



DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Legislative and Regulatory Initiatives

Date: February 2, 2015

I am providing my analysis of eleven (11) legislative and regulatory initiatives in anticipation of the February 12, 2015 meeting. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. DMMA Final Medicaid Primary Care Payment Rate Reg. [18 DE Reg. 642 (2/1//15)]

The SCPD and GACEC commented on the proposed version of this regulation in December. A copy of the SCPD's December 30, 2014 memorandum is attached for facilitated reference.

In a nutshell, the Division proposed to extend existing Medicaid reimbursement rates for primary care services and physician-administered vaccines. The Councils endorsed the proposal subject to one concern, i.e., some "odd" wording. The Division has now adopted a final regulation with no changes. It responded to the Councils' concern as follows:

Agency Response: The proposed wording reflects previously approved state plan language. This SPA was submitted to CMS on December 12, 2014 and is currently under review. Should CMS require any changes to the proposed language, the agency will comply.

At pp. 644-645.

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

2. DSS Final TANF Plan Renewal Regulation [18 DE Reg. 646 (2/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in November. A copy of the SCPD's November 25, 2014 memorandum is attached for facilitated reference. The Councils endorsed the regulation with no suggested amendments.

The Division of Social Services has now acknowledged the endorsements and adopted the regulation with no changes. I recommend no further action.

3. DOE Proposed IEP Reading Interventions Regulation [18 DE Reg. 621 (2/1/15)]

In October, 2014, the Department of Education issued a proposed regulation amending multiple provisions within its regulations covering evaluations, eligibility, and IEPs [18 DE Reg. 281 (10/1/14)]. The SCPD and GACEC submitted comments on the regulation resulting in two amendments. However, the DOE declined to adopt a third Council-recommended amendment to add a reference to extended school year services for children not beginning to read by age seven. Representatives of the Legislature, Councils, DLP, Attorney General's Office, and DOE met in January to discuss the Councils' concerns. The Councils shared the attached "Supplemental Analysis of Regulations Implementing S.B. No. 229" to clarify their view that the regulation did not fully implement recent legislation. As a result, the DOE agreed to issue a new proposed regulation incorporating the amendment reflected in the Supplemental Analysis.

The DOE has now formally issued the proposed regulation. It mirrors the version proposed by the Councils. I recommend endorsement.

4. DOE Prop. Extended School Year Services Regulation [18 DE Reg. 618 (2/1/15)]

In October, 2014, the Department of Education published a regulation amending its extended school year standards to implement recently enacted S.B. No. 229. The SCPD and GACEC issued a highly negative analysis of the proposed regulation since it did not conform to the letter or spirit of S.B. No. 229. In January, the DOE adopted a final regulation with one minor amendment prompted by the commentary.

Representatives of the Legislature, Councils, DLP, Attorney General's Office, and DOE met in January to discuss the Councils' concerns. The Councils shared the attached "Supplemental Analysis of Regulations Implementing S.B. No. 229" to clarify their view that the regulation did not fully implement recent legislation. As a result, the DOE agreed to issue a new proposed regulation incorporating the amendment reflected in the Supplemental Analysis.

The DOE has now formally published its regulation which, with one exception, mirrors the version reflected in the Supplemental Analysis. The Department omitted the following amendment:

6.2. Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 DE Admin Code 925.20.0 through 925.24.0, that the services are necessary for the provision of FAPE to the child or are otherwise specifically authorized by statute.

The omission is problematic. In the Supplemental Analysis, the DLP stressed that the legislative history of S.B. No. 229 supported presumptive summer services even if their provision might exceed a minimum FAPE. The omission of the amendment to §6.2 creates some "tension" within the regulation: 1) §6.2 literally bars ESY unless necessary for a FAPE; 2) §6.7 creates a presumption of ESY eligibility with no reference to FAPE. IEP teams may be confused and attempt to justify denial of ESY based on minimum FAPE standards. This "tension" would have been obviated if the agreed-upon revision to §6.2 were included in the regulation.

I recommend that the Councils request that the DOE include the proposed amendment to §6.2 in the final regulation. The GACEC may wish to follow up with the DOE to determine if the omission was inadvertent or intentional. If intentional, input from other sources (e.g. Legislature; Attorney General's Office) may be appropriate.

5. DOE Proposed Gifted or Talented Education Plan Regulation [18 DE Reg. 616 (2/1/15)]

There is little statutory law concerning programs for gifted or talented students. Title 14 Del.C. §3101(6) defines the qualifications for a "gifted or talented child". Title 14 Del.C. §3126 contains a one-sentence authorization for the Department of Education to issue regulations defining program standards:

§3126 Rules and regulations.

The extent of programs and facilities provided for children determined to be gifted or talented shall be in accordance with the rules and regulations of the Department as approved by the State Board of Education.

The Department is now proposing to require each district and charter school to develop and maintain a "Gifted or Talented Education Plan. Initial plans would be submitted to the Department by July 15, 2015 for implementation no later than the 2015-16 school year. Districts and charter schools could request an extension for implementation to occur no later than the 2016-17 school year.

I have the following observations.

First, the Department may wish to reconsider the July 15, 2015 deadline for submission of the initial plan. The earliest the regulation could become "final" is April 1, 2015. This would provide districts and charter schools with only 2 ½ months to obtain input from stakeholder groups (including parents) [§3.2] and develop a final plan. Schools would not even be "open" during the latter part of this period. If districts and charter schools are "rushed" into submission of plans, plan content may suffer.

Second, §3.1.3 is problematic. It requires “each teacher assigned to teach gifted or talented students to be certified in gifted and talented education”. This is “overbroad”. A student who is gifted in psychomotor ability or the performing arts may not need a certified gifted or talented teacher for academics. Literally, a “gifted or talented child” could not take a world language course unless the foreign language or ASL instructor were certified in gifted or talented education. If a student were gifted in “psychomotor ability”, the student’s coaches and physical education instructors would have to be certified in gifted or talented education.

Third, in §3.1.8, the term “Gifted or Talented Education” should be deleted. The term “Plan” should suffice. See definition of “Gifted or Talented Education Plan (Plan)” and compare references to “Plan” in §§3.1, 3.2, 3.3, and 3.4.

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

6. S.B. No. 10 (DPAS II Advisory Committee)

This bill was introduced on January 15, 2015. It unanimously passed the Senate with S.A. No. 1 on January 22. As of February 2, it awaited action by the House Education Committee.

The legislation makes some technical and minor changes to the enabling legislation establishing the advisory committee for the Delaware Performance Appraisal System (DPAS II). Changes include the following: 1) requiring the Department of Education to provide administrative staff to the committee (line 4); 2) adding non-voting members representing the Department of Education and State Board of Education (lines 21-23); 3) authorizing the committee to meet more often than quarterly (line 24); and 4) rewording the duties of the committee (lines 26-42).

At its January 20 meeting, the GACEC voted to recommend an amendment to add a “representative of the Governor’s Advisory Council for Exceptional Citizens” to the committee membership. The committee membership otherwise lacks any representative with specific background in special education. After consulting the prime sponsor, this recommendation was not pursued. An opportunity for public comment is offered at each meeting.

I recommend either: 1) taking no action on the bill; or 2) commenting that the Council(s) would have ideally preferred the expansion of membership to include a GACEC representative but otherwise has no reservations in endorsing the bill.

7. H.B. No. 17 (Adult Protective Services Definition of “Financial Institution”)

This legislation was introduced on January 7, 2015. It passed the House on January 27. As of February 2, it awaited action by the Senate Health & Social Services Committee.

Consistent with the synopsis, H.B. No. 417 was enacted in 2014 to authorize financial institutions to “freeze” transactions if they suspect financial exploitation and to require financial institutions to report suspected financial exploitation. The original version of H.B. No. 417 defined “financial institution” to include “a broker-dealer, investment advisor, or federal covered advisor, as defined in §73-103 of Title 6”. References to these entities were deleted due to concerns raised by these entities. Subsequent negotiations have resolved these concerns and the current bill restores the references. The bill also changes a few semicolons to periods to conform to the Delaware Legislative Drafting Manual.

I did not identify any concerns with the bill. Moreover, clarification of the scope of “financial institutions” may result in enhanced protection of covered individuals from financial exploitation.

I recommend endorsement.

8. H.B. No. 8 (Mental Health Commitment Code)

This legislation was introduced on January 20, 2015. It was reported out of the House Health & Human Development Committee on January 21. As of February 2, it awaited action by the full House.

The bill seeks to address two (2) concerns with changes in the mental health commitment code adopted in 2014 through H.B. No. 346.

First, the definition of “psychiatrist” was limited to practitioners who completed residency in a program certified by a particular entity. There is at least one psychiatrist in Delaware who completed a residency program certified by a different entity. The bill proposes to resolve this issue by simply referring to “an accredited residency training program in psychiatry” (lines 12-14).

Second, the existing law excludes physicians employed by the Delaware V.A. Medical Center from serving as mental health screeners if not licensed to practice medicine in Delaware. The bill proposes to authorize such V.A. physicians to qualify for credentialing as mental health screeners (lines 6-9).

I have a few observations and recommendations.

A. The current law bars a V.A. psychiatrist from qualifying as a “psychiatrist” if not licensed in Delaware (line 12). As a result, such a V.A. psychiatrist could not qualify as a “psychiatrist” authorized to serve as a “credentialed mental health screener” under 16 Del.C. §5001(1)a. Pursuant to 16 DE Admin Code 6002.3.1, psychiatrists are authorized to serve as “screeners” without additional coursework required of physicians. The V.A. psychiatrist would also be unable to serve as an independent psychiatrist in commitment hearings [16 Del.C. §5007(3)] even if he/she were the primary treating practitioner prior to initiation of the commitment process. Finally, treating a V.A. psychiatrist as a “non-psychiatrist” creates some “tension” with the following statute within the commitment code:

§5021 Veterans Administration hospitals.

The provisions in the Delaware Code pertaining to the admission, commitment, care and discharge of persons diagnosed with a mental condition at state institutions shall apply with the same force and effect to persons entitled to the services of hospitals for people with a mental condition operated by the Veterans Administration. Persons so entitled may be transferred from state institutions to such Veterans Administration hospitals subject to the statutory provisions affording interested parties the right to have the status of the person with a mental condition determined as provided by law.

The “bottom line” is that practitioners employed as psychiatrists by the V.A. Medical Center who are not licensed in Delaware should be included within the definition of “psychiatrist” in §5001.

B. The sponsors may also wish to consider whether simply addressing V.A. physicians and psychiatrists is sufficient. Consistent with the attached prior version of §5001, a “psychiatrist” was defined as including the following:

b. Any physician employed by the United States government within the State in the capacity of psychiatrist and certified by the Delaware Psychiatric Center Medical Director to the Medical Council of Delaware as qualified in the diagnosis and treatment of mentally ill persons.

For example, a physician or psychiatrist employed by the Dover Air Force Base who is only licensed in another state would ostensibly not qualify as a “physician” or “psychiatrist” under Delaware’s mental health code. The sponsors may wish to consider whether to adopt a broader approach to federally employed or contracted practitioners than simply addressing V.A. employees.

C. I assume the V.A. may have medical practitioners who are either employees or independent contractors. The use of the term “employment” in line 8 could create ambiguity for physicians who are serving as independent contractors. The sponsors may wish to consider whether the reference to “employment” merits revision.

I recommend sharing the above observations with Deborah Gottshalk, Sarah Fishman Goncher, the DSAMH Advisory Council, and legislative policymakers.

9. H.B. No. 10 (State Office of Financial Empowerment)

This bill was introduced on January 20, 2015. It was released from the House Health & Human Development Committee on January 28. As of February 2, it awaited action by the full House.

Background is as follows. Consistent with the attached September 20, 2013 article, many low and middle income families lack financial literacy. As a result, upward mobility is hampered by lack of sophistication with finances and such families are more likely to “fall into the clutches of predatory financial institutions, trapped by exorbitant rates charged by payday lenders or unscrupulous creditors.”

Delaware launched a financial literacy and empowerment initiative to promote informed decision-making and economic security. Partners included the United Way, several banks, and DHSS. Financial coaches worked with a few thousand Delawareans who reviewed their credit, developed household budgets, and improved their credit scores. Consistent with the attached May 22, 2014 DHSS Press Release, a hybrid program was launched to address the Hispanic community, “Stand By Me Hispano”.

H.B. No. 10 is intended to codify the infrastructure for the program by establishing the “Office of Financial Empowerment” within the Office of the DHSS Secretary. The intended activities are listed at lines 9-27. They generally focus on promoting financial literacy through a variety of activities.

I did not identify any concerns with the bill. It does address a huge problem with lack of education about credit, budgets, and financial planning by many Delawareans. I recommend endorsement.

10. H.B. No. 27 (School Safety)

This bill was introduced on January 14, 2015. As of February 2, it remained in the House Education Committee. It is earmarked with an incomplete fiscal note.

Similar legislation has been introduced in the past. Most recently, a bill (H.B. No. 13) with almost identical content was introduced and then stricken on January 15, 2015. In 2014, similar legislation (H.B. No. 347) passed the House and was released from the Senate Education Committee on June 25, 2014. It did not receive a vote by the full Senate. The prior legislation (H.B. No. 347) also required installation of “bullet resistant white boards in each classroom” (line 22). The “white boards” are not included in the current H.B. No. 27. Consistent with the attached November 7, 2014 News Journal article, private financing was secured to establish a white board pilot in two schools.

H.B. No. 27 would have two effects. First, it would require newly constructed or renovated school buildings to contain specific design features, including bulletproof glass, certain door locks, and an intruder alert system. Second, it would require the OMB Facilities Management Section to ensure Dept. Of Homeland Security review of such sites to address compliance with both the above standards and “Crime Prevention through Environmental Design (CPTED) contemporary practices”.

I identified one principal concern with the legislation.

Adoption of safety features can create barriers and result in violations of the ADA. In the past, I believe at least one public school installed safety features which were later uninstalled due to non-conformity with accessibility standards. I therefore recommended an amendment to add the following sentence at the end of line 23: "Such review shall be coordinated with the Architectural Accessibility Board established by Chapter 73 of this title to ensure compatibility of safety and architectural accessibility features." The AAB is already charged with reviewing school construction and renovations to ensure ADA compliance. However, if the "safety" review occurred after the AAB review, changes could supersede and contravene the AAB-approved accessibility features. The Councils raised the same concern with the prior legislation (H.B. No. 347) which resulted in the approval of a conforming H.A. No. 1 to that bill. See attached June 19, 2014 SCPD Memorandum and H.A. No. 1.

I recommend endorsement of H.B. 27 subject to incorporation of the above recommended 1-sentence amendment. Parenthetically, I will share a June 9, 2014 email exchange between the prime sponsor and SCPD which addresses Dan Mutterspaw's "ok" of the amendment and the prime sponsor's acceptance of the proposed amendment. Senator Poore is the prime Senate sponsor of H.B. No. 27 who may also benefit from input from the Councils.

11. H.B. No. 14 (Lockable Classroom Doors)

This legislation was introduced on January 7, 2015. As of February 2, it remained in the House Education Committee. Brief background is contained in the attached article, "Jaques Bills Would Improve School Safety for Current and Future Public Schools".

H.B. No. 14 would require all public schools to comply with the following standard: "...(E)very door into a classroom in every public school shall be lockable from both inside and outside the classroom". The Act would be effective on August 1, 2015.

Almost identical legislation (H.B. No. 221) was introduced in 2013. It was tabled in the House Education Committee. It contained the attached \$3,994,500 fiscal note based on \$300 per door. I do not believe the SCPD submitted formal comments on the predecessor bill.

The pros and cons of having all classroom doors lockable from both the inside and outside are not entirely clear. The type of door lock is not described in the bill and may vary from door to door. For example, could an intruder turn an outside door lock trapping students inside for a later attack? Would doors have manual keys or a keyless touchpad? Who would have the key(s) and who would know the codes? If teachers move from classroom to classroom, do they have multiple keys and multiple codes? Are substitute teachers given keys and codes?

I recommend sharing the following comments. Since the Council is not an expert in school safety, it would defer to the views of the Department of Homeland Security or other law enforcement agency with expertise in this context. The \$3,994,500 fiscal note on the predecessor bill is not insignificant. If law enforcement experts opined that a silent alarm system would be a higher priority than lockable doors, legislation similar to H.B. No. 33 from the 147th General Assembly could be considered. The attached fiscal note for installing an alarm system in all public schools was between \$110,500 and \$331,500.

Attachments

8g:leg/215bils
F:pub/bjh/legis/2015p&l/215bils



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

VOICE: (302) 739-3620
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DATE: December 30, 2014

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

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

RE: 18 DE Reg. 424 [DMMA Proposed Medicaid Primary Care Payment Rate Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend the Medicaid State Plan in the context of payments for primary care services and physician-administered vaccines. The proposed regulation was published as 18 DE Reg. 424 in the December 1, 2014 issue of the Register of Regulations.

As background, the Affordable Care Act required that Medicaid reimbursement for primary care providers and vaccine administration in 2013 and 2014 be no less than a Medicare fee schedule. DMMA adopted that methodology for Delaware's Medicaid program and apparently benefitted from enhanced (100%) federal funding. DMMA now proposes to continue the existing reimbursement rates into 2015 albeit with a lower federal subsidy, i.e., "the regular federal matching rate". The total fiscal cost in FFY15 will be \$147,691 in General (State) Funds and \$95,699 in Federal match.

SCPD endorses the proposed regulation subject to one concern. The Plan Amendment recites that vaccine administration "shall be paid at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program." At p. 428. This is "odd" wording. It is common to recite that a standard will be the lesser of "A" or "B". It is peculiar to recite that a standard will be the lesser of "A". DMMA may wish to clarify the standard.

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

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



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: November 25, 2014

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

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

RE: 18 DE Reg. 354 [DSS Proposed TANF State Plan Renewal Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to renew Delaware's eligibility status for the TANF program covering the period from October 1, 2014 through December 31, 2016. The proposed regulation was published as 18 DE Reg. 354 in the November 1, 2014 issue of the Register of Regulations.

SCPD endorses the proposed regulation.

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

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

18reg354 dss-tanf state plan renewal 11-25-14

SUPPLEMENTAL ANALYSIS OF REGULATIONS IMPLEMENTING S.B. NO. 229

Brian J. Hartman
January 10, 2015

I. NEW STATUTE (S.B. NO. 229)

(e) With respect to any child with a disability who is not beginning to read by age seven, each IEP prepared for such student until that student is beginning to read shall (a) enumerate the specific, evidence-based interventions that are being provided to that student to address the student's inability to read, and (b) provide for evidence-based interventions through extended school year services during the summer absent a specific explanation in the IEP as to why such services are inappropriate.

II. 2 FINAL REGULATIONS

A. IEP (Part 925, §24.0)

The IEP Team shall:

...
24.2.7. In the case of any child with limited reading proficiency, consider the reading services, supports and evidenced based interventions as those relate to the child's IEP;

24.2.7.1. For a child who is not beginning to read by age seven, or who is beyond age seven and is not yet beginning to read, enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read.

B. ESY (Part 923, §6.0)

...
6.2 Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 DE Admin Code 925.20 through 925.24.0, that the services are necessary for the provision of FAPE to the child.

...
6.5. ...The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.

...
6.5.4 Reading acquisition: For a child who is not beginning to read by age seven, or who is beyond age seven and not yet beginning to read, the team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goal(s) related to reading will not be achieved.

6.5.4.1. For purposes of the extended school year services (ESY) determination, a child is beginning to read if the child demonstrates phonological awareness and ability to use letter sound knowledge and decode unknown words.

III. PROBLEM(S) WITH REGULATIONS

A. Statute creates a presumption of summer school. An exception is permitted only if team provides specific explanation in the IEP why summer services are inappropriate. The default is that summer program is provided. Under the regulation, the default is that covered students get no summer school. A burden is placed on the IEP team to justify ESY.

B. The overall ESY regulation is constrictive. It literally and categorically bars ESY unless "necessary" for a FAPE and an enumerated factor is met. The statute mandates a presumption of summer school regardless of whether necessary for a FAPE. The House Committee report stridently supports presumptive summer services even if their provision might exceed a minimum FAPE standard:

Committee findings: The Committee found that this bill is long overdue and ensures that these students are receiving the best education possible to make certain that they are prepared for their futures.

Moreover, the Legislature has mandated service eligibility for children regardless of "FAPE" in multiple contexts. See 14 Del.C. §1703(1) [12 month programs for children with certain disabilities]; and 14 Del.C. §206(a) [presumption of Braille instruction for students who are blind], implemented by 14 DE Admin Code 925, §20.6 and 24.2.3 with no reference to "FAPE."

IV. SOLUTION

A. Amend the IEP regulation as follows:

24.2.7. In the case of any child with limited reading proficiency, consider the reading services, supports and evidenced based interventions as those relate to the child's IEP;

24.2.7.1. For a child who is not beginning to read by age seven, or who is beyond age seven and is not yet beginning to read, enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read. Eligibility for reading-based extended school year services shall be determined in accordance with 14 DE Admin Code §923.6.0.

B. Amend the ESY regulation as follows:

6.2 Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 DE Admin Code 925.20.0 through 925.24.0, that the services are necessary for the provision of FAPE to the child or are otherwise specifically authorized by statute.

Delete §§6.5.4 and 6.5.4.1 (reproduced above) and renumber §§6.5.5 and 6.5.6 as 6.5.4 and 6.5.5 respectively.

Insert a new §6.7 as follows:

6.7 Reading acquisition: Notwithstanding any contrary provision in this section, if a child is not beginning to read by age seven, or is beyond age seven and not yet beginning to read, the team shall presumptively include extended school year services in the IEP which incorporate evidence-based interventions that address the child's inability to read. The team may decline to include such extended school year services in the IEP only if the team provides a specific explanation in the IEP why such services are inappropriate.

6.7.1 For purposes of this subsection, a child is beginning to read if the child demonstrates phonological awareness and ability to use letter sound knowledge and decode unknown words.

Renumber §§6.7-6.11 as 6.8-6.12 respectively and add "14 Del.C. §3110" to "Authority".

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(5) "Involuntary patient" means a person admitted involuntarily to the custody of the hospital for observation, diagnosis, care and treatment.

(6) "Mentally ill person" means a person suffering from a mental disease or condition which requires such person to be observed and treated at a mental hospital for the person's own welfare and which both (i) renders such person unable to make responsible decisions with respect to the person's hospitalization, and (ii) poses a real and present threat, based upon manifest indications, that such person is likely to commit or suffer serious harm to that person's own self or others or to property if not given immediate hospital care and treatment.

(7) "Peace officer" means any public officer authorized by law to make arrests in a criminal case.

(8) "Psychiatrist" means:

a. A physician licensed to practice medicine in this State specializing in the field of psychiatry, or a physician employed by the Delaware Psychiatric Center, registered with the Medical Council of Delaware and certified by the Delaware Psychiatric Center Medical Director to the Medical Council of Delaware as being qualified in the diagnosis and treatment of mentally ill persons; or

* b. Any physician employed by the United States government within the State in the capacity of psychiatrist and certified by the Delaware Psychiatric Center Medical Director to the Medical Council of Delaware as qualified in the diagnosis and treatment of mentally ill persons.

(9) "Working day" means all days other than Saturday, Sunday and legal holidays; and "day" means a calendar day. (60 Del. Laws, c. 95, § 1; 62 Del. Laws, c. 300, § 1; 66 Del. Laws, c. 424, § 2; 68 Del. Laws, c. 309, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, §§ 1-4.)

Purpose of chapter. — The purpose of this chapter was to establish a procedure for compulsory confinement which satisfied the requirements of due process. *Delaware State Hosp. ex rel. Div. of Alcoholism, Drug Abuse & Mental Health v. Morris*, Del. Super. Ct., 541 A.2d 139 (1988).

"Mentally ill person" construed. — By reference to the definition of a "mentally ill person" in subdivision (1) of this section, the criteria in subsection (b) of § 403 of Title 11 means that such person is not likely to commit serious harm to others or to property. *In re Lewis*, Del. Supr., 403 A.2d 1115 (1979).

"Mentally ill person" and "insanity acquittee" distinguished. — Although the definition of a "mentally ill person" provided in subdivision (1) of this section appears broad enough to include insanity acquittees for purposes of potential future behavior, it fails to account for 1 important distinction based on past conduct, i.e., insanity acquittees have performed acts which, but for the existence of a mental disease or defect at the time of the acts, would otherwise have subjected them to crimi-

nal sanctions. *In re Lewis*, Del. Supr., 403 A.2d 1115 (1979).

Psychiatrist owes duty to persons other than patient regarding treatment and discharge of patients. — Based on the special relationship that exists between a psychiatrist and a patient, a psychiatrist owes an affirmative duty to persons other than the patient to exercise reasonable care in the treatment and discharge of psychiatric patients; reasonable care is that degree of care, skill, and diligence which a reasonably prudent psychiatrist engaged in a similar practice and in a similar community would ordinarily have exercised in like circumstances. *Naidu v. Laird*, Del. Supr., 539 A.2d 1064 (1988).

Substantial likelihood of danger to patient established. — Patient's history of walking away from the institution in a bewildered condition in an area of high traffic density established the substantial likelihood of danger to patient. *Delaware State Hosp. ex rel. Div. of Alcoholism, Drug Abuse & Mental Health v. Morris*, Del. Super. Ct., 541 A.2d 139 (1988).

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Governor's Blog

The Official Blog of Delaware's Governor Jack Markell

Posts Tagged 'financial empowerment'

America's Latest Financial Crisis? It's Incredibly Personal.

Friday, September 20th, 2013

We have not done nearly enough to give Americans control over their financial destinies. It's time to start educating Americans about personal finance.

Many of today's economic proposals from cities, states, and the White House focus on growing the middle class, and for good reason. But we are not paying enough attention to one of the major barriers to joining the middle class: personal finance know-how.

Helping people understand their finances is absolutely essential in today's economy. In an era when wages are pressured by global competition and technological change, having a command of personal finance basics can make all the difference to America's working families. All Americans need to feel comfortable planning for retirement, managing their rent payments, and keeping up with their student loans.

We have not done nearly enough to give Americans control over their financial destinies. Indeed, half of all Americans say they could not pull together \$2,000 in 30 days to fix a car or pay an unanticipated medical bill, according to [a previous study](#) by the National Bureau of Economic Research. When faced with such events, millions fall into the clutches of predatory financial institutions, trapped by exorbitant rates charged by payday lenders or unscrupulous creditors. Too many families find themselves locked in a debt cycle they were never taught to avoid. Emotional stress, depression, and divorce too often follow. The [most recent Census Bureau data](#) shows that half of all U.S. households earn less than \$52,000 a year. These families often face unexpected expenses that can quickly turn into crises.

In a national [Harris Interactive survey](#) released this week, nearly a third of U.S. adults admit their lack of knowledge has led to poor financial decisions and more than 40% acknowledge they've missed out on good financial opportunities as a result.

How do we address these problems? We need to provide financial education and support. The private and public sector — businesses, governments, educators and non-profits — must work together to achieve this goal.

To be sure, knowing how to put together a personal budget or how a credit score works won't raise a person's income. But it can make a paycheck go further and show families how to avoid decisions that cause long-term harm. While some of today's financial stressors will persist until the economy improves, a better grasp of the financial basics can make a huge difference to millions right now.

In Delaware, we have partnered with United Way of Delaware since 2011 to offer citizens of our state access to personal financial coaching. That program, "Stand By Me," provides information about non-predatory financial products, as well as help with financial issues related to post-secondary education, including financial aid and student loan debt.

Staff is trained to be objective, non-judgmental, and confidential. Our businesses offer financial coaching onsite as an employee benefit and our community college offers it to their students. We're testing a new curriculum for K-12 students as well. Our coaches are not simply number crunchers — they help people plan and provide moral support to carry out their goals.

Of the almost 3,000 Delawareans who have worked with a coach since 2011, 82% reviewed their credit for the first time, 53% worked on household budgets, and added savings to their budget, 42% took action to improve their credit. But ours is just one promising approach and we need more help from every corner, including the private sector.

In Delaware, Bank of America, JPMorgan Chase, Citi, and Wells Fargo have supported the "Stand By Me" personal financial empowerment program. And beyond Delaware, Bank of America is focused on making complex financial concepts easy to understand for people of all ages and recently joined with K-12 education innovator Khan Academy to create free web-based financial lessons accessible to everyone at bettermoneyhabits.com. Khan Academy has become the face of K-12 online education in America, teaching more than six million students every month.

While many financial institutions and other companies have taken action to educate their customers about financial literacy, government and business leaders must do more. Delaware is home to many of this country's leading financial institutions, and I'll be reaching out to leaders of these companies to bring their best ideas to the table.

I look forward to enlisting state, local, and federal level officials and private sector leaders. Together, we must empower Americans to be effective stewards of their own economic destinies.

Government and business leaders must stop thinking of financial literacy as courses and brochures and start thinking about it as an essential service for the success of their employees and constituents. Delaware's "Stand By Me" partnership has shown that this investment can be affordable through public-private partnerships and collaboration. Costs can be shared. And just as society saves money when people receive health services that prevent them from getting sick in the first place, it will be less expensive if we help individuals and families avoid personal financial crises.

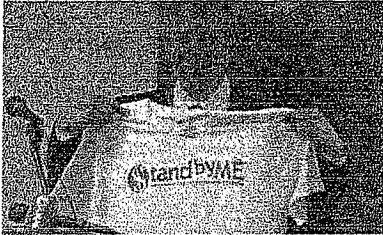
This blog was originally published in [Fortune Magazine](#).

Tags: [financial education](#), [financial empowerment](#), [quality of life](#), [responsible government](#)
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Stand By Me: Helping Delawareans Achieve Financial Goals

Wednesday, May 18th, 2011

As we keep our focus on putting Delawareans to work and improving our state's future, we're working to provide tools that can enable individuals to improve **financial responsibility** and save up for **college**, to buy a **new home** or achieve other **financial goals**.



I'm particularly excited about a new effort called Stand By Me DE—the Delaware Financial Empowerment partnership. This brings together state employees, the United Way, major banks, non-profits—dozens of groups who are volunteering their time, resources and talents to make a real difference in our community.

(Interested in joining with us to volunteer?)

Here are **some of the services** offered through Stand By Me available to **all Delawareans**:

- **One-on-one coaching**, sticking with you as you work towards goals
- Help with creating a **budget** and understanding **credit**
- Advice for **college** and **financial aid** applications
- Access to **consumer loans** and **savings accounts**
- **Referrals for additional resources** if needed



We've been hearing some tremendously positive

feedback about Stand By Me.

One participant told us: "This is exactly what I need—a place that does not tell me what I have to do, but **lets me tell the coach what I want to work on** and what I think I need to do first. It's great to have **someone to listen** to my concerns and help me sort out what I can do next."

At the Stand By Me **website**, you can set up a meeting with a coach, find a wide assortment of resources designed to help manage your finances, or volunteer to help grow the program. Initially, sessions will be held at the first Stand By Me **Financial Empowerment Center** in the Hudson State Service Center in Newark, with these efforts later spreading to public agencies, businesses, and non-profit organizations around the state—**free help will not be far away**.

Financial literacy and responsibility are **keys to economic growth and personal stability**, and we hope you'll take advantage of the resources that Stand By Me has to offer.

Visit standbyme.org to learn how they help you or sign up to volunteer!

Tags: [budget](#), [credit cards](#), [Delaware](#), [finance](#), [financial empowerment](#), [financial responsibility](#), [fiscal responsibility](#), [Governor](#), [Jack Markell](#), [loans](#), [United Way](#), [volunteers](#)

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Jack A. Markell, Governor

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SERVICES**INFORMATION****DHSS Press Release**Date: May 22, 2014
DHSS-5-2014

Rita Landgraf, Secretary
Jill Fredel, Director of Communications
302-255-9047, Pager 302-357-7498
Email: jill.fredel@state.de.us

\$TAND BY ME SET TO INCREASE ECONOMIC SECURITY OF HISPANIC IMMIGRANTS

Wilmington, DE - On June 5 at 10 a.m. at the Latin American Community Center in Wilmington, community leaders will launch Stand By Me Hispano, a program to increase the economic security of Hispanic immigrants and residents in the state of Delaware. Stand By Me Hispano is a new resource designed to help Hispanics in Delaware understand more about their finances and achieve their financial dreams.

Stand By Me, the state's financial empowerment program, is a coalition of community partners, led by the State of Delaware and United Way of Delaware. Through stand By Me Hispano, the program is now offering personal financial coaching and educational workshops about money in Spanish to ensure that each member of the Hispanic community has access to the information and support they need to set and achieve personal financial goals. The program offers one-on-one personal financial coaching in convenient locations in communities, at employers, and educational institutions across the state.

In addition to the coaching that helps individuals deal with personal financial challenges, the program offers workshops on topics such as budgeting and building credit. The program aims to address the unique challenges of immigrants, such as sharing living costs with other families, sending money home, navigating the financial mainstream in America, and avoiding scams and predatory financial services. Workshops will be offered in English and/or Spanish in partnership with the Delaware Department of Adult Education's ESL classes.

Stand By Me Hispano is partnering with the Delaware Hispanic Commission, the Latin American Community Center, La Esperanza, and the Department of Education's ESL programs. TD Bank provided support through its foundation to fund program operations.

About Stand By Me Since it started three years ago, Stand By Me has helped more than 12,000 Delawareans with this FREE confidential service. The program is a partnership of the State and United Way of Delaware, and it is a priority of Governor Jack Markell, who believes that it is his responsibility to help all Delaware residents to achieve financial stability. Stand By Me also has sub-programs that reach out to the 50+ population, as well as early care and education providers and people with disabilities, providing financial coaching specific to their concerns. More information available at standbyme.org.

Contact:
Mary Dupont, State of Delaware
(302) 255-9245

Patrick McDevitt, United Way of Delaware
(302) 573-3731

Delaware Health and Social Services is committed to improving the quality of the lives of Delaware's citizens by promoting health and well-being, fostering self-sufficiency, and protecting vulnerable populations.

Last Updated: Thursday May 22 2014

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Bulletproof whiteboards will protect students, teachers

DELAWARE VOICE
SEN. NICOLE POORE



Protecting our children has always been foremost in our minds as legislators and parents and, since the Sandy Hook school shootings in 2012, we in the General Assembly and Gov. Jack Markell's administration have been studying the issue of school safety with a renewed sense of urgency.

When I had an opportunity to meet personally with some of the Sandy Hook parents in 2013, I got a renewed interest in finding a tool that would empower our teachers without scaring our students.

While doing research to find an approach that might work here in Delaware, I learned about Hardwire, Inc., and its bulletproof whiteboards. After researching, I thought the idea was good enough that I approached the company with the idea of doing a pilot project in several of our schools.

The whiteboards, which have arm loops at the back, are used in a fashion similar to the bulletproof shields that police use. They are made of the same kinds of material used to make body and light vehicular armor for the armed forces, and tests with a variety of firearms show they work.

Think of the whiteboards as a tool like a fire extinguisher, a non-violent option that teachers can deploy to protect their classrooms if they should

ever come under attack.

A teacher can use the board to close on a shooter and buy time, which is invaluable in what law enforcement officials call "active shooter situations," giving police, some of whom are assigned to schools, a chance to respond.

It's a pilot program we all fervently pray never has to be put to the test.

This pilot program has cost Delaware taxpayers nothing. House Majority Leader Valerie Longhurst and I were able to reach out to the business community and, through a partnership with Delmarva Power, the Delaware City Refinery, the DuPont Co. and Monroe Energy, we have been able to purchase 140 of these whiteboards for use as a pilot project at Gunning Bedford

Middle School and Pleasantville Elementary School. These public-spirited private organizations clearly see value in their employees being able to send their children to school with the peace of mind that they will have at least some degree of protection.

The whiteboards give teachers a chance to respond to, and attempt to contain, a threatening situation in a non-lethal fashion that could save the lives of students and teachers alike. That, in my opinion, makes it a good investment and one we should explore deploying in Delaware schools on a wider basis.

Sen. Nicole Poore is a Democrat representing the 12th Senatorial District, which includes New Castle and Delaware City.



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

DATE: June 19, 2014

TO: ~~Members of the Delaware State Senate~~

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

RE: H.B. 347 (School Safety Construction & Renovations Features)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 347 with H.A. 1, which would require newly constructed or renovated school buildings to contain certain design features, including bulletproof glass, certain door locks, and an intruder alert system. It would also require the OMB Facilities Management Section to ensure Dept. Of Homeland Security's review of such sites to address compliance with "Crime Prevention through Environmental Design (CPTED) contemporary practices."

SCPD originally had one principal concern with the legislation. Adoption of safety features can create barriers and result in violations of the ADA. In the past, Council believes at least one public school installed safety features which were later uninstalled due to non-conformity with accessibility standards. SCPD therefore recommended an amendment to add the following sentence at the end of line 12: "Such review shall be coordinated with the Architectural Accessibility Board established by Chapter 73 of this title to ensure compatibility of safety and architectural accessibility features." The AAB is already charged with reviewing school construction and renovations to ensure ADA compliance. However, this may not always occur. In addition, if the "safety" review occurred after the AAB review, changes could supersede and contravene the AAB-approved accessibility features. After consultation with the AAB, the SCPD shared the proposed amendment with the prime sponsor and H.A. 1 addresses this issue.

SCPD endorses H.B. 347 with H.A. 1.

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

cc: Delaware State House of Representatives
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 347 school safety construction 6-14



SPONSOR: Rep. Jaques

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

HOUSE BILL NO. 347

- 1 AMEND House Bill No. 347 at line 12 by striking the phrase "as well as the requirements of §2306 of Title 14".
- 2 FURTHER AMEND House Bill No. 347 by inserting at the end of line 12 the following:
- 3 "Such review shall be coordinated with the Architectural Accessibility Board established by Chapter 73 of this title to
- 4 ensure compatibility of safety and architectural accessibility features.".
- 5 FURTHER AMEND House Bill No. 347 by striking Section 2 in its entirety.

SYNOPSIS

This amendment requires the new school construction review by the Department of Safety and Homeland Security to be coordinated with the Architectural Accessibility Board. Further, the amendment removes the itemized requirements for bulletproof glass, doors with key locks on both sides, bullet resistant white boards, and panic buttons.

DELAWARE HOUSE DEMOCRATS

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Jaques Bills Would Improve School Safety for Current and Future Public Schools

DOVER – Legislation aimed at making Delaware's public schools safer by requiring new door locks for all schools and mandating various safety features for new public schools was introduced Wednesday.



Sponsored by Rep. Earl G. Jaques, [House Bill 14](http://legis.delaware.gov/LIS/LIS148.nsf/vwLegislation/HB+14?Opendocument) (<http://legis.delaware.gov/LIS/LIS148.nsf/vwLegislation/HB+14?Opendocument>) would require that any door to a classroom must have a lock that can be locked from either side of the door. A previous version of the bill stalled in committee last session. [House Bill 13](http://legis.delaware.gov/LIS/LIS148.nsf/vwLegislation/HB+13?Opendocument) (<http://legis.delaware.gov/LIS/LIS148.nsf/vwLegislation/HB+13?Opendocument>) would require all new school construction or major renovation to include the following features: an intruder alarm, bulletproof glass in entrance areas and interior doors and windows, and doors lockable with keys on both sides.

"The issue of school safety is one we cannot forget. While providing a quality education is our top priority for schoolchildren, we also have to make sure they are safe in their learning environment," said Rep. Jaques, D-Glasgow. "These measures are not cure-alls, but they will help provide just a little more safety, security and peace of mind for teachers, students and their parents."

HB 13 also would require all new school construction plans to be submitted to the Office of Management and Budget's Facilities Management Section for compliance with these requirements. A previous version of this bill cleared the House unanimously last year.

Both bills have been assigned to the House Education Committee, which Rep. Jaques chairs.

###

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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)

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)

Office of Controller General
March 08, 2013
MJ:MJ
0271470003

(Amounts are shown in whole dollars)