed at their high school prom, application of this standard could result in expulsion or placement in an alternative school.

Teen Dating Violence: The DOE should consider cross-referencing 14 Del.C Section 4112E.
Terroristic Threatening: The term "crime" should not be capitalized. Subsection (2) of the definition is not included in the relevant statute (Title 11 Del.C, §621). It is not intuitive that an act which is not a "threat" is characterized as terroristic threatening.

Use and/or Possession of drugs and/or Alcohol and/or Drug Paraphernalia: SCPD recommends deletion of "or any prohibited substance". There are definitions of drug, alcohol, and drug paraphernalia. Adding "any prohibited substance" is outside the scope of the standard and could result in the inclusion of extraneous substances under this definition.

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
Dr. Donna Mitchell, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Ms. Ilona Kirshon, Esq.
Ms. Kathleen MacRae, ACLU
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg367 doe-uniform definitions student conduct 10-25-13

17908 Unearned Income Exclusion

Unearned income is excluded up to ~~\$904.00~~ 956.00 per month for the individual. There is no ~~\$904.00~~ 956.00 per month unearned income exclusion for a spouse who is not applying for MWD. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

(Break in Continuity of Sections)

17911 Financial Eligibility Determination

There are two income tests used to determine financial eligibility:

1. If the monthly unearned income of the individual exceeds ~~\$904.00~~ 956.00, the individual is ineligible. This unearned income limit will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.
2. Countable income must be at or below 275% of the Federal Poverty Level for the appropriate family size (individual or couple).

17912 Retroactive Eligibility

The individual may be found eligible for up to three months prior to the month of application as described at DSSM 14920-14920.6 provided the premium requirements under MWD are met. Eligibility cannot be retroactive prior to October 1, ~~2008~~ 2009.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

Reimbursement Methodology for Inpatient Hospital Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is amending the Title XIX Medicaid State Plan to revise the reimbursement methodology for inpatient hospital services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by September 30, 2009.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSED AMENDMENT

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to revise the hospital outlier reimbursement methodology.

Statutory Authority

- 42 CFR §440.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates;
- 42 CFR §447, Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services

Summary of Proposed Amendment

The proposed amendment is intended to revise the calculation of high cost outlier payments. Currently, high cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Effective October 1, 2009, the proposal changes the threshold to four times the hospital operating rate per discharge.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

The proposal will result in reduced spending of \$4.9 million in total funds.

DMMA PROPOSED REGULATION #09-35**REVISIONS:**

ATTACHMENT 4.19-A

PAGE 3

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - INPATIENT HOSPITAL CARE
(Continued)****Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing
(Continued)**

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97.

Effective for admission dates on or after April 1, 2009, payment rates for inpatient hospital care will be adjusted to the rates that were in effect on December 31, 2008. Future rate adjustments will be suspended until further notice.

Other Related Inpatient Reimbursement Policies

Outliers - High cost outliers will be identified when the cost of the discharge exceeds the threshold of ~~three~~ four times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus ~~79~~ 70 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

Effective January 1, 2006, any provider with a high cost client case (outlier) will receive an interim payment; that is, a payment prior to the discharge of that patient when the charge amount reaches the designated level. An interim payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again. The interim payment amount is based on the current reimbursement methodology used to pay outliers. Upon the discharge of the client, the facility will receive the balance of the payment that would have been paid if the case were paid in full at the time of discharge.

6 DE Reg. 885 (1/1/03)

9 DE Reg. 783 (11/01/05)

13 DE Reg. 259 (8/1/09)

2. Countable income must be at or below 275% of the Federal Poverty Level for the appropriate family size (individual or couple).

17912 Retroactive Eligibility

The individual may be found eligible for up to three months prior to the month of application as described at DSSM 14920-14920.6 provided the premium requirements under MWD are met. Eligibility cannot be retroactive prior to October 1, ~~2008~~ 2009.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

ORDER

Reimbursement Methodology for Inpatient Hospital Services

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA). The Department's proceedings to amend the Title XIX Medicaid State Plan to revise the inpatient hospital outlier reimbursement methodology for were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to revise the hospital outlier reimbursement methodology.

Statutory Authority

- 42 CFR §440.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates;
- 42 CFR §447, Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services

Summary of Proposed Amendment

The proposed amendment is intended to revise the calculation of high cost outlier payments. Currently, high cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Effective October 1, 2009, the proposal changes the threshold to four times the hospital operating rate per discharge. The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

The proposal will result in reduced spending of \$4.9 million in total funds.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. DMMA has considered the comments and responds as follows:

The current standards authorize a compensation "add on" for "high cost outliers" whose cost of discharge exceeds the threshold of 3 times the hospital operating cost per discharge. The "add on" is 79% of the difference between the outlier threshold and the total cost of the case.

The revision would authorize a compensation "add on" for those whose cost of discharge exceeds the threshold of 4 times the hospital operating cost per discharge. The "add on" would also be reduced to 70% of the difference between the outlier threshold and the total cost of the case. The combined effect of the revision would be to reduce compensation for very expensive Medicaid patients who may tend to be persons with severe disabilities.

St. Francis Hospital has presented testimony in legislative hearings confirming its precarious financial circumstances. Other hospitals may also be under financial stress. The proposed regulation would ostensibly reduce Medicaid reimbursement for "deep end" beneficiaries (who may tend to be persons with severe disabilities) which could adversely affect patient care. For example, the reduction in compensation provides an incentive to hospitals to discharge earlier in the recovery process and/or exercise any discretion involving treatment in favor of "bare-bones" or minimally adequate services. For these reasons, SCPD has reservations with the proposed regulation.

Agency Response: DMMA believes the revised outlier methodology will not adversely impact the quality of care to our Medicaid beneficiaries. We thank the Council for their comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the inpatient hospital outlier reimbursement methodology for is adopted and shall be final effective November 10, 2009.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #09-40
REVISIONS:**

**ATTACHMENT 4.19-A
PAGE 3**

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - INPATIENT HOSPITAL CARE
(Continued)**

Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing
(Continued)

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97.

Effective for admission dates on or after April 1, 2009, payment rates for inpatient hospital care will be adjusted to the rates that were in effect on December 31, 2008. Future rate adjustments will be suspended until further notice.

Other Related Inpatient Reimbursement Policies

Outliers - High cost outliers will be identified when the cost of the discharge exceeds the threshold of ~~three~~ four times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus ~~70~~ 70 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

Effective January 1, 2006, any provider with a high cost client case (outlier) will receive an interim payment; that is, a payment prior to the discharge of that patient when the charge amount reaches the designated level. An interim payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again. The interim payment amount is based on the current reimbursement methodology used to pay outliers. Upon the discharge of the client, the facility will receive the balance of the payment that would have been paid if the case were paid in full at the time of discharge.

6 DE Reg. 885 (1/1/03)

9 DE Reg. 783 (11/01/05)

13 DE Reg. 259 (8/1/09)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

ORDER
Reimbursement Methodology for Medicaid Services
NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA). The Department's proceedings to amend the Title XIX Medicaid State Plan to revise the reimbursement methodology for pharmaceutical services and renal dialysis facility services were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The purpose and effect of this proposal is to amend the Title XIX Medicaid State Plan to revise the reimbursement methodology for certain provider services.

Statutory Authority

- 42 CFR §440, Subpart A, *Definitions*;
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*; and,
- 42 CFR §447, *Payments for Services*.

MEMORANDUM

DATE: September 29, 2009

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

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

RE: 13 DE Reg. 373 [DMMA "Outlier" Hospital Medicaid Reimbursement Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to amend its hospital outlier reimbursement methodology regulations published as 13 DE Reg. 373 in the September 1, 2009 issue of the Register of Regulations. SCPD has the following observations.

The current standards authorize a compensation "add on" for "high cost outliers" whose cost of discharge exceeds the threshold of 3 times the hospital operating cost per discharge. The "add on" is 79% of the difference between the outlier threshold and the total cost of the case.

The revision would authorize a compensation "add on" for those whose cost of discharge exceeds the threshold of 4 times the hospital operating cost per discharge. The "add on" would also be reduced to 70% of the difference between the outlier threshold and the total cost of the case. The combined effect of the revision would be to reduce compensation for very expensive Medicaid patients who may tend to be persons with severe disabilities.

St. Francis Hospital has presented testimony in legislative hearings confirming its precarious financial circumstances. Other hospitals may also be under financial stress. The proposed regulation would ostensibly reduce Medicaid reimbursement for "deep end" beneficiaries (who may tend to be persons with severe disabilities) which could adversely affect patient care. For example, the reduction in compensation provides an incentive to hospitals to discharge earlier in the recovery process and/or exercise any discretion involving treatment in favor of "bare-bones" or minimally adequate services. For these reasons, SCPD has reservations with the proposed regulation.

Thank you for your consideration and please contact SCPD if you have any questions or

comments regarding our observations on the proposed regulation.

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

13reg373 dmma-outlier 9-09

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U.S. Code > Title 29 > Chapter 79 > Section 794

U.S. CODE TOGGLEBOX

29 U.S. CODE § 794 - NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS

Wex: Nondiscrimination Under Federal Grants and Programs

US Code Notes History Authorities (CFR)

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 701(2) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of—

(1)

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)

(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 1201 of title 20), system of vocational education, or other school system;

(3)

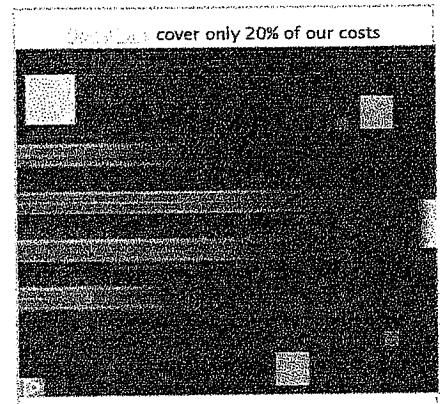
(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);



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Baker gets rid of felon job box

Written by Andrew Staub The News Journal
Dec. 10

delawareonline.com

People with felony convictions no longer have to reveal their criminal background when applying for a non-uniform job with the city of Wilmington.

At the request of City Council, Mayor James M. Baker on Monday signed an executive order that removes a question about criminal convictions from city job applications unrelated to public safety.

The decree does not apply to the private sector.

"Many people who have had problems in the past need work and are ready to work and put their problem periods behind them," Baker said.

Such measures are known popularly throughout the country as "ban the box," a reference to the square employers require applicants to check denoting a conviction record. Wilmington's application also asked the applicant to indicate the type, date and location of the offense.

"By taking this action, we can restore hope, save money and give someone a fair chance and the opportunity to present themselves as an individual and not immediately be frowned upon because of past behavior," said Councilman Justen Wright, who pushed the idea that won unanimous support in the council.

Public-safety jobs in the police and fire departments are excluded from the order because of "obvious reasons," the city said.

The city will conduct criminal background checks only on applicants who have received a conditional job offer for a non-uniformed position, Baker said.

Previously, the city conducted checks on potential employees before an offer was made, said Samuel D. Pratcher Jr., the director of human resources.

Wright said he hopes other municipalities and businesses follow suit, and would like to see the ban expanded to include vendors doing business with Wilmington.

As of November, 43 cities and counties across the country had "banned the box," and statewide measures have been instituted in Hawaii, California, Minnesota, Colorado, New Mexico, Massachusetts and Connecticut, according to the National Law Employment Project.

In April, the federal Equal Employment Opportunity Commission updated its guidelines urging employers to eliminate "policies or practices that exclude people from employment based on any criminal record."

Baltimore removed the question regarding criminal history in 2007, while identifying "positions of trust" that require background checks. Last year, Philadelphia banned the box for public and private jobs.

Though support has been strong in Wilmington, such measures have been criticized elsewhere.

Earlier this year in Minnesota, business owners opposed expanding a statewide ban-the-box provision for public employers to the private sector.

The EEOC already protects against automatic denials of employment, said Ben Gerber, manager of energy and labor management policy for the Minnesota Chamber of Commerce.

"Primarily, we feel this is already being addressed, and it's kind of unnecessary legislation," Gerber said.

Different measures from state to state also can create an administrative burden for national employers, Gerber said. Employers, not the state, should decide whether they want to ask about a person's criminal history, he said.

The National Law Employment Project estimates 1 in 4 adults in the United States has a criminal record that would appear in a background check.

There are 5,770 people incarcerated in Delaware's four prison facilities and another 1,068 in community corrections centers, said John Painter, spokesman for the state Department of Correction.

Delaware processes about 23,000 intakes and 23,000 releases a year, Painter said. About 1,300 of released prisoners annually have served a sentence of a year or more, he said.

Locally, Wright said, he often hears stories of people who need jobs, but worry about a checkered past.

Councilwoman Hanifa Shabazz tied unemployment to crime, saying some people enter survival mode after a criminal record precludes them from a chance at being hired.

"That makes it very difficult for someone to continue to do the straight and narrow," she said.

The ban-the-box measures can streamline municipalities' background check procedures, while giving people with past convictions another chance at gainful employment, said Michelle Rodriguez, a staff attorney with the National Law Employment Project.

"So many times, that's all people want," she said. "They just want the opportunity to prove themselves."

Contact Andrew Staub at 324-2837, on Twitter @AndrewStaubTNJ or at astaub@delawareonline.com.

Phila. limits questions about criminal record

5-11
2/2

Businesses can ask in interview

By **MARYCLAIRE DALE**
Associated Press

PHILADELPHIA — Philadelphia will soon become the latest U.S. city to “ban the box,” prohibiting questions about a person’s criminal record on job applications. The president of the NAACP plans to be in town Monday when Mayor Michael Nutter signs the law.

Employers can still ask candidates about the issue, but proponents say ex-offenders at least deserve a chance to get a foot in the door. They say the interviews never come if they admit their records early on.

“Americans believe in second chances. We believe that when somebody has paid their debt to society, they deserve the right to earn a living, reunite their

families,” said Benjamin Todd Jealous, president of the civil rights group.

Chicago, Boston and several other cities have adopted similar measures. Some involve only public-sector jobs, but the Philadelphia law will apply to most public and private employers.

About 65 million Americans, or one in four, have a criminal record, while 90 percent of employers use criminal background checks, according to New York’s National Employment Law Project, which released a report on the issue last month.

The group argues that stable employment will help former offenders straighten out their lives, and save tax dollars that would otherwise go toward supporting them in or out of prison.

Some business groups, including the Greater Philadelphia Chamber of Commerce, oppose the law.



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5-4

20 11/1

A growing movement to protect convicted job applicants

By Claire Zillman, reporter January 14, 2014: 12:13 PM ET

So-called ban the box campaigns, which prohibit employers from immediately asking jobseekers to disclose their criminal history, have been gathering steam across the U.S.

Are you a citizen of the United States?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If no, are you authorized to work in the U.S.?	YES <input type="checkbox"/>
Have you ever worked for this company?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If so, when?	
Have you ever been convicted of a felony?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, explain	
EDUCATION				
High School		Address		
From	To	Did you graduate?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
		Degree		
College		Address		
From	To	Did you graduate?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
		Degree		
Other		Address		
From	To	Did you graduate?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
		Degree		

FORTUNE -- Samantha Rogers readily acknowledges her past drug problem. "If I had a rap sheet to email you, you'd see all the repeated offenses," she told *Fortune*. Back when possession of all controlled substances was a felony, her frequent court appearances landed her in jail again and again over the course of 17 years.

When she got out for good in 2010, things didn't get much easier.

She was rejected for jobs she applied to -- she thinks -- because the applications asked her to disclose her criminal past. Finding affordable housing -- with its similar paperwork -- is just as difficult for former felons. "The hardest thing for all of us is finding a safe environment and housing so we can channel our energy into going back to school and getting a job," says Rogers, 46, who's now back in school and works part-time in the San Francisco area as a program assistant for the California Coalition for Women Prisoners.

Formerly incarcerated individuals like Rogers soon could have an easier time finding employment and a place to live in San Francisco if a recently proposed ordinance is approved. San Francisco currently prohibits city agencies from using job applications that inquire about an individual's criminal history. The new proposal would extend that ban to private employers, publicly funded housing providers, and city contractors, and would keep businesses from asking job candidates about their criminal backgrounds until after a live interview.

MORE: The disappearing U.S. workforce: It's not just the 'Obummer economy'

"Incarceration is bad enough," says Jesse Stout, policy director at Legal Services for Prisoners with Children. Once people are released from prison, he says, they deserve "the basic right to the housing and employment that many of us take for granted."

The San Francisco measure, dubbed the Fair Chance ordinance, is one of the latest efforts in a nationwide movement to "Ban the Box" -- the little square on applications that, when ticked, acknowledges individuals' criminal histories and often disqualifies them for a job or housing on the spot. Since 9/11, and with the increased accessibility of criminal records online, hiring background checks have been on the rise, says National Employment Law Project attorney Michelle Rodriguez, but so too have efforts to limit them.

In addition to San Francisco, Louisville, Ky. is considering a similar Ban the Box ordinance. The city, where 160,000 people in the metro area of 800,000 have a criminal background, already refrains from asking about a person's record early in its own hiring processes, but the ordinance would codify that rule and extend it to city vendors and contractors.

And in Indianapolis, city councilman Vop Osili plans to introduce a "Ban the Box" initiative on Jan. 27 that would prohibit the city and its vendors from asking about job candidates' criminal backgrounds until after the first interview. Osili's effort stems from a desire to cut down on the city's prison recidivism rate, which hovers near 50%. "Every person coming out of jail has a

one-in-two chance of going back within three years," he says. If the ordinance passes, instead of costing taxpayers the \$30,000 required to keep a person in jail for a year, a former felon could be contributing income and property taxes, Osili says.

At the state level, lawmakers in Delaware, New Jersey, Michigan, North Carolina, and Ohio recently introduced Ban the Box legislation too.

The prevalence of these initiatives has to do with "this understanding in our society [that] mass incarceration is broken," says Rodriguez. According to an August 2013 report by NELP, an estimated 65 million Americans -- or one in four adults -- have a criminal record that would show up on a routine background check. "We need people to be able to work," says Rodriguez. "It makes no sense to keep qualified people out of the labor market. There are already enough barriers [to getting a job] in place, and this takes the simplest one away and gives them a fair chance."

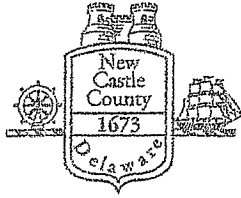
MORE: 3 reasons why Chris Christie is damaged goods

Hawaii became the first state to outlaw questions about a job applicants' criminal background, when it passed a Ban the Box law that applied to public and private employment in 1998. Fifty-three cities and counties and 10 states have established some sort of Ban the Box measure since then. Last year alone, eight cities joined those ranks, as did five states, including Minnesota and Rhode Island, which applied the rule to private employers in addition to state agencies.

Businesses groups, meanwhile, have argued that the bans are too big of a burden. The San Francisco Chamber of Commerce, for instance, argued that the original version of the city's most recent proposal, which prohibited background checks until after an individual received a conditional job offer, would have caused businesses to waste resources and time on candidates they ultimately could not hire. The Chamber and the ordinance's sponsors ultimately reached a compromise -- the ban on background checks would be lifted earlier in the hiring process, after the first interview.

The Chamber now supports the measure. "[The Chamber had] no issue with Ban the Box. The broader issue was the scope of the legislation and how it applies in the hiring process," says Jim Lazarus, the Chamber's senior vice president of public policy. "If possible, we want to give everyone a fair chance to be employed."

THOMAS P. GORDON
County Executive



DAVID A. GRIMALDI
Chief Administrative Officer

EXECUTIVE OFFICE

For Immediate Release
Jan. 28, 2014

Contact: Antonio Prado, Director of Communications
(302) 395-5108, AMPrado@nccde.org

NEWS RELEASE

County Executive Gordon Issues Executive Order to 'Ban the Box'

NEW CASTLE, Del. – At the urging of New Castle County Council Pro Tempore Penrose Hollins, County Executive Tom Gordon signed an executive order removing criminal conviction history information from the County's non-uniformed employment applications.

County Executive Gordon's executive order endorsed the national and statewide effort to "Ban the Box" (i.e. the checkbox that asked, "Have you ever been convicted of a violation of Federal, State, County or Municipal laws or ordinances?") from job applications.

In lieu of this question, New Castle County will only conduct criminal background investigations on job applicants who have received a conditional offer of employment for a non-uniformed position with the County.

"No Department or Office within the New Castle County Government shall automatically exclude applicants from consideration for employment due to criminal history, but rather, henceforth shall balance the nature and severity of an applicant's criminal history with other factors, such as the length of time since the infraction(s), the known applicable surrounding circumstances, remorse, and documented evidence of rehabilitation," Gordon wrote in Executive Order No. 2014-03.

"I agree with the Americans for Democratic Action of Delaware and Councilman Penrose Hollins that a criminal history should not automatically disqualify an individual for consideration of employment within New Castle County," Gordon said. "When people have paid their debt to society, they are ready to work and become contributing members of the community once again."

New Castle County Councilman Hollins, who is a board member of the Wilmington Hope Commission, commended the Executive's order.

"This is a great first step, but there has to be greater support from the business community," Councilman Hollins said.

County Executive Gordon signed the executive order on Tuesday, Jan. 28, 2014.

Criminal background check policy updated

EEOC issues new hiring guidelines for employers

By SAM HANANEL

Associated Press

WASHINGTON — Is an arrest in a barroom brawl 20 years ago a job disqualifier?

Not necessarily, the government said Wednesday in new guidelines on how employers can avoid running afoul of laws prohibiting job discrimination.

The Equal Employment Opportunity Commission's updated policy on criminal background checks is part of an effort to rein in practices that can limit job opportunities for minorities who have higher arrest and conviction rates than whites.

"You thought prison was hard, try finding a decent job when you get out," EEOC member Chai Feldblum said.

She cited Justice Department statistics showing that 1 in 3 black men and 1 in 6 Hispanic men will be incarcerated during their lifetime. That compares with 1 in 17 white men who will serve time.

"The ability of African-Americans and Hispanics to gain employment after prison is one of the paramount civil justice issues of our time," said Stuart Ishimaru, one of three Democrats on the five-member commission.

About 73 percent of employers conduct criminal background checks on all job candidates, according to a 2010 survey by the Society for Human Resource Management. Another 19 percent of employers do so only for selected job candidates.

That data often can be

inaccurate or incomplete, according to a report this month from the National Consumer Law Center.

EEOC commissioners said the growing practice has grave implications for blacks and Hispanics, who are disproportionately represented in the criminal justice system and face high rates of unemployment.

But some employers say the new policy — approved in a 4-1 vote — could make it more cumbersome and expensive to conduct background checks. Companies see the checks as a way to keep workers and customers safe, weed out unsavory workers and prevent negligent-hiring claims.

The new standards urge employers to give applicants a chance to explain a past criminal misconduct before they are rejected outright. An applicant might say the report is inaccurate or point out that the conviction was expunged. It may be completely unrelated to the job, or a former convict may show he's been fully rehabilitated.

The EEOC also recommends that employers stop asking about past convictions on job applications. And it says an arrest without a conviction is not generally an acceptable reason to deny employment.

The guidelines are the first attempt since 1990 to update the commission's policy on criminal background checks.

While the guidance does not have the force of regulations — and may conflict with state requirements for some job applicants — it sets a higher bar in explaining how businesses can avoid violating the law.

"It's going to be much more burdensome," said Pamela Devata, a Chicago employment lawyer who has represented companies trying to comply with EEOC's requirements.

EXCERPT: DEL HOUSE DEMOCRATS "LEG HALL INSIDE" (JANUARY 17, 2014)

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Advances

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jority Leader Valerie
ghurst

islative Wrap-Up

Our Leadership

Peter C. Schwartzkopf
Speaker of the House
14th District

Valerie Longhurst
Majority Leader
15th District

John Viola
Majority Whip
26th District

Keep In Touch



Pawing Around



Rep. Trey Paradee's 3-year-old yellow lab, Belle, reaches across the aisle to shake hands with House Minority Leader Rep. Danny Short as House Majority Leader Rep. Valerie Longhurst looks on. Belle visited Legislative Hall on the first day of session Tuesday and greeted lawmakers and staff as they returned to Dover to complete the 147th General Assembly. No word on whether she'll return during the "dog days" of session in June.

Ban the Box Legislation Advances

Legislation giving ex-offenders an opportunity to gain employment after their release from prison cleared a House committee Wednesday.

Rep. J.J. Johnson said House Bill 167 is not a "hire ex-felons" bill, but a "foot-in-the-door" bill. He noted that more than two-thirds of the men and women released from prison end up back there within three years, and the lack of a stable job contributes greatly to that recidivism.

HB 167 would prevent most public agencies in Delaware from requiring job applicants to disclose criminal history information when moving through the early steps of the hiring process. Agencies still would be able to ask about an applicant's criminal record, even perform a criminal background check, before hiring a person. The bill would exempt several state agencies.

Said Rep. Johnson: "If we are serious about curbing recidivism and helping Delawareans

who are trying to right their wrongs, then we as a state owe it to them to lead by example.

Ten other states and dozens of local jurisdictions, including Wilmington and Philadelphia, have enacted similar policies. HB 167 was unanimously released from the House Economic Development Committee and awaits action by the full House.

EXCEPT: STATE OF THE STATE ADDRESS
(JANUARY, 2014)

The Opportunity to Contribute

We cannot meet the potential of our great state and our great country if we give up on a great number of our people. Today, America incarcerates more than 2 million people, and each year we release more than 700,000 inmates. 25 years ago, the total number of people incarcerated was 700,000.

For released inmates, their criminal record makes it difficult to be productive members of society.

There are those who belong behind bars and it is worth every penny we spend to keep them there. But when a person has served their time, it's up to them – and to us – to make sure they transition effectively, achieve their potential and contribute to society.

In 2009, with the leadership of Secretary McMahon and Director Ben Addi, we began our I-ADAPT initiative to help offenders prepare for their eventual release by giving them some of what they need to return to our communities. Identification. Access to medical care. A transition plan. Job training opportunities.

Five years of experience has taught us that those little things make a big difference. But for many offenders there is one thing we can't give them – a driver's license. Many offenders guilty of drug offenses are denied a driver's license – regardless of whether their crime had anything to do with a car. This penalty is just one more punishment that prevents them from seeking employment and accessing job training.

This should change. I ask you to eliminate the arbitrary loss of a drivers' license for crimes that have nothing to do with automobiles.

Too many of the inmates we release end up going back to prison. One of the best predictors of whether a person will commit another crime is whether they have a job. If we know employing ex-offenders helps make our communities safer, why are we putting so many hurdles in the way of job opportunities for ex-offenders?

We need to start by looking at employment discrimination against people who have repaid their debt to society. Here is an example: If there is one employer in Delaware that should be able to decide whether hiring an ex-offender makes sense, it's the Department of Correction. But the Department is prohibited from hiring anyone with a felony record, even on a part-time basis.

As Representative JJ Johnson has suggested, we can do better.

Many communities have started to "ban the box" on job applications by eliminating the box that says "check here if you've been convicted of a crime." I believe we should ban the box for state government hires this year.

Let's stop denying ex-offenders their first interview. Let's be a model for the private sector, because marginalizing ex-offenders helps none of us.

Delaware's incarceration rate is higher than the national average in a country whose average is higher than the rest of the world's. That's not a point of pride, it's incredibly expensive, and it hasn't worked.

We lock up too many people for not making bail and not appearing at hearings. Forty percent of the women incarcerated at Baylor are pre-trial detainees, many charged with non-violent offenses.

Based on guidance from Commissioner Coupe, I propose that we pilot, in the City of Wilmington, a program of pre-trial community supervision for non-violent offenders. Based on a model from New York, this pilot program will allow the Department of Correction and social service providers to help get offenders to hearings and avoid trouble while awaiting trial.

By supervising some offenders, we can keep them out of prison in the first place and link them with services to address addictions or mental health concerns in the community, and not a prison cell.

In addition to filling our prisons with pre-trial detainees, we also impose longer sentences than other states do. One reason is that we are the only state in the country that forces our judges, without exception, to impose consecutive rather than concurrent sentences for multiple offenses.

That hasn't made us any safer and contributes to overcrowding in our prisons. I ask you to join me in giving judges greater discretion when it comes to concurrent and consecutive sentencing.

Lastly, we need to change the trajectory of kids who enter the criminal justice system at a young age.

Many of these kids are bright and full of potential. And, after living in a facility with structure, education, and medical care, they have the same goals and determination as any of our kids.

But here is the reality. As well as those kids do while they are in a secure facility, when they leave our care, they often return to the same exact circumstances that led them to us in the first place, only now they are returning with the burden of a juvenile record. Many of them won't complete their education.

Of 184 kids in custody at our Faulkland Road campus last year, only 11 were back in traditional schools six months later. Many kids drop out, are expelled, or are re-incarcerated. This is our failure. We have seen the progress many of them make while under our care and we must do better when they transition away from our facilities.

I am asking you to fund community-based advocates to work with these families and kids after they leave the custody of the Kids Department. A 15 year old doesn't know how to access mental health services, re-enroll in school, and get on a path to success. These advocates can make that happen.

We also need to break the cycle of incarceration by getting these kids back into school. I am asking Secretary Ranji to lead a task force focused on how to get these children into an educational environment that is sensitive to their unique challenges and experiences.

OPINION

The NewsJournal ...

Howard L. Gri
President and F
David F. Ledfc
Executive Editc
John Sweeney
Editorial Page I

OUR V

Public robbed of a reformed employee

Recently, Wilmington nixed the felon check-off box on city job applications. For decades, many in the criminal justice system urged rethinking this one-size-fits-all life sentence for former criminals.

CITY LEADER

Alfonso Ballard, who oversaw Wilmington's public works department since February, had earned that honor. Last week, he was booted out of his job due to a nonsensical application of justice, which has too long dominated the public's psyche.

From 1990 to 1992, he submitted fraudulent claims to the Railroad Retirement Board, while working for Delmarva Power. Appropriately he was indicted. Deservedly he went to federal prison for 14 months, which classifies him as a felon. He paid his \$10,000 fine.

A felony is no minor offense. Murderers, thieves, rapists and corrupt

accountants share the designation. The punishment is death or imprisonment in excess of one year. That wide range allows enough room to measure former inmates' worthiness according to their after-prison citizenship.

Yet Mr. Ballard spent his post-jail history working his way up the manager ladder on projects that keep the city's critical infrastructure functioning and preparing for its future upkeep. So nearly two decades of demonstrated honorable citizenship – including being entrusted with overseeing an \$86 million municipal public works department – should count for something.

However, unbalanced public perceptions and fears pressure government leaders to give more weight to every worker's criminal history. In the end, it is the public that gets robbed of these reformed employees' credible and needed service.

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Making probation a positive recognized at awards event

Officials laud locals who turned their lives around

By MIKE CHALMERS and SEAN O'SULLIVAN
The News Journal

Five years ago, after being caught with a gun he wasn't supposed to have, Tarrell Anderson faced a federal prison sentence and made a decision.

His life as a drug dealer had to end, he said, and his life as a responsible father had to begin. Anderson earned his GED, learned job skills behind bars and, after being released last year, got a job, a promotion, an apartment and a car.

"It's been long, and it's been hard, too," Anderson said, wiping away tears Friday morning as federal officials recognized him as a model probationer.



Tarrell Anderson (left), supervisor at Waste Carpet Depot in New Castle, received an award Friday for being a model probationer. THE NEWS JOURNAL/SUCHAT PEDERSON

The sixth annual Workforce Development Ceremony is a way for the U.S. Probation Office in Delaware to draw attention to its programs that help ex-offenders successfully return to society. It was held at the J. Caleb Boggs Federal Building

in Wilmington.

"Folks sometimes need a second chance," said Jack McDonough, chief of the federal probation office in Delaware. "We all do."

See PROBATION, Page B9

Probation: Employers urged to hire

Continued from Page B1

In the past few years, the office has helped probationers get jobs, housing and other services, including cognitive-behavioral therapy — a form of psychotherapy that focuses on how thoughts influence feelings and behaviors.

McDonough said it helps probationers value employment and stability.

"We can get people jobs, but this helps with job retention," McDonough said.

The approach has helped cut recidivism dramatically. Among medium- and high-risk offenders who receive cognitive-behavioral therapy, only 10 percent are arrested again within a year of being released, far below national averages that range from 40 percent to 70 percent, he said.

William D. Burrell, a 19-year veteran of probation services in New Jersey who is now a corrections consultant, praised the Delaware program.

Burrell, who recently appeared at John Jay College's Guggenheim Symposium on Crime in America, said the U.S. correctional system generally is "addicted to punishment," instead of considering ways to help ex-offenders reform and avoid slipping back into criminal ways. The Delaware program sends a positive message to ex-offenders that the focus on punishment is ending and the system is now interested in helping probationers get back on track, he said.

"That is an important mind-set



Tarrell Anderson, supervisor at Waste Carpet Depot in New Castle, was honored Friday during the sixth annual Workforce Development Ceremony. THE NEWS JOURNAL/SUCHAT PEDERSON

for the system to embrace," Burrell said.

Anderson, 30, had a history of drug dealing and probation violations, but he never spent more than six months at a time behind bars, said John Selvaggi, deputy chief of the federal probation office. That changed in November 2007, when police caught Anderson — a felon — with a handgun during a traffic stop. He was sentenced to four years in federal prison.

Anderson said the sentence scared him.

"When they told me how much time I had to do, that was the wake-up," he said.

Anderson said he was determined to make the most of his prison time, so he took courses in HVAC and commercial driving. He served 40 months in Kentucky and New Jersey before being released.

While living with his mother, Anderson went to work as a laborer at Waste Carpet Depot, a carpet recycling company in New Castle. He worked his way up to

supervisor two months ago, increasing his salary and allowing him to take better care of his girlfriend and three children, ages 7, 10 and 12.

Selvaggi said it's rare to see a probationer make so much progress in less than a year.

The ceremony also recognized Local 199 of Laborers' International Union of North America, which started working with the federal probation office a year ago to get ex-offenders work on road-construction crews.

"Our Local is very forgiving of people who have arrest records, as long as they want to do the job" and have experience in construction, said Toby Lamb, president of Local 199.

Burrell said recognition efforts like Friday's ceremony also encourage employers to hire ex-offenders.

"We so desperately need employers to step up and hire ex-offenders," Burrell said. "We need to cultivate those employers that are willing to step up."

McDonough also thanked the St. Vincent de Paul Society for helping probationers get transitional housing and Delaware Technical Community College for providing vocational training.

Contact Mike Chalmers at 324-2790 or at mchalmers@delawareonline.com. Subscribe at [facebook.com/MTChalmers](https://www.facebook.com/MTChalmers) or follow on Twitter @MTChalmers. Contact Sean O'Sullivan at 324-2777 or at sosullivan@delawareonline.com. Subscribe at [facebook.com/SGOsullivan](https://www.facebook.com/SGOsullivan) or follow on Twitter @seangosullivan.

7-12-12

BUSINESS IN BRIEF

Pepsi Beverages settles race discrimination case

Pepsi Beverages Co. has agreed to pay \$3.1 million to settle federal charges of race discrimination for using criminal background checks to screen out job applicants. The Equal Employment Opportunity Commission says the company's policy of not hiring workers with arrest records disproportionately excluded more than 300 black applicants. Under the policy, applicants with arrest records were not hired even if they had never been convicted of a crime. The company also denied employment to those arrested or convicted of minor offenses.



U.S. Equal Employment Opportunity Commission

PRESS RELEASE
1-11-12

Pepsi to Pay \$3.13 Million and Made Major Policy Changes to Resolve EEOC Finding of Nationwide Hiring Discrimination Against African Americans

Company's Former Use of Criminal Background Checks Discriminated Based On Race, Agency Found

MINNEAPOLIS – Pepsi Beverages (Pepsi), formerly known as Pepsi Bottling Group, has agreed to pay \$3.13 million and provide job offers and training to resolve a charge of race discrimination filed in the Minneapolis Area Office of the U.S. Equal Employment Opportunity Commission (EEOC). The monetary settlement will primarily be divided among black applicants for positions at Pepsi, with a portion of the sum being allocated for the administration of the claims process. Based on the investigation, the EEOC found reasonable cause to believe that the criminal background check policy formerly used by Pepsi discriminated against African Americans in violation of Title VII of the Civil Rights Act of 1964.

The EEOC's investigation revealed that more than 300 African Americans were adversely affected when Pepsi applied a criminal background check policy that disproportionately excluded black applicants from permanent employment. Under Pepsi's former policy, job applicants who had been arrested pending prosecution were not hired for a permanent job even if they had never been convicted of any offense.

Pepsi's former policy also denied employment to applicants from employment who had been arrested or convicted of certain minor offenses. The use of arrest and conviction records to deny employment can be illegal under Title VII of the Civil Rights Act of 1964, when it is not relevant for the job, because it can limit the employment opportunities of applicants or workers based on their race or ethnicity.

"The EEOC has long standing guidance and policy statements on the use of arrest and conviction records in employment," said EEOC Chair Jacqueline A. Berrien. "I commend Pepsi's willingness to re-examine its policy and modify it to ensure that unwarranted roadblocks to employment are removed."

During the course of the EEOC's investigation, Pepsi adopted a new criminal background check policy. In addition to the monetary relief, Pepsi will offer employment opportunities to victims of the former criminal background check policy who still want jobs at Pepsi and are qualified for the jobs for which they apply. The company will supply the EEOC with regular reports on its hiring practices under its new criminal background check policy. Pepsi will conduct Title VII training for its hiring personnel and all of its managers.

"When employers contemplate instituting a background check policy, the EEOC recommends that they take into consideration the nature and gravity of the offense, the time that has passed since the conviction and/or completion of the sentence, and the nature of the job sought in order to be sure that the exclusion is important for the particular position. Such exclusions can create an adverse impact based on race in violation of Title VII," said Julie Schmid, Acting Director of the EEOC's Minneapolis Area Office. "We hope that employers with unnecessarily broad criminal background check policies take note of this agreement and reassess their policies to ensure compliance with Title VII."

"We obtained significant financial relief for a large number of victims of discrimination, got them job opportunities that they were previously denied, and eradicated an unlawful barrier for future applicants," said EEOC Chicago District Director John Rowe. "We are pleased that Pepsi chose to work with us to reach this conciliation agreement and that through our joint efforts, we have been able to bring about real change at Pepsi without resorting to litigation."

The EEOC enforces federal laws against employment discrimination. The EEOC issued its first written policy guidance regarding the use of arrest and conviction records in employment in the 1980s. The Commission also

considered this issue in 2008 and held a meeting on the use of arrest and conviction records in employment last summer. The EEOC is a member of the federal interagency Reentry Council, a Cabinet-level interagency group convened to examine all aspects of reentry of individuals with criminal records.

The Minneapolis Area Office is part of the EEOC's Chicago District. The Chicago District is responsible for investigating charges of discrimination in Minnesota, Illinois, Wisconsin, Iowa and North and South Dakota. Further information is available at www.eeoc.gov.



Social Security Payments Caught in Illegally Frozen Bank Accounts

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New America Media, News Report, Khalil Abdullah, Posted: Apr 23, 2009 [NT Review it on NewsTrust](#)

Editor's Note: Bank account freezes are designed to prevent account holders from withdrawing funds before creditors can collect on legal claims. Some debt collectors, however, often file claims on exempt accounts, which include Social Security and veteran benefits writes NAM editor Khalil Abdullah.

When Ronald Coote went to an ATM in the autumn of 2008 to get the money to fill the prescription for his heart medication, he was stunned to find his funds unavailable.

Coote received a monthly direct deposit into his bank account, a \$783 disability check from the Social Security Administration (SSA). Since recovering from open-heart surgery, and with high blood pressure, he was always careful to set aside the cost of medication. The ordeal that followed was almost more than his 60-year-old heart could take.

His Washington Mutual account had been frozen by the bank at a debt collector's request for non-payment of an old credit card bill. The collector attempted to garnish Coote's Social Security disability checks, funds that are deemed exempt from collection under federal law. In part, the law reads, "none of the monies paid or payable ... shall be subject to execution, levy, attachment, [or] garnishment." In all but a few instances, such as child support or non-payment of federal taxes, can SSA funds be garnished; even then there are caps to ensure that a person is left with enough to live on.

"I have to have my medication or I die," Coote said, explaining his decision not to pay the bill. "I have to eat, I have to pay rent, gas, electric. It wasn't a choice."

Coote's situation was far from unique. Margot Saunders of the National Consumer Law Center estimates that "tens of thousands of people every month," who are elderly or disabled, are being forced into dire financial circumstances. Bank account freezes and illegal garnishments of exempt funds, including veterans' benefits, are shredding safety nets. In her 2008 testimony before a House Ways and Means Subcommittee on Social Security, Saunders included a long list of stories similar to Coote's--or worse.

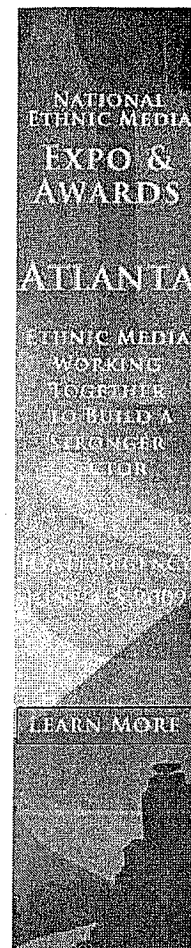
According to SSA, its payments provide baseline financial solvency for 13 million Americans, who would otherwise be in poverty. However, a 2008 report by SSA's inspector general, estimated that direct-deposit beneficiaries across the United States have incurred \$177.7 million in total garnishments. The report did not attempt to estimate the near incalculable damage of bank account freezes.

Bank account freezes are designed to prevent account holders from withdrawing funds before creditors can collect on legal claims. Debt collectors, though, often file claims on exempt accounts.

"The freeze creates a hostage-like situation where the creditor can wait out the debtor by demanding payment," said attorney Johnson Tyler, director of the Social Security/Consumer Rights Unit at South Brooklyn Legal Services.

Tyler explained that often consumers don't know SSA funds are exempt and agree to make payments to have the freeze lifted, so they can access their accounts. He suggested the problem might be worse in communities where limited proficiency in English is common.

In 2002, Coote was a mid-level manager at a Western Beef grocery store in the Bronx, when his foot got caught in an uncovered drain at the facility. He fell, and the injury rendered him unable to work.



In addition to two herniated disks, tests confirmed arthritis in the lower part of his spine, a heart ailment, and other debilitating medical conditions. Then in his early 50s, Coote began receiving benefits in 2003. Friends and family members also helped at times.

"Taking money from loved ones, well, it doesn't make me feel good," Coote confided.

Last year, Coote complied with the debt collector's request for three months of his bank statements to show that he was barely surviving financially with SSA funds and should be considered uncollectable. But the collection agency saw that he had deposited non-SSA money, modest personal gifts. The collector claimed Coote's account was no longer exempt because it included "co-mingled funds."

Coote contacted Tyler, who convinced the collection agency that, under the Social Security Act, his account could not be garnished. Because Coote had already spent the money by the time the bank had frozen the account, the claim of co-mingled funds was not valid, Tyler told the collection agency. He threatened to sue if the bank did not end the freeze.

'Debt Collection on steroids'

Because of complications with bank account freezes, varying definitions of co-mingled accounts, or imprecise calculations of exempt funds, consumer rights advocates contend bank freezes and garnishments on accounts, such as Coote's, are illegal. They argue that the freezes violate the intent and spirit of the federal law's mandate to provide a floor above the poverty line for Americans.

Collection agencies use computer searches for debtors' accounts as easily as commercial fishing crews use huge trawling nets to haul in a catch. Using a database and a keystroke, a collector can broadcast an electronic inquiry on a claim to every bank in a state.

"It's debt collection on steroids," said Tyler. "Computers are talking to computers."

In Coote's case, had the collection agency attempted to seize his account after January 2009, New York's recently enacted Exempt Income Protection Act (EIPA) would have shielded his funds. EIPA protects up to \$1,716, equal to two months of work at the minimum wage, from bank freezes, regardless of the source of funds. If the source of the funds is from Social Security or other exempt sources, such as veterans' benefits, a bank can freeze only funds above \$2,500. But New York is only one of a handful of states that offers this protection.

Earlier this year, the National Academy of Social Insurance (NASI) in Washington, D.C., triggered interest in the issue by publishing an analysis of the barriers to protecting vulnerable Social Security recipients from abuses of the rules. The article noted that the five entities responsible for banking oversight are currently hashing out the details of best practices. Others, though, said the squabbling among the group is impeding a regulatory consensus that might resolve the issue. (New America Media did not receive a reply to its inquiry from the U.S. Treasury Department, which is reportedly coordinating this effort.)

Stalled legislation

The author of the NASI paper, John Infranca, criticized the "patchwork of state regulations" that continually produces inconsistent results. He called for federal legislation to settle the issue.

However, a Capitol Hill staffer on the Senate Committee on Aging spoke to New America Media about proposed legislation. The committee's chair, Sen. Herbert Kohl, D-Wis., sponsored the Illegal Garnishment Prevention Act in 2008. But the legislation stalled during last year's election cycle. The bill would prohibit SSA from promoting the use of direct deposit accounts until they are better protected.

Kohl will reintroduce the bill, said the committee staffer, but Congress is not wedded to any particular solution and would actually prefer a regulatory fix from the five banking agencies.

Sybil Hebb, an attorney at the Oregon Law Center, is not waiting for Congress or the regulators. She is lobbying Oregon's legislature to enact a law similar to California's or New York's EIPA. "The money is really important to our clients because it's their only source of income," Hebb stated. She knows of cases where "all of the money taken was exempt," adding that often "clients have to file a claim to get the money back."

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Few states have directly addressed the issue. In others, class action suits have been filed or individual lawsuits have been successful against some collection agencies and banks. Consumer rights advocates are hopeful that banks may now be more receptive to a solution that would bring countrywide uniformity.

Tyler contended that profit has been at the heart of the banking industry's reluctance to adhere to Social Security Act provisions. Computerization has invalidated the previous assertion of banks that they couldn't distinguish exempt funds from others, Tyler said.

Also, Tyler noted, banks impose fees on their customers for freezes ordered by state courts and collect bounced-check fees for checks presented to frozen accounts.

"Don't forget that banks are the issuers of credit cards," he said. "They want to be able to collect those fees as well."

Direct deposit: good and bad

Ironically, SSA has saved the public millions of dollars in administrative costs by using electronic deposits, rather than mailing paper checks.

The administration's Web site touts the convenience and security of direct deposit: "Both you and your money are safe." But, when a bank freezes an account, deposits that arrive are also unavailable. A paper SSA check, on the other hand, can be taken to a bank and cashed whether an account is frozen or not.

J.P. Morgan Chase bought Washington Mutual in 2008 for \$1.9 billion. It has made at least \$100 of that outlay back, the fee it charged Coote for the freeze imposed on his account. Coote claims that he was never informed that his Washington Mutual overdraft protection had been terminated. Without overdraft protection, J.P. Morgan Chase charged Coote another \$34 for a bounced check he had written, unaware that his account had been frozen.

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New rule protects exempted funds from garnishment orders

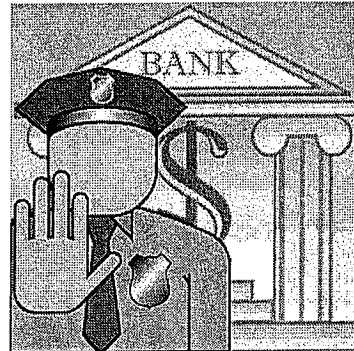
Debtors no longer have to worry about frozen exempted funds

By Martin Merzer

The latest in a series of new federal regulations intended to protect credit card holders and other indebted Americans has kicked in, and this measure covers new ground: It offers aid and comfort to some of the nation's most desperate debtors -- those who face frozen bank accounts and, ultimately, seizure of the funds in those accounts.

As of May 1, 2011, banks and other financial institutions no longer can automatically freeze accounts that are subject to garnishment orders won by credit card companies, their representatives or any other creditor. Instead, banks, credit unions and similar institutions must examine those accounts -- and ensure that electronically deposited federal benefit payments are exempted from the garnishment order and remain available to account holders.

Among the federal payments that cannot be slapped into the deep freezer and later thawed and ladled out to creditors: Social Security benefits, Supplemental Security Income benefits, veterans benefits, federal employee and civil service retirement benefits, and benefits administered by the Railroad Retirement Board.



Protecting exempt funds

The move is seen as a significant reform that will pre-empt inconsistent state rules and clarify procedures for banking institutions. Most importantly, it will end a practice that often left many of the nation's most debt-ridden and impoverished people -- including retirees, veterans and the disabled -- without even the minimal financial resources they needed for food, shelter, health care and other matters of basic subsistence.

Consumer advocates estimate that more than 1 million low income people each year, including hundreds of thousands of credit card customers, received Social Security and other federal payments that were improperly frozen as a result of garnishment orders. These actions often rendered such people temporarily destitute.

"We applaud the work of the Treasury Department and the other agencies to safeguard these essential benefits ...," said Margot Saunders, an attorney with the National Consumer Law Center, which represented Consumers Union, Public Citizen and 19 other consumer groups before the U.S. Department of the Treasury, which took the lead in crafting the new regulation.

"All too often, elders, veterans and disability benefit recipients who rely on these benefits for their basic needs have been unable to access them for extended periods because of creditor-imposed garnishment freezes," she said.

On the other side of the equation, the American Bankers Association, the trade group representing virtually all of the nation's banks, also expressed approval.

"The ABA supports adoption of the proposal," said Mark Tenhundfeld, a senior vice president of the association.

We recognize that the procedures that banks had to follow before the rule could result in very real hardships for some individuals ...

— Mark Tenhundfeld
American Bankers Association

"We recognize that the procedures that banks had to follow before the rule could result in very real hardships for some individuals, and so we support a rule that avoids those hardships by protecting the customer's access to funds."

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Credit Card Rate Report

Updated: 01-31-2014

National Average	15.00%
Low Interest	10.46%
Balance Transfer	12.55%
Business	12.98%
Student	13.27%
Airline	14.51%
Cash Back	14.62%
Reward	14.91%
Bad Credit	22.73%
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Banks caught in the middle

Put simply, garnishment is a last-ditch effort by a creditor to collect legitimate debts owed by consumers. If you become and remain delinquent in your payments, and if you fail to respond to a series of efforts by the creditor or its representatives to collect the amount due, the creditor can obtain a court order allowing it to "garnish" your account and seize your money.

Such garnishment orders generally come in two flavors: If you are earning a paycheck, the court can order your employer to divert a portion of your wages to the creditor. If you are not employed, the court can order your bank to turn over to the creditor some of the proceeds of your account.

Social Security and other federal payments that end up in your bank account have been exempt from court-issued garnishment orders for years, but those orders often produced inconsistent or overly broad responses by banks that found themselves between a rock (court orders won by creditors) and a hard place (account holders needing access to their money).

When the account is frozen, no money is available to cover any expenses for food, rent or medical care.

— National Consumer Law Center

"On the one hand, a creditor, having received a court order entitling it to payment, expects the bank to comply with that order or risk incurring liability for the full amount of the judgment," Tenhundfeld of the bankers association said last year in a letter to the U.S. Treasury. "On the other hand, a debtor that receives benefits payments that are exempt from garnishment expects the bank to refuse to pay to the creditor funds that are presumably protected."

In the end, many banks and other financial institutions simply froze the entire account and then required consumers to prove that the funds -- or a particular portion of the funds -- in that account came from exempted federal sources and should not be and could not be frozen or seized.

The process of unfreezing an account could take weeks or even months, consumer advocates said, and usually required the assistance of an attorney. As a consequence, it often took a heavy toll on credit card holders and others who already were nearly at their wit's end.

"When the account is frozen, no money is available to cover any expenses for food, rent or medical care," the National Consumer Law Center noted. "Checks and debits previously drawn on the account, before the recipient learned that the account was frozen, are returned unpaid. Subsequent monthly deposits into the account will also be subject to the freeze and inaccessible to the recipient."

Vulnerable most impacted

The NCLC offered several examples, including the case of Ethel Silmon of Montgomery, Ala. A disabled, 59-year-old widow, she fell behind on her credit card payments. Her bank account ended up getting hit with a garnishment order for \$15,895.44. The only money in her account -- less than \$1,000 -- came from her \$889 monthly Social Security disability payments, funds that should have been exempted from the order but were frozen by the bank. It took her -- and a volunteer attorney -- about four weeks to sort it out.

"During the month without access to her money, Mrs. Silmon suffered severe anxiety attacks. She had to go to the food bank for food and had to rely on her doctors for samples of medicine," the Center reported. "She is still fearful that they will try it again and states that she cannot handle it if they do."

Attorneys and consumer advocates say the regulation that takes effect May 1 should go a long way toward preventing similar cases in the future. The new garnishment rules come in the wake of other recent federal efforts to protect consumers, including the staged phase-in of landmark credit card reforms and creation of the Consumer Financial Protection Bureau.

Applies only to direct deposits

Importantly, the garnishment regulation applies only to electronic direct deposits. It does not apply to old-fashioned paper deposits of federal payments. Those deposits also are exempt from garnishment, but banks are not required under this regulation to identify or protect them. This should not pose much of a problem, given that 87 percent of Social Security recipients received their payments electronically last year, and the federal government is making electronic delivery mandatory for virtually everyone who receives federal payments.

Under the regulation:

- The federal government must insert an electronic "tag" in all direct deposits of exempted payments.
- When a bank receives a garnishment order from a court, it must review the debtor's account within two business days and determine what -- if any -- federal payments are exempt under the new regulation. Those payments cannot be frozen or garnished.
- Banks are required to exempt all tagged deposits made during the two months prior to the receipt of any garnishment order and protect those deposits from garnishment. No longer will consumers be required to identify or help segregate payments that are exempt from garnishment.
- Within three business days of receiving the garnishment order, the bank must provide the debtor with the name of the creditor, the date of the garnishment and the amount of both protected and nonprotected assets in the account.
- As in the past, amounts owed for federal taxes and in response to state child support agencies *cannot* be protected from garnishment -- even if they come from otherwise exempted federal sources. In other words, even under this new regulation, your Social Security or federal pension payments can be garnished to pay for overdue federal taxes or for child support.

Though both sides of the issue -- the banks and consumer representatives or attorneys -- had urged federal officials to tweak an early version of the regulation in various (and mostly minor) ways, everyone seemed pleased with the result.

"This rule is truly an amazing and wonderful thing" the National Consumer Law Center said in a written statement. "The Treasury Department has led a remarkable effort."

"The agencies have tried hard to strike the right balance," said ABA's Tenhundfeld. "While the rule will result in additional burdens for the banking industry, we believe the balance struck by the agencies is reasonable."

See related: [How wage garnishment works -- and how to avoid it](#), [Wage garnishment after unemployment](#), [Take these steps to avoid wage garnishment](#), [After medical bills lead to wage garnishment, consider bankruptcy](#), [3 ways to rebuild your credit after wage garnishment](#), [Bankruptcy protects against wage garnishment](#), [The truth about Social Security benefits and wage garnishment](#), [Ignoring debt collection lawsuit can lead to wage garnishment](#)

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42 U.S. CODE § 675 - DEFINITIONS

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As used in this part or part B of this subchapter:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672 (a)(1) ⁽¹⁾ of this title.

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) The health and education records of the child, including the most recent information available regarding—

- (i) the names and addresses of the child's health and educational providers;
- (ii) the child's grade level performance;
- (iii) the child's school record;
- (iv) a record of the child's immunizations;
- (v) the child's known medical problems;
- (vi) the child's medications; and
- (vii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements.

(F) In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under section 673 (d) of this title, a description of—

- (i) the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
- (ii) the reasons for any separation of siblings during placement;

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- (iii) the reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interests;
- (iv) the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;
- (v) the efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefor; and
- (vi) the efforts made by the State agency to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made.

(G) A plan for ensuring the educational stability of the child while in foster care, including—

- (i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
- (ii)
 - (I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or
 - (II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum

- (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and
- (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)

(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where—

- (i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and
- (ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be

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necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

* (5) The term "case review system" means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 6 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, of the State in which the child has been placed, or of a private agency under contract with either such State, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship,

(C) with respect to each such child,

(i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living;

(ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and

(iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or

administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child; ^[2]

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care, and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law; ^[2]

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 671 (a)(15)(B)(ii) of this title are required to be made with respect to the child; ^[2]

(F) a child shall be considered to have entered foster care on the earlier of—

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home; ^[2]

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a proceeding solely on the basis of such notice and right to be heard; ^[2]

(H) during the 90-day period immediately prior to the date on which the child will attain 18 years of age, or such greater age as the State may elect under paragraph (8) (B)(iii), whether during that period foster care maintenance payments are being made on the child's behalf or the child is receiving benefits or services under section 677 of this title, a caseworker on the staff of the State agency, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, includes information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, and provides the child with the option to execute a health care power of attorney,

health care proxy, or other similar document recognized under State law, and is as detailed as the child may elect; ^[2] and

(l) each child in foster care under the responsibility of the State who has attained 16 years of age receives without cost a copy of any consumer report (as defined in section 1681a (d) of title 15) pertaining to the child each year until the child is discharged from care, and receives assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term "legal guardian" means the caretaker in such a relationship.

(8)

(A) Subject to subparagraph (B), the term "child" means an individual who has not attained 18 years of age.

(B) At the option of a State, the term shall include an individual—

(i)

(I) who is in foster care under the responsibility of the State;

(II) with respect to whom an adoption assistance agreement is in effect under section 673 of this title if the child had attained 16 years of age before the agreement became effective; or

(III) with respect to whom a kinship guardianship assistance agreement is in effect under section 673 (d) of this title if the child had attained 16 years of age before the agreement became effective;

(ii) who has attained 18 years of age;

(iii) who has not attained 19, 20, or 21 years of age, as the State may elect; and

(iv) who is—

(I) completing secondary education or a program leading to an equivalent credential;

(II) enrolled in an institution which provides post-secondary or vocational education;

(III) participating in a program or activity designed to promote, or remove barriers to, employment;

(IV) employed for at least 80 hours per month; or

(V) incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

[1] See References in Text note below.

[2] So in original. The semicolon probably should be a comma.

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QTA – A brief analysis of a critical issue in special education

Foster Care and Children with Disabilities

February 2005

by Terry L. Jackson and Eve Müller

Overview

Children and youth in foster care are a vulnerable population. They are at a higher risk for abuse, neglect and permanent separation from birth parents and have a greater incidence of emotional and behavioral disturbances than their peers who are not in foster care (van Wingerden, Emerson & Ichikawa, 2002). Educationally, this group has a higher rate of absenteeism and tardiness and is more likely to repeat a grade and to be in special education (Smucket & Kauffman, 1996). Although several federal laws address the needs of children and youth in foster care (e.g., the Adoption Assistance and Child Welfare Act, Adoption and Safe Families Act and Child Abuse Prevention and Treatment Act) none specifically address the needs of children and youth with disabilities in foster care.

The purpose of this document is to:

- provide data on the prevalence of children in foster care who are also receiving special education services;
- summarize federal legislation that addresses the foster care system and children who are in foster care;
- describe how states are beginning to address the Child Abuse Prevention and Treatment Act (CAPTA);
- identify some of the barriers to providing appropriate educational services to school-aged children with disabilities in foster care; and
- suggest some next steps for meeting the educational needs of this population.

For the purposes of this document, Project Forum has adopted the following definition of foster care provided by the U.S. Department of Health and Human Services (HHS): “Twenty-four-hour care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, family foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes regardless of whether the facility is licensed and whether payments are made by the State or local agency for the care of the child, or whether there is Federal matching of any payments made.”¹

¹ Information retrieved on November 10, 2004 from www.acf.hhs.gov/programs/cb/dis/ncands98/glossary/glossary.htm.

This document was prepared by Project Forum at the National Association of State Directors of Special Education (NASDSE) as part of its cooperative agreement with the U.S. Department of Education's Office of Special Education Programs (OSEP).

Prevalence and Other Pertinent Data

HHS collects information on children and youth in foster care through the Adoption and Foster Care Analysis and Reporting System (AFCARS) and tracks the following: number of children entering and exiting foster care; type of placement (e.g., non-relative foster family homes and group homes); permanency goals; outcomes (e.g., reunification and adoption); length of stay; and descriptive information such as age, race/ethnicity and gender of children. States submit data to AFCARS every six months. The estimated number of children in foster care in 2001 was 542,000 (National Clearinghouse on Child Abuse and Neglect Information - NCCANCH, 2003). Between 1998 and 2001, the number of children and youth entering foster care remained relatively stable, whereas the number exiting increased somewhat, leading to a slight drop in total numbers. The median age of children and youth in foster care in 2001 was 10.6 years (NCCANCH, 2003). In a similar period, thirty percent of all foster children were under the age of five (Dicker, Gordon, & Knitzer, 2002) and babies under three months of age were the most likely to enter care (Dicker & Gordon, 2004). Foster children were slightly more likely to be male (52 percent) than female (48 percent) (NCCANCH, 2003). Black children (38 percent of all foster children) received foster care in significantly disproportionate numbers (NCCANCH, 2003), as they comprise only 17 percent of the school-aged population (Office for Civil Rights, 2000). The breakdown for other groups was as follows: 37 percent of all foster children were white; 17 percent were Hispanic; and eight percent were other races/ethnicities (NCCANCH, 2003).²

In terms of academic outcomes, children and youth in foster care do not perform as well on standardized tests (Burley & Halpern, 2001; Smithgall, Gladden, Howard, Goerge & Courtney, 2004), have higher absentee and tardy rates (Altshuler, 1997), suffer from higher drop-out rates (Choice et al., 2001; Smithgall et al., 2004), have higher rates of suspension and expulsion (Smithgall et al., 2004) and are more likely to be retained in grade (Smithgall et al., 2004) than children and youth who are not in foster care.

Children and youth in foster care also receive special education services in disproportionate numbers. Estimates of the percentage of school-age children who are receiving special education services range from 30 to 45 percent (Smithgall et al., 2004; van Wingerden, Emerson & Ichikawa, 2002). In comparison, only 11 percent of *all* children aged 6 to 17 received special education services under Part B of the Individuals with Disabilities Education Act (IDEA) in the 2003 school year.³ Furthermore, children in foster care are also approximately 15 times more likely to be identified with emotional disturbance (ED) than children who are not in foster care (George, Voorhis, Grant, Casey, Robinson, 1992). One study of students in the Chicago area found that nearly 20 percent of seventh and eighth graders in foster care were identified as

² In 2000, 62 percent of the total school-aged population was white, 17 percent Black, 16 percent Hispanic, 4 percent Asian Pacific Islander and 1 percent American Indian/Alaska Native (Office for Civil Rights, 2000).

³ Information retrieved on January 27, 2005 from www.ideadata.org.

having ED, whereas only one to two percent of the overall student population was identified as such (Smithgall et al., 2004). This same study found that approximately 20 percent of students in foster care were classified with a specific learning disability (SLD), compared to only 12 percent of the overall public school population in Chicago.

Babies less than 12 months of age in foster care are also disproportionately likely to have disabilities. According to a document published by Zero to Three, over half of infants placed in foster care have developmental delays or disabilities (Dicker & Gordon, 2004). In comparison, only 2.24 percent of children ages birth through two years received special education services under Part C of the IDEA in the 2003 school year.⁴

Federal Legislation

There are four federal laws that pertain to this population of children, two of which explicitly address state and local foster care systems – the Adoption Assistance and Child Welfare Act of 1980 (AACWA) and the Adoption and Safe Families Act of 1997 (ASFA).

AACWA is designed to correct or alleviate problems in the foster care system and to promote permanent rather than multiple foster placements. According to NCCANCH (2003b), the goals and objectives of AACWA are to:

- prevent unnecessary separation of children from families;
- protect the autonomy of the family;
- shift the support of the federal government away from foster care alone and towards placement, prevention and reunification;
- promote the return of children to their families when feasible;
- encourage adoption when it is in the child's best interest;
- improve the quality of care and services; and
- reduce the number of children in foster care.⁵

Robinson and colleagues note that ASFA focuses on three priorities in the delivery of child welfare services – safety, permanency and well-being (Robinson, Rosenberg, Teele, Stainback-Tracy, Swope, Conrad & Curry, undated). While safety and well-being are equally important to child welfare, the emphasis on permanent placement has had the greatest impact on how child welfare agencies respond to cases of neglect or abuse. ASFA's guidelines require permanent placement within a specified timeframe for children under six years of age. As a consequence of this law, an increasing number of children are being adopted by their foster families or being placed in the permanent custody of relatives (Robinson et al., undated).

According to NCCANCH (2003b), the goals and objectives of ASFA are to:

- promote permanency for children in foster care;
- ensure safety for abused and neglected children;

⁴ Information retrieved on February 1, 2005 from www.ideadata.org.

⁵ Full text of the AACWA (P.L. 96-272) can be found at <http://thomas.loc.gov/cgi-bin/bdquery/z?d096:HR03434:@@@D|TOM:/bss/d096query.html>.

- accelerate permanent placements of children;
- increase accountability of the child welfare system; and
- reduce the duration of a child's stay in foster care.⁶

The third law pertinent to children in foster care is the Keeping Children and Families Safe Act of 2003, signed into law on June 25, 2003. This law reauthorized and amended the Child Abuse Prevention and Treatment Act (CAPTA) of 1974. Although children and youth impacted by CAPTA are not necessarily in foster care, they are likely to be. This law requires each state to develop "provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under Part C of the Individuals with Disabilities Education Act" [P.L. 108-36 §106(b)(2)(A)(xxi)]. Infants and toddlers are currently one of the largest growing populations entering foster care (Dicker, Gordon, & Knitzer, 2002; Smucket & Kaufman, 1996). Over the past ten years, the number of children under five entering foster care has increased by 110 percent, in contrast to a 50 percent increase for all children (Dicker, Gordon, & Knitzer, 2002).

NCCANCH (2003b) identified the two primary goals and objectives of CAPTA as:

- increasing identification, reporting and investigation of child maltreatment, thereby protecting children from harm; and
- monitoring research and compiling and publishing materials for persons working in the field.

The 2004 reauthorization of the IDEA or the Individuals with Disabilities Education Improvement Act of 2004, signed into law on December 3, 2004, also includes language that is pertinent to this population. This law makes specific reference to children in foster care [P.L. 108-446 §631(a)(5)], foster parents [P.L.108-446 §602(23)] and reinforces the CAPTA language:

(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence...[P.L. 108-446 §635(c)(2)].

The [State] application shall contain...(6) a description of the State policies and procedures that require the referral of early intervention services under this part of a child under the age of 3 who – (A) is involved in a substantiated case of child abuse or neglect [P.L. 108-446 §637(a)].

The IDEA Conference Report language clarifies that the conferees intended that every child that fits the description above will be screened by a Part C provider or designee to determine whether a referral for evaluation for services under Part C is warranted and if warranted that a referral be made. The conferees did not intend to require that every such child receive an evaluation or Part C services (Congressional Record, 2004).

⁶ Full text of the ASFS (P.L. 105-89) can be found at www.acf.hhs.gov/programs/db/laws/index.htm.

Impact of CAPTA

It is too early to assess the impact of the reauthorized CAPTA and IDEA on states. However, there is concern that CAPTA may increase the rolls of Part C programs and thus increase the need for qualified staff in an already understaffed area and the need for interagency program support (Rosenberg & Robinson, 2003). It is likely that new policies and procedures will have to be developed for screening children involved in substantiated cases of abuse or neglect and for evaluating and providing early intervention services, if needed. Staff development will be necessary to equip staff with the skills to address the unique issues related to abuse and neglect, and programs will have to ensure that social work and family counseling services are available (Rosenberg & Robinson, 2003).

In an effort to determine states' capacity to address the new CAPTA requirements, the IDEA Infant and Toddler Coordinators' Association summarized information available from 21 states in September of 2004.⁷ At that time, nine of the 21 had existing procedures in place for referral of children involved in substantiated cases of abuse or neglect to Part C programs. Eight of the nine states were referring *all* such children to Part C programs, with screening being conducted by the Department of Social Services or Child Protective Services in two of the eight states. One additional state was referring *all* such children, although there were no agreed upon referral procedures in place. Discussions relating to policies and procedures were taking place in ten states and one additional state had discussions planned. Of the 21, two states had staff development planned and two states had data collection and/or tracking planned in place. There was no information available from 29 states.⁸ Clarification provided by the recent IDEA Conference Report may assist states in developing and implementing screening procedures.

Barriers to Educational Services for School-age Children

Van Wingerden and colleagues (van Wingerden, Emerson, & Ichikawa, 2002) identified a number of barriers to meeting the educational needs of school-age children with disabilities in foster care. The following section summarizes their findings.

Systems Coordination – A lack of coordination between schools and the child welfare system (e.g., coordinated service delivery and cost sharing) makes it difficult to identify children in foster care who are in need of special education services, develop and implement individualized education programs (IEPs) in a timely fashion, advocate for children's needs, conduct transition planning and adequately attend to children's physical and mental health needs. Poor coordination stems in part from the fact that most special educators know very little about the foster care system and most child welfare workers know very little about special education services.

Tracking Children and Transferring Records – Children in foster care are a highly mobile population. This mobility frequently contributes to under-identification of educational

⁷ Special thanks to Maureen Greer, consultant to the IDEA Infant and Toddler Coordinators Association, who provided Project Forum with this information.

⁸ It is important to note that ITCA did not specifically request information from all states, but used information from extant sources. Therefore, it is possible that states are doing more than these data suggest.

disabilities, delays in evaluation for special education services, absenteeism, redundant assessments and services and lost or delayed transfer of records and IEPs.

Early Intervention Services – Although early intervention services are critical to helping children in foster care succeed academically, Part C services are vastly underused for children placed in foster settings.

Parental Role and Child Advocacy – Many children in foster care lack a knowledgeable, consistent and effective advocate for their special education needs. This results in part from confusion as to the roles of birth parents, foster parents, surrogate parents and social workers in the special education process. Social workers may also be left out of the IEP process, in spite of their access to pertinent background information about the child and family.

Young Adult Transition Services – Although both the education and child welfare systems provide services to assist young people transitioning to adult life, these services are rarely coordinated. This is an area of significant concern, since emancipation outcome data suggests that children who “age out” of the foster care system are more likely to drop out of high school, be unemployed and/or receive public assistance and experience homelessness.

Mental Health and Behavior Issues – As mentioned earlier, as a result of abuse, neglect and separation from birth families, children in foster care have a high incidence of emotional disturbance and social/behavioral problems. As many as two thirds of children in the foster care system are in critical need of mental health services. Failure to provide children in foster care with adequate mental health services may contribute to the high rate of suspension and expulsion noted above.

Participation in State Planning Efforts – Foster parents and representatives from the child welfare and judiciary systems rarely participate in state planning efforts to improve education results for all children, including those with disabilities, even though these are the people who know the most about how to meet the needs of children and youth in foster care.

Next Steps

In response to the barriers identified above, van Wingerden and colleagues (2002) generated a number of policy recommendations for improving educational services for children and youth with disabilities who are in foster care. The following recommendations for services and supports come from van Wingerden et al. (2002) and the authors of this document:

- include child welfare representatives and foster parents on state special education advisory panels;⁹

⁹ The 2004 reauthorization of IDEA specifies that there must be at least one representative from the state child welfare agency responsible for foster care on the state Part C interagency coordinating council [P.L. 108-446 §641(b)(L)].

- explicitly link state special education, mental health, child welfare agencies and state Part C lead agencies through coordinated service systems activities that include case management, shared financing and interagency personnel development;¹⁰
- provide early intervention providers, teachers and related services personnel with the information/preparation necessary to work effectively with foster care families;
- develop statewide electronic databases that cross systems (i.e., education, social services, child welfare, health care, mental health and juvenile justice) with shared unique common identifiers for children;
- invite child welfare or social workers to IFSP/IEP meetings, particularly if they are knowledgeable about the child's developmental and social history;
- ensure that state parent centers (e.g., community parent resource centers and parent training and information centers) develop outreach strategies for reaching foster parents who have children with disabilities; and
- require that young adult transition planning and service delivery be coordinated with the child welfare system for all students in foster care.

Closing Remarks

Providing appropriate services to children and youth with disabilities in foster care is a difficult challenge. Although service coordination is required under Part C of the IDEA and the 2004 reauthorization of the IDEA requires at least one representative from the state child welfare agency responsible for foster care to take part on the state Part C interagency coordinating council, no federal policies require collaboration between schools, social services and child welfare programs for school-age children and youth. Currently, groups such as the Mid-South Regional Resource Center (MSRRC), National Early Childhood Technical Assistance Center (NECTAC), IDEA Infant and Toddler Coordinators Association and the Child Find community of practice are working together to examine how states are beginning to implement the requirements in the reauthorized CAPTA and IDEA. Such examination is an important step towards understanding how to better coordinate services for infants and toddlers in foster care.

For school-age children in foster care, efforts also must be directed at streamlining the identification of disabilities and providing special education services in a more timely manner. Steps must be taken by social service agencies and educational systems on both the state and local levels to collaborate and prevent the duplication of services, including the design/revision of policies to allow information sharing across agencies. Until then, children and youth with disabilities in foster care will continue to be under-identified and underserved.

This report was supported by the U.S. Department of Education (Cooperative Agreement No. H326F000001). However, the opinions expressed herein do not necessarily reflect the position of the U.S. Department of Education, and no official endorsement by the Department should be inferred.

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¹⁰ Service coordination is already a required part of the Part C program.

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School: Bill adds alarm systems

6-13-13
15

Continued from Page A1

Connecticut, which left 20 students and six adults dead. It also would help in other situations, like fights between



Rep. Joseph Miro

students or confrontational parents. "Obviously, the concern that's foremost in our mind is an intruder, but there are lots of different scenarios this could work in," Miro said.

Secretary of Safety and Homeland Security Lewis Schilliro supports the idea.

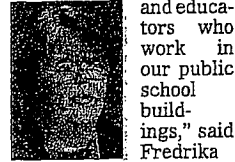
"This is a good idea. It's another tool in the security toolbox, and we want all the tools we can get," Schilliro said.

Schilliro said silent alarms are useful in some situations where more conventional communication fails.

"There are certainly tactical situations where you can't get to a landline or use a cellphone," he said.

The bill has the support of many teacher and parent groups who say they welcome any reasonable effort to boost school security.

"We support any measure, no matter how big or how small, that improves the safety of the students



Frederika Jenner

who learn and educators who work in our public school buildings," said Fredrika Jenner, president of the Delaware State Education Association.

"We trust that those who are safety experts will make reasonable, well thought out decisions and consider the impact on the learning environment."

Only six of the state's 228 public school build-



Lewis Schilliro

ings are equipped with such a system, according to a report the state Department of Education submitted to the Legislature.

The bill would require the state to pick up the cost of installing the system, but districts would pay for upkeep.

The cost of the program will vary from school to school depending on what security is already in place and what company provides it, Miro said.

Though few schools have a panic button, many have a security system in place, which would make installation and maintenance relatively inexpensive, Schilliro said.

Miro said the state estimates it could pay anywhere from \$110,500 to \$331,000 to install the systems.

Monthly maintenance fees would be in the neighborhood of \$10 to \$30 a month. That means all the state's schools combined would face a total cost of about \$79,560 a year.

"We're not looking at huge costs to the districts," Schilliro said.

Most parents say they're glad to see the proposal.

"You can't do enough to make schools safe," said Pam Sayers, who has a child at Heritage Elementary, a child headed to Delcastle Technical High School and a child who just graduated from Cab Calloway School of Arts in Wilmington. "I think this bill is a good idea."

Sayers said she generally believes her children are safe, but thinks any steps to make them safer are welcome.

"Nowadays, with everything you hear about people doing, you can't get complacent," she

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said. "You have to keep upgrading, doing everything you can."

The proposal also received an overwhelming positive response on delawareonline.com's Facebook page and in emailed comments.

Gov. Jack Markell signed a bill last year that charged Safety and Homeland Security staff with helping every school in the state develop a comprehensive safety plan.

In the wake of the Sandy Hook shootings, Markell accelerated that timeline to two years and doled out \$300,000 to speed things up.

As schools develop those plans, they are adding them to a comprehensive secure online portal that will allow law enforcement agencies to learn the layout of every building and plans for evacuations and lockdowns.

Miro said that means the panic buttons will be especially effective, because police will know exactly where and how to respond to each school.

"This is just one piece of a larger strategy," Miro said. "This bill fits in nicely with what we're already doing."

Schilliro said efforts to implement the plans are on schedule.

"When this is done, I think Delaware is going to have some of the best-prepared, best-informed schools in the country for security issues," he said.

Matthew Albright can be reached at 324-2428 or at malbright@delawareonline.com. Follow him on Twitter @TNJ_malbright.

SCHOOL SAFETY

Lawmaker banking on panic buttons

By Matthew Albright
The News Journal

Schools across Delaware could get panic buttons like those in banks if legislation aimed at improving school safety becomes law.

House Bill 33, sponsored by Rep. Joseph Miro (R-Pike Creek), would require every school in Delaware to have an alarm system school staff could trigger to alert law enforcement of a potential threat.

Miro said the bill aims to prevent school shootings like the December one at Sandy Hook Elementary School in

See SCHOOL, Page A2

CORRECTIONS

LOTTERY: The Powerball numbers for Saturday's drawing were 02-11-22-26-32 with a Powerball of 19. Incorrect numbers appeared in Sunday's editions.

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147TH GENERAL ASSEMBLY

FISCAL NOTE

BILL: HOUSE BILL NO. 33
SPONSOR: Representative Miro
DESCRIPTION: AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SILENT ALARM SYSTEMS IN PUBLIC SCHOOLS.

ASSUMPTIONS:

1. This Act requires every public school building to be equipped with an alarm system capable of notifying local law enforcement of an emergency that may be manually activated from at least one location within the public school.
2. Based on the Department of Education, there are 228 public school buildings through the State (207 regular and vocational district buildings and 21 charter schools). This does not include Pencader Charter School, which is scheduled to close at the end of the school year. Based on a survey performed by the Department of Safety and Homeland Security, there are a total of 6 school buildings that will meet the requirements of this Act. As such, there are a total of 221 public school buildings impacted by this Act.
3. Depending on the infrastructure needs of the school buildings, the estimated one-time cost per building to satisfy the provisions of this Act is expected to range between \$500 to \$1,500, which includes labor installation as well as the necessary hardware to install a panic button. Statewide, the projected one-time installation costs range between \$110,500 (\$500 X 221 buildings) to \$331,500 (\$1,500 X 221 buildings). The Fiscal Year 2014 Budget, as written by the Joint Finance Committee, includes \$700,000 for School Safety Plans that could potentially be used as a source of funding.
4. The ongoing monitoring cost of the system for the link to local law enforcement, through a third party vendor and using a standard telephone line, is assumed to be a local school district/charter school expense at \$360 annually per school building (\$30 per month/per building). Statewide, monthly monitoring costs are projected to impact all districts/charter schools by \$79,560 in total (\$360 annually/per building X 221 buildings).

Cost: Fiscal Year 2014: \$110,500 to \$331,500 for installation (State)
\$79,560 statewide monitoring costs (Local only)
Fiscal Year 2015: \$79,560 statewide monitoring costs (Local only)
Fiscal Year 2016: \$79,560 statewide monitoring costs (Local only)

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SCHOOL SAFETY

12-29-13
15

Bill seeks two-way classroom door locks

Jaques wants them lockable from the inside

By Jon Offredo
The News Journal

A Democratic lawmaker is proposing a school safety bill that would require classroom doors in the state's 228 public schools to be lockable from both inside and outside the room.

The piece of legislation was pre-filed by Rep. Earl Jaques, of Glasgow, ahead of the January start to next year's legislative session.

Most classrooms can only be locked from the outside, leaving them vulnerable if the teacher has to step out to lock the door, Jaques said.

The ability to lock the door from the inside could help prevent an intruder from entering the classroom, he added.

Dr. Mervin Daugherty, superintendent of the Red Clay School District, and president of the School Chiefs Association, said no one disagrees with the idea of changing locks. But like proposed legislation to install panic buttons in schools, the question is how to pay for the changes.

"It's not as cheap as people would think it is," he said. "I think it's a good idea. I'm just hoping there is some funding along with it."

"You're looking at a lot of doors," Daugherty added.

The change could pose a significant cost to school districts. Some might be able to handle it, but there are a lot of districts with tight budgets and the expense of changing all classroom door locks could be a heavy hit to facilities budgets, Daugherty said.

Classrooms in the majority of Delaware's school buildings are locked from the outside,

Classrooms in the majority of Delaware's school buildings are locked from the outside, in the hallway, and in many of the rooms there is no way to lock the door from the inside. THE NEWS JOURNAL

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See LOCKS, Page B7



Classrooms in the majority of Delaware's school buildings are locked from the outside, in the hallway, and in many of the rooms there is no way to lock the door from the inside. THE NEWS JOURNAL

Locks: A full statewide door retrofit would come at a cost

Continued from Page B1

in the hallway, and in many of the rooms there is no way to lock the door from the inside, said Frederika Jenner, president of the Delaware State Education Association.

"It has been a concern that I recognized a decade ago in my own classroom and other members have brought it to our attention as we look at school safety and security," Jenner said. "During a lockdown or crisis situation requiring people to be secured in place, it means that you have to open your door, somebody has to go outside."

But she said creating new locks is "obviously not without its cost."

Jaques said he doesn't know how much it will cost to retrofit classroom doors across the state, but hopes to know shortly after the start of the New Year. He added that he'd like

the state to cover the costs of the locks.

"I don't think it will be outrageous to tell you the truth," he said.

Jaques's proposed legislation comes after Gov. Jack Markell signed a bill last year that charged Safety and Homeland Security staff with helping every school in Delaware develop a comprehensive safety plan.

Following the Sandy Hook Elementary School shootings, Markell accelerated the effort's timeline and doled out \$300,000 to encourage the process.

As plans are developed, they are added to a secure online portal that would allow various law enforcement agencies to learn the layout of every building and plans for evacuations and lockdowns.

Jonathan Starkey contributed to this article. Contact Jon Offredo at (302) 678-4271 or atjoffredo@delawareonline.com. Follow him on Twitter @jonoffredo.

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School Safety: Finding funding to lock Delaware classrooms

Project could cost up to \$4 million

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There are an estimated 13,315 classroom doors across the state. / Getty Images

Written by
Jon Offredo
The News Journal

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A House lawmaker said he wants the state to pay the estimated \$4 million it will cost to make every door in Delaware's public and charter schools lock from both sides.

Rep. Earl Jaques, D-Glasgow, said he doesn't know how, when and over what length of time the state would pay the cost of his proposal for the locks. But protecting the state's children is the responsibility of the state and its elected officials, he said.

"It's a lot of money, and like I said, it will have to be spread over many years. But what is the cost of a child's life," he said. "If Sandy Hook happened here, everybody and

their brother would be jumping through hoops to give me the \$4 million."

But so far, no one is willing to commit funds to pay for outfitting the estimated 13,315 classroom doors across the state affected by the bill at a rate of about \$300 each.

"As the governor stated this week, it's a tight budget year and we'll have to balance our priorities. We anticipate discussing the proposal with lawmakers in greater detail," said Cathy Rossi, Gov. Jack Markell's spokeswoman.

Like any proposal, Rossi said "the safety benefit must be weighed against cost, but we welcome a discussion about ways to further enhance school safety."

In 2012, Markell signed a bill that charged Safety and Homeland Security staff with helping every school in Delaware develop a comprehensive safety plan. Following the Sandy Hook Elementary School shootings, Markell accelerated the effort's timeline and doled out \$300,000 to encourage the

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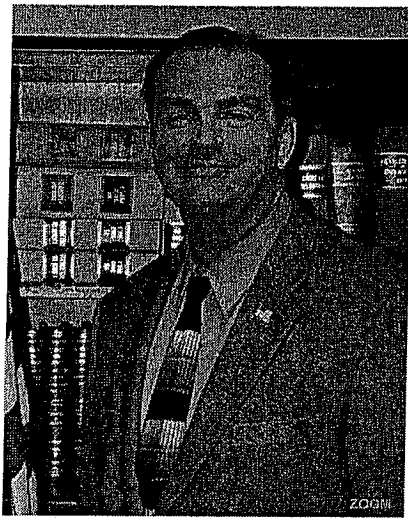
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Rep. Earl Jaques

process, and last week, Markell proposed \$400,000 in new spending for school facility access control during his proposed budget hearing.

Lewis Schiliro, Safety and Homeland Security Secretary, said Jaques' idea was "right on the money." But finding the cash is a different issue.

Schiliro said his department is funded to implement the ongoing safety planning and live training exercises, but they don't have the money for changes to physical security.

"If you had the magic wand, you'd be able to wave and do all these things, but unfortunately that's not the case. But that doesn't mean the discussion shouldn't go forward," he said.



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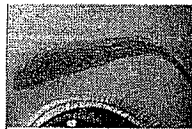
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School Safety: Finding funding to lock Delaware classrooms

Project could cost up to \$4 million

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Written by
Jon Offredo
The News Journal

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The bill, heard by the House Education Committee last week, had some discussion, but was ultimately tabled after time ran out in the meeting. Jaques said he's hoping to dedicate a full committee hearing to the bill and school safety when lawmakers return from their recess in March.

He questioned the \$4 million price tag offered in a fiscal note drafted by the Controller General's Office.

"We think it's going to be cheaper than that. We're just using some numbers that were pulled out of the air," he said. "I can go on the Internet and find anything from \$50 to \$300. They took a high number knowing that it won't be that number."

The state paying for the locks is the preferred method, but Jaques said he won't let the legislation die if the state won't fund it. The alternative is school districts pay. But Jaques said he's nowhere near trying to make that happen. He plans on testifying during Joint Finance Committee hearings this month about his legislation, in hopes of finding a way to fund the bill.

Co-chair of the House Education Committee, Rep. Kimberly Williams, said committee members are "generally receptive" to the idea, but concerned about mandating school districts to pick up the cost if the state won't fund it.

"We keep passing laws but not providing money to pay for it, and it falls on local taxpayers," she said.

A similar piece of legislation that would have put panic buttons in schools has sat in the House Appropriations Committee since lawmakers released it from the House Education Committee last June.

School officials say costs are a major obstacle. They say that if lawmakers want to require the locks, they need to find a way for the state to pay for it.

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"I don't think anybody's against the idea. But there are a lot of questions about how we can afford it," said Merv Daugherty, Red Clay School District Superintendent and head of the state's school chiefs. "You're going to be talking about thousands and thousands of dollars. Is that going to come from minor capital funding, which we've seen reduced recently? You can't use local money for a project like this."

Daugherty said the locks, while possibly helpful, are not essential. He points out that schools have worked over recent years to overhaul their school security plans, including a statewide planning hub monitored by state safety officials.

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Matthew Albright
contributed to this article.



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147TH GENERAL ASSEMBLY

FISCAL NOTE

BILL: HOUSE BILL NO. 221
SPONSOR: Representative Jaques
DESCRIPTION: AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL PROPERTY AND HEALTH AND SAFETY REQUIREMENTS.

ASSUMPTIONS:

1. This Act will require that every door into a classroom in every public school shall be lockable from both inside and outside of the classroom.
2. Based upon an assessment by the Department of Education, there are a maximum of 12,650 doors in the school districts and 665 doors in the charter schools that may be affected by this Act.
3. The anticipated cost to purchase and install commercial grade, two-way locks is assumed at \$300 per door given the variability in the type and age of school facilities, the cost of installation, and the general price to purchase a lock. However, based on an assessment by the Department of Education, the cost may vary up to \$600 per door.

Cost:

Fiscal Year 2014	\$3,994,500 (\$300 per door)
Fiscal Year 2015	\$0
Fiscal Year 2016	\$0

Office of Controller General
January 21, 2014
MJ:MJ
0271470014

(Amounts are shown in whole dollars)