EST 1946 CLASI DELAWARE COMMUNITY LEGAL AID SOCIETY, INC.

DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Legislative & Regulatory Initiatives

Date: March 7, 2016

Consistent with the requests of the SCPD and GACEC, I am providing analyses of eleven (11) legislative and regulatory initiatives. Given time constraints, the analyses should be considered preliminary and non-exhaustive.

1. DPH Final Home Health Agency Aide Only Licensure Reg. [19 DE Reg. 847 (3/1/16)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2016. A copy of the November 24, 2016 SCPD letter is attached for facilitated reference. The Division fo Public Health is now adopting a final regulation with some technical amendments prompted by the commentary.

The Councils questioned a requirement that an agency "shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent." The Councils noted that the limitation unnecessarily limited consumer choice of providers and violated the Administrative Code Style Manual by including a substantive standard in a definition.

The Division declined to remove the limitation based on the rationale that agencies "need to be in close enough proximity to their patients and employees/contractors to provide adequate supervision." At 848. The Division did effect revisions to remove the limitation from a definition to conform to the Administrative Code Style Manual.

Since the regulation is final, and the Division responded to the Council's concern, no further action is warranted.

2. DPH Final Skilled Home Health Agency Licensure Reg. [19 DE Reg. 849 (3/1/16)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2016. A copy of the November 24, 2016 SCPD letter is attached for facilitated reference. The Division fo Public Health is now adopting a final regulation with some technical amendments prompted by the commentary.

The Councils questioned a requirement that an agency "shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent." The Councils noted that the limitation unnecessarily limited consumer choice of providers and violated the Administrative Code Style Manual by including a substantive standard in a definition.

The Division declined to remove the limitation based on the rationale that agencies "need to be in close enough proximity to their patients and employees/contractors to provide adequate supervision." At 848. The Division did effect revisions to remove the limitation from a definition to conform to the Administrative Code Style Manual.

Since the regulation is final, and the Division responded to the Council's concern, no further action is warranted.

3. DPH Final Personal Assistance Services Regulation [19 DE Reg. 852 (3/1/16)

The SCPD and GACEC commented on the proposed version of this regulation in November, 2016. Copies of the November 24 and November 30 SCPD and GACEC letters are attached for facilitated reference. The Division of Public Health is now adopting a final regulation with some technical amendments prompted by the commentary.

First, the Councils recommended a grammatical correction. The Division does not mention the comment and retained the problematic sentence. Parenthetically, the sentence violates §4.2 of the Administrative Code Style Manual which recites as follows:

> Gender
>
> Avoid using pronouns that include gender. Use the noun which the pronoun would replace. Avoid use of "his/her", "he/she", and "(s)he". The general use of the masculine gender is addressed in 1 Del.C. §304 of the Delaware Code.

Second, the Councils questioned a requirement that an agency "shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent." The Councils noted that the limitation unnecessarily limited consumer choice of providers and violated the Administrative Code Style Manual by including a substantive standard in a definition. The Division declined to remove the limitation based on the rationale that "skilled home health agencies (sic personal assistance services agencies) need to be in close enough proximity to their patients and employees/contractors to provide adequate supervision." At 852. The Division did effect revisions to remove the limitation from a definition to conform to the Administrative Code Style Manual.

Third, the Councils questioned a categorical ban on toenail care. The Division does not mention the comment.

Fourth, the Council objected to a ban on the use of "healthcare" by personal assistance agencies in their title or advertising. The Councils noted that personal care workers are explicitly authorized to perform "healthcare acts" by statute. The Division does not mention the comment.

DPH recites that the regulations "have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS. At 853. The Councils may wish to consider sharing a concern with the DHSS Secretary and Attorney General since staff may benefit from training in both the Administrative Procedures Act and Administrative Code Style Manual. The APA requires agencies to include a summary of information submitted and findings based on the information submitted. See 29 Del.C. §10118. Substantive comments from multiple state agencies should not simply be ignored.

4. DFS Prop. Criminal History Record Checks for Child Care Person Reg. [19 DE Reg. 821 (3.1.16)]

The Division of Family Services proposes to repeal its current criminal background check standards for persons involved in child care and substitute a new set of standards.

In general, the standards are comprehensive and prescriptive. I have only one significant concern. The new regulation applies its standards to an "employee" which is defined as including paid personnel, volunteers, persons with direct access to children, adult household members of child care homes, and applicants to become foster care providers, respite providers, adoptive parents, and their household members. See §2.0, definition of "employee". While this may be the approach adopted in the statute [Title 31 Del.C. §309(b)(9)], there are several problems with this approach.

First, while the definition of "employee" covers this long list of persons, many regulatory sections refer to employees as distinct from volunteers, foster parents, etc. Compare, e.g., §2.0, definition of "child-serving entity", §4.6.1.1, §4.7.1, and §5.1.1. If the definition of "employee" covers volunteers, foster parents, etc., it makes no sense to have separate references.

Second, the Administrative Code Style Manual provides the following guidance:

> 7.2. General Guidelines
>
> In general, keep the language of the text as clear and simple as possible. When drafting, remember that documents should be written so that the general public can understand them. Avoid using language that only individuals with specialized knowledge can understand. Consistency of expression, logical arrangement, and adherence to accepted usage aid readability.
> Strive for consistency of terminology, expression, and arrangement. Avoid using the same word or term in more than one sense. Conversely, avoid using different words to denote the same idea. ...

In contrast, the regulation sometimes refers to "employment" as distinct from volunteering or serving as a respite, foster parent, or adoptive parent. Compare §§4.2, 4.4, 4.6.1.1, 4.7.1, 7.1, 7.1.1.1.

Third, encompassing many "non-employees" within the definition of "employee" is counterintuitive and confusing. It's akin to having a definition of "red" and defining "red" as including blue, green, and yellow. It's "odd" to characterize volunteers and household members of foster, respite, and adoptive homes as "employees".

Fourth, the title to the regulation still refers to "child care persons" which was the term used in the prior regulation (§4.1). This term is preferable to "employee" since a variety of persons can be listed under this definition without the term being counterintuitive and confusing.

For the above reasons, the Division may wish to revert to using the current regulatory term, "child care person", rather than "employee" and otherwise revising the regulation for consistency.

The Councils may wish to consider sharing the above observations with the Division.

5. DFS Prop. Child/Health Care, Public School & Camp Registry Ck. Reg. [19 DE Reg. 822 (3/1/16)]

The Division of Family Services proposes to amend it child protection registry standards to conform to enactment of S.B. No. 144 in the 148th General Assembly with an effective date of April, 2016.

I have the following observations.

First, the regulation appears to omit provisions related to student teachers implementing Title 31 Del.C. §309(e)(1). That statute contemplates submission of registry information to the student teacher's college/university while the regulation only envisions submission of the information to an employer (which does not include a college/university).

Second, §6.4 suggests that the employer is only "requested" to provide a copy of the results to an applicant for employment. The statute envisions DSCY&F providing the summary to the individual. See, e.g., Title 31 Del.C. §§309(e)(1)(a) and 309(e)(1)(c). Cf. Title 31 Del.C. §309(e)(2) and (3) [DSCY&F shares determination with individual].

Third, in §3.0, the definition of "person seeking employment" and §4.0 are inconsistent. The former includes volunteers and contractors within the scope of "person seeking employment" while the latter establishes a separate subpart (§4.2) for such persons.

The Councils may wish to consider sharing the above observations with the Division.

6. DOE Proposed District & School Emergency Preparedness Policy Reg. [19 DE Reg. 810 (3/1/16)]

The Department of Education proposes to repeal this regulation in its entirety based on the following rationale:

> This regulation is being repealed in order to eliminate confusion for districts and charter schools in terms of the policy to follow with regards to emergency preparedness. These entities are to comply with the 29 Del.C. §8237, otherwise known as the Omnibus School Safety Act (OSSA), and therefore this regulation is no longer needed.

At 810.

I have the following observations.

The attached Omnibus School Safety Act makes the Department of Safety and Homeland Security primarily responsible for emergency preparedness in public schools. The Act includes the following provision:

> (c) The Department ...shall have the overall responsibility for the implementation of the act. In connection therewith, the Department's duties and responsibilities shall include but not be limited to :
>
> > ...(5) In consultation with the Department of Education, adopting such rules and regulations as shall be necessary or desirable to implement the provisions of the act;...

The Administrative Code reveals no Department of Safety & Homeland Security regulations implementing the law. Literally, regulations are optional under the statute.

The Department is also responsible for submission of a progress report "to the General Assembly by May 31 of each year until such time that implementation of the program is completed and it is fully operational." See Title 29 Del.C. §8237(g).

The Councils may wish to comment that repeal of the DOE regulation appears warranted given the statutory responsibility of the Dept. Of Safety & Homeland Security under the OSSA. However, the Councils may wish to inquire about the status of any regulations authorized to be developed "in consultation with the Department of Education" under Title 29 Del.C. §8237(c)(5). Moreover, since the SCPD is part of the Dept. of Safety & Homeland Security, the SCPD may wish to solicit the latest progress report and an update on the status of implementation of the OSSA.

7. DOE Proposed Emergency Certificate Regulation [19 DE Reg. 812 (3/1/16)]

The Department of Education proposes to revise its educator emergency certificate regulation based on the following rationale:

> This regulation is being amended to provide current formatting and to eliminate unnecessary language, as well as to allow the Department of Education the ability to process some Emergency Certificates automatically for those enrolled in an approved Alternate Routes program.

At 812.

I have the following observations.

First, an educator is generally approved for a 1-year emergency certificate (§3.1.1) which can be extended for a second year (§3.1.3) and third year based on exigent circumstances (§7.5). The intent of the regulation is to offer the educator some time to achieve a standard certificate (§7.2). However, the following limitation is being stricken:

> ~~3.10. An Emergency Certificate shall not be issued more than once to an individual for a specific Standard Certificate.~~

This results in ambiguity. Consider the following:

A. If an educator has had an emergency certificate (for 1-3 years) without achieving a standard certificate, could an application be subsequently filed for the educator to obtain a new emergency certificate? This would not be a renewal of the original application but a new application. In theory, an educator could be approved for a series of emergency certificates with some hiatus between applications. In some cases the educator might have good reason for placing efforts to achieve a standard certificate on hold for a few years (e.g. battling cancer; sequential pregnancies). For clarity, the regulation should address whether there are any limitations on multiple applications for an emergency certificate.

B. If an educator has an initial emergency certificate, could an application be filed for a new emergency certificate instead of a renewal? For example, if an educator changed employer, the new employer might prefer the prospect of having an approved educator for 2-3 years rather than seeking a transfer of the certificate correlated with 1-2 years of maximum extension. Alternatively, if an educator has an initial emergency certificate, but has made zero progress towards qualifying for a standard certificate, the employer could not obtain an extension (§6.2.2.1; §8.0). Could that employer or a new employer apply for a new initial emergency certificate?

Second, the current regulation requires the employer to develop a written "plan" outlining the expected steps towards achieving a standard certificate. See current §§3.7.1.3, 4.1.4, and 5.1.2 The requirement of a written plan is being deleted. The new standard (§4.1.4) is somewhat amorphous. The DOE may wish to reconsider the deletion since it provides a clear, single source of reference for the employer, educator, and DOE.

The Councils may wish to share the above observations with the DOE and SBE.

8. DOE Prop. Post Secondary Education Regulation [19 DE Reg. 809 (3/1/16)]

The Department of Education proposes to adopt several revisions to its standards covering post secondary institutions and degree granting institutions of higher education. The standards are comprehensive and prescriptive.

I have the following observations.

First, in §1.0, definition of "Recognized Approval", the term should ostensibly be "Recognized Applicant". Compare §§5.3, 6.1, 11.1.2.

Second, the regulation does not address the separate standards for degree-granting law schools appearing in Title 8 Del.C. §125.

Third, §2.3 requires institutions incorporating in Delaware to "provide documentation of official Department approval with any certificate of incorporation filed with the Secretary of State that includes the power to confer academic or honorary Degrees." The content of this section could be enhanced.

A. It would be preferable to require institutions with only "Recognized Applicant" status (which cannot confer degrees) to include some acknowledgment of its lack of authority in its certificate of incorporation. Such institutions can incorporate (§6.1.1) in Delaware and there is potential for misleading the public about its authority to confer degrees if the certificate of incorporation is silent. It would be preferable to amend §6.1. to require the institution to include an acknowledgment of lack of degree-granting authority in its certificate of incorporation.

B. It may be preferable to not simply refer to "power to confer academic or honorary Degrees" but to include the type of approval granted (e.g. Provisional or Full) since institutions are expected to amend certificates based on changes in status. See §§6.2.3 and 6.3.3.

Fourth, the Department may wish to reconsider whether to require that applications be filed in both "hard and electronic" versions per §5.1. There may be some justification for requiring submission in both forms but the DOE may wish to reconsider whether to require duplicate submission in the regulation.

Fifth, §6.1 requires students to be notified of the institution's lack of authority to confer degrees. The regulation only requires the notice "near the end of the first school year with classes" for associates degrees and "near the end of the second school year with classes" for 4-year degrees. It would be preferable to also require the notice to students at the time of application and/or admission. The DOE should also consider requiring notice to students if degree "approval status is terminated" (§§6.1.8.1.5, 6.2.8.2, and 6.3.6.2).

Sixth, in §6.1.8.1.4 and in §6.2.3, there is a plural pronoun ("their") with a singular antecedent ("institution"). Substitute "its" for "their".

Seventh, there are multiple sections requiring an institution to report "changes" since its most recent approval with some examples of changes provided. See §§6.2.6.1.6, 6.3.5.3, and 6.4.4.3. These sections could be improved by explicitly requiring notice of changes in accreditation given its importance. See §§4.1 and 4.2.

Eighth, §6.2.7.4 establishes the following standard:

> If a Provisional Approval Institution does not receive Full Approval within four years after the first graduating class, the Department may withdraw all approval and inform the Corporation Division of Delaware that the Institution is no longer authorized to confer Degrees.

It's unclear what the Division of Corporations would do with the information. It may not have the authority to unilaterally amend the institution's certificate of incorporation. The DOE may wish to consult the Division to assess whether this section merits revision.

Ninth, Title 8 Del.C. §125 contemplates the inclusion of a DOE endorsement on the certificate of incorporation and amendments of a degree granting institution. Since statuses can change based on several factors, the DOE could consider including a provision in its "endorsement" referring to the published list required in §9.0 of the regulation for current status.

Tenth, in §13.0, I recommend deletion of the word "or" between "action" and "permitted". The DOE could also consider deleting "or required" since it is superfluous.

9. S.B. No. 180 (Student "Age of Majority" Bill)

This legislation was introduced on January 21, 2016. It passed the Senate on January 27, 2016. As of March 7, it awaited action by the House Education Committee.

As background, a federal regulation (34 C.F.R. 300.520) requires states to address decision-making for students with disabilities reaching adulthood who may lack capacity to exercise special education rights:

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

This legislation implements the federal regulation by requiring the State Department of Education to adopt regulations consistent with minimum standards in the bill (lines 22-24). If it appears a child turning 18 may lack capacity, but has no court-appointed guardian, the IEP team is authorized to make the determination of capacity (lines 27-32). In such cases, a school psychologist must participate in the IEP team decision (lines 33-36). The school psychologist must have interviewed the child AND either conducted an evaluation or reviewed evaluation results from another school psychologist. Both the child and parent are invited to participate in the IEP team meeting (lines 37-38). If the child is determined to lack capacity, the IEP team appoints an individual to serve as the educational decision-maker in the following descending order of priority: 1) willing and available biological or adoptive parent; and 2) willing and available relative (lines 43-46). If neither is available, the team issues a referral for appointment of an educational surrogate parent under existing law (lines 47-48).

The legislation is an initiative of the Governor's Advisory Council for Exceptional Citizens and Disabilities Law Program. It has been endorsed by the Department of Education. The Department's regulations would be developed in consultation with the Governor's Advisory Council for Exceptional Citizens.

The Councils may wish to confirm their endorsement of the legislation and collect/communicate endorsements of other organizations.

10. Draft Nurse Workplace Violence Protection Legislation

On January 30, a State Representative shared the attached set of proposed Delaware Code revisions prompted by the attached December 14, 2015 letter from the Delaware Nurses Association.

As background, the current Code contains a list of contexts in which an assault qualifies as Assault in the second degree, a class D felony. See 11 Del.C. §612. In pertinent part, anyone intentionally causing physical injury to a person (including a nurse) rendering emergency care is guilty of a class D felony. See 11 Del.C. §612(a)(4). Consistent with the letter from the Delaware Nurses Association, it would prefer to expand the scope of that law so an assault on a nurse providing non-emergency care would minimally qualify as a class D felony.

Legislation (H.B. No. 214) to achieve this result was introduced on June 15, 2015. As of March 1, 2016, it remained in the House Public Safety & Homeland Security Committee.

The draft legislation is broader than H.B. No. 214 as follows:

A. It is not limited to nurses. Anyone causing physical injury to a list of health care workers and "any other person while such person is rendering care" would be guilty of a class D felony. See proposed amendments to 11 Del.C. §612.

B. Under current law, anyone causing "serious physical injury" to a list of health care workers and any other person while such person is rendering emergency care is guilty of a class B felony. The draft legislation would expand the scope of the crime to include non-emergency care contexts. See proposed amendments to 11 Del.C. §613.

The draft bill also proposes some exceptions based on perpetrator impairments. See proposed subparts (c) and (d).

I have the following observations.

First, the bill is manifestly unnecessary and authorizes penalties disproportionate to the offense. The Delaware Nurses Association letter refers to surveys documenting verbal abuse, including yelling and cursing. This bill will not address that concern. The letter also refers to nurses being subject to "grabbing" and "scratching". If someone assaults a nurse while causing no serious injury (e.g. via grabbing or scratching) the perpetrator is punishable for third degree assault, a class A misdemeanor, punishable by a year in prison and a $2,300 fine. See 11 Del.C. §§611 and 4206(a). That is ostensibly a fair punishment for an assault without serious injury. Under the bill, the same conduct ("grabbing" or "scratching") would be a class D felony punishable by 8 years in prison. See 11 Del.C. §4205(b). This would appear to be an excessive penalty for an assault with no serious injury. Moreover, under existing law, if anyone assaults someone resulting in serious physical injury, the crime is a class D felony punishable by 8 years in prison. See 11 Del.C. §612(a)(1). Under the bill, such an offense against an "on duty" nurse would result in more than triple the penalty, 25 years in prison. See proposed 11 Del.C. §§613 and 4205(b)(2).

Second, the "laundry list" of contexts in which penalties are heightened is already lengthy and arguably overbroad. For example, an assault against any state employee results in a heightened penalty. See 11 Del.C. §§612(a)(8). Conduct amounting to a misdemeanor (punishable by one year in prison) becomes a felony (punishable by 8 years in prison) simply because the target is a state employee. Query whether it makes sense to impose a penalty not double, triple, or quadruple - but 8 times as severe, simply based on a benign status with no serious physical injury. Conceptually, providing an enhanced penalty for victims with certain statuses (e.g. pregnant women) is more defensible. Providing special status to "any other person while such person is rendering care" is not in the same class as pregnant women. The latter standard (created by the bill) is so broad it would cover any parent, daycare worker, babysitter, home health aide, caretaker, group home worker, adult day program worker, social worker, or counselor.

Third, while the impetus for the bill is surveys on nurses, the bill expands the application of enhanced penalties to a large class of individuals with no identified data/justification. See proposed §§612(a)(4) and 613(a)(6). This is much more expansive than the approach taken in H.B. No. 214 (lines 14-18).

Fourth, I am dubious that there would be any practical deterrent effect if the legislation were enacted. Query whether assaultive patients will deliberate and gauge their conduct based on whether an assault is a misdemeanor versus a felony under the Delaware Code.

Fifth, the bill could easily result in prosecution of patients with compromised capacity at the time of the alleged crime. For example, individuals with urinary tract infections may display symptoms akin to mental illness. Individuals with an intense fear of needles may defensively strike out at a nurse attempting to perform an injection. An elderly patient may strike out defensively at a nurse attempting to impose wrist or mechanical restraints on the patient to prevent the patient from removing tubes or aggravating wounds. Medications or a high fever may compromise executive functioning and self-control. A patient who does not speak English may defensively try to block an injection or push a nurse away out of a lack of understanding. A patient may experience involuntary movements or seizures which a nurse could misinterpret as voluntary acts of aggression. A patient with an undiagnosed TBI may strike out as a function of brain injury. The "unintended consequence" of the bill may be to unnecessarily "criminalize" a large number of vulnerable patients.

Sixth, the proposed exceptions in Subsections (c) and (d), while well intentioned, would not cover language deficits, medical conditions such as UTIs, seizures, etc. Moreover, it may be impossible for patients to prove that they had an undiagnosed UTI or TBI, or prove that they had a seizure. Limiting consideration of drug effects to "self-administered" drugs, to the exclusion of nurse-administered drugs, is also unduly limiting.

The Councils may wish to consider sharing the above observations and concerns with the referring legislator.

11. Draft State Use Legislation

The Division for the Visually Impaired shared the attached proposed Delaware Code revisions with the SCPD on February 9, 2016. It revises the State Use Law codified at Title 16 Del.C. Ch. 96.

I have the following observations.

First, the description in the enactment section refers to "blind and other severely handicapped individuals". This violates 29 Del.C. §608 and the reference is unnecessary.

Second, on p. 1, line 18, there is a definition of "blind". Since the term "blind" is not used in the balance of the chapter (with exception of reference to "Delaware Industries for the Blind" on p. 7), there should be no definition of "blind". There should be a definition of "visual impairments".

Third, there are multiple references to "and/or" (p. 1, line 23; p. 2, line 7) which the 2015 Delaware Legislative Drafting Manual refers to as a "verbal monstrosity" (pp. ix and 86).

Fourth, the definition of "Central Nonprofit Agency" (p. 1, line 21) is 77 words long and should be simplified.

Fifth, the reference to "implemented" on p. 2, line 1, should be "implementing".

Sixth, in the definitions section, references should preferably be consistent. The drafters sometimes say "shall include", sometimes say "is", and sometimes say "means". The drafters ay wish to review the 2015 Delaware Legislative Drafting Manual, Rule 26.

Seventh, the definition of "Commission for Statewide Contracts ....Disabilities" (p. 2, line 4) is "backwards". It should read "Commission" means the "Commission....Disabilities". The reference to "for purposes of this chapter" is redundant. See p. 1, line 14.

Eighth, the sentence describing the DelARF mission on p. 2, lines10-13 should be deleted. It does not belong in a definition. The reference to "or any succeeding name of this entity" is awkward. Alternate language should be adopted.

Ninth, defining "disability" per the ADA on p. 2, line 14, should be reconsidered since it would include individuals "regarded" as having a disability or with a history of disability. I infer the chapter is intended to benefit individuals with actual significant impairments. Compare p. 3, lines 7-9.

Tenth, it would be preferable to define covered public office buildings (and exclusions) in one place. There are standards on p. 2, lines 18-22 as well as on p. 7, lines 26-27.

Eleventh, the term "means" is omitted on p. 3, line 12. Rather than referring to the "Commission...Disabilities" the reference should simply be to "Commission".

Twelfth, it may be unnecessary to refer to "Commission....Disabilities" rather than simply "Commission" on p. 3, lines 18-19.

Thirteenth, at a minimum, the reference to "shall be" on p. 4, line 9, is grammatically incorrect and does not match the other items in the series.

Fourteenth, it would be preferable to use a consistent term for "chair/chairperson" on p. 4, lines 9 and 23.

Fifteenth, the term "agency" is sometimes capitalized and sometimes not capitalized. In almost all instances, it should not be capitalized.

Sixteenth, it may be unnecessary to refer to "Commission....Disabilities" rather than simply "Commission" on p. 5, line 11.

Seventeenth, the reference to "assure" on p. 5, line 12, should be reconsidered. It sets a high standard to say that an agency will guarantee a constant market for products and services.

Eighteenth, it's unclear if the regulations contemplated by p. 5, lines 26-28, would be subject to the APA. This could be clarified.

Nineteenth, on p. 6, line 7, the reference to "create" is odd. Consider "promulgate" or "adopt". Compare p. 8, line 6.

Twentieth, I'm not familiar with a "Director of Government Support Services" (p. 7, line 7). Perhaps the term should be included in the definition section.

Overall, the revised chapter is rather difficult to understand and often contains convoluted and unduly lengthy provisions. It would benefit from revision by legislative counsel.

Attachments

E:legis/316bils
F:pub/bjh/legis/2016p&l/316bils

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STATE COUNCIL FOR PERSONS WITH DISABILITIES
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November 24, 2015

Mr. Jamie Mack
Division of Public Health
Jesse Cooper Building
417 Federal Street
Dover, DE 19901

RE: 19 DE Reg. 388 [DPH Proposed Home Health Aide Only Agency Licensure Regulation]

Dear Mr. Mack:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposed regulation to implement legislation (H.B. 107) which was recently enacted to remove a ban on provision of home health agency services in hospitals and nursing facilities. The proposed regulation was published as 19 DE Reg. 388 in the November 1, 2015 issue of the Register of Regulations. The preamble describes the purpose of the changes as follows:

> One purpose of the amendments is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow consumers to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care.

SCPD has the following observation.

In §1.0, definition of "Home Health Agency (HHA)", the second sentence reads as follows: "The HHA shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent." This new limitation may be ill-conceived. An HHA "located" in Kent County could serve the entire State. However, an Agency "located" in NCC could not serve clients in Sussex and an Agency "located" in Sussex could not serve clients in NCC. The rationale for this change is not provided. The term "located" is not defined. It is not based on statute. See 16 Del.C. §122(3)o. Delaware is a small state and the limitation may unnecessarily circumscribe residents' choice of providers.

Parenthetically, inclusion of this limitation in a definition violates the attached Section 4.3 of the

Delaware Administrative Code Style Manual since it creates a substantive standard in a definition.

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

Sincerely,

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

cc: Mr. A. Richard Heffron, President, State Chamber of Commerce
Ms. Karyl Rattay, DHSS-DPH
Ms. Debbie Gottschalk, DHSS
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

19reg388 dph home health aide only agency licensure 11-25-15

4.3 Definitions (See Figure 4.1)

It is recommended that definitions of terms be included in each regulation. Definitions provide clarification of terms used within a regulation, save space in the body of the regulation, and allow the regulation writer to control the meaning of a word. Define a term only when the meaning of a word is important and it is used more than once in the regulation. Do not define ordinary words that are used in their dictionary context.

Regulatory information should not be included in the definition.

Example of a Definition that is Too Substantive:

"**Lockup facility**" means a secure adult detention facility used to confine prisoners waiting to appear in court and sentenced prisoners for not more than 90 days. In addition to the cell, a lockup facility must include space for moderate exercise and activity, such as weight lifting, ping-pong, table games, reading, television, and cards.

This definition should end at "90 days."

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November 24, 2015

Mr. Jamie Mack
Division of Public Health
Jesse Cooper Building
417 Federal Street
Dover, DE 19901

RE: 19 DE Reg. 391 [DPH Proposed Skilled Home Health Agency Licensure Regulation]

Dear Mr. Mack:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposed regulation to implement legislation (H.B. 107), which was recently enacted to remove a ban on provision of home health agency services in hospitals and nursing facilities. The proposed regulation was published as 19 DE Reg. 391 in the November 1, 2015 issue of the Register of Regulations. The preamble describes the purpose of the changes as follows:

> One purpose of the amendments is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow consumers to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care.

SCPD has the following observation.

In §1.0, definition of "Home Health Agency (HHA)", the second sentence reads as follows: "The HHA shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent." This new limitation may be ill-conceived. An HHA "located" in Kent County could serve the entire State. However, an Agency "located" in NCC could not serve clients in Sussex and an Agency "located" in Sussex could not serve clients in NCC. The rationale for this change is not provided. The term "located" is not defined. It is not based on statute. See 16 Del.C. §122(3)o. Delaware is a small state and the limitation may unnecessarily circumscribe residents' choice of providers.

Parenthetically, inclusion of this limitation in a definition violates the attached Section 4.3 of the Delaware Administrative Code Style Manual since it creates a substantive standard in a definition.

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

Sincerely,

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

cc: Mr. A. Richard Heffron, President, State Chamber of Commerce
Ms. Karyl Rattay, DHSS-DPH
Ms. Debbie Gottschalk, DHSS
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

19reg391 dph skilled home health agency licensure 11-25-15

4.3 Definitions (See Figure 4.1)

It is recommended that definitions of terms be included in each regulation. Definitions provide clarification of terms used within a regulation, save space in the body of the regulation, and allow the regulation writer to control the meaning of a word. Define a term only when the meaning of a word is important and it is used more than once in the regulation. Do not define ordinary words that are used in their dictionary context.

Regulatory information should not be included in the definition.

Example of a Definition that is Too Substantive:

"**Lockup facility**" means a secure adult detention facility used to confine prisoners waiting to appear in court and sentenced prisoners for not more than 90 days. In addition to the cell, a lockup facility must include space for moderate exercise and activity, such as weight lifting, ping-pong, table games, reading, television, and cards.

This definition should end at "90 days."

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
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November 24, 2015

Mr. Jamie Mack
Division of Public Health
Jesse Cooper Building
417 Federal Street
Dover, DE 19901

RE: 19 DE Reg. 392 [DPH Proposed Personal Assistance Services Agency Regulation]

Dear Mr. Mack:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposed regulation to implement legislation (H.B. No. 107), which was recently enacted to remove a ban on provision of personal assistance services in hospitals and nursing facilities. The proposed regulation was published as 19 DE Reg. 392 in the November 1, 2015 issue of the Register of Regulations. The preamble describes the purpose of the changes as follows:

> One purpose of the amendments is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow consumers to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care.

SCPD has the following observations.

First, in §1.0, definition of "Personal Assistance Services Agency", first sentence, SCPD recommends correction of grammar. There are singular pronouns (his/her) with a plural antecedent (consumers). This can be easily corrected by substituting "their" for "his/her".

Second, in §1.0, definition of "Personal Assistance Services Agency", the second sentence reads as follows: "The personal assistance services agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent." This new limitation may be ill-conceived. A "Personal Assistance Services Agency" "located" in Kent County could serve the entire State. However, an Agency "located" in NCC could not serve clients in Sussex and an Agency "located" in Sussex could not serve clients in NCC. The rationale for this change is not provided. The term "located" is not defined. It is not based on statute. See 16 Del.C. §122(3)x. Delaware is a small

state and the limitation may unnecessarily circumscribe residents' choice of providers.

Parenthetically, inclusion of this limitation in a definition violates the attached Section 4.3 of the Delaware Administrative Code Style Manual since it creates a substantive standard in a definition.

Third, in §5.4.2.2, simple fingernail care by a direct care worker is authorized. However, toenail care is categorically banned. This is counterintuitive. If someone can trim a fingernail, the same skills would logically apply to trimming toenails. For example, simple "soaking of fingernails" is authorized but soaking of toenails is banned. Moreover, the ban would ostensibly conflict with the statutory authorization that authorizes personal assistance workers to provide "those other services set out in §1921(a)(15) of Title 24", i.e. acts individuals would normally perform themselves but for functional limitations. [16 Del.C. §122(3)x2]. Individuals could normally provide their own toenail care. The Division may wish to consider whether a categorical ban on toenail care is justified.

Fourth, the following new limitation is added:

> Section 3.13. The personal assistance services agency must not use the word "healthcare", or any other language that implies or indicates the provision of healthcare services, in its title or in its advertising.

Since personal assistance workers, by statute, can perform acts individuals could normally perform themselves but for functional limitations, the restriction is "overbroad". See 16 Del.C. §122(3)x2 and 24 Del.C. §1921(a)15). Many of the services authorized by statute would amount to "healthcare". Indeed, the above statutes specifically authorize personal care workers to perform "healthcare acts".

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: Mr. A. Richard Heffron, President, State Chamber of Commerce
Ms. Karyl Rattay, DHSS-DPH
Ms. Debbie Gottschalk, DHSS
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

19reg392 dph personal assistance services agency 11-25-15

4.3 Definitions (See Figure 4.1)

It is recommended that definitions of terms be included in each regulation. Definitions provide clarification of terms used within a regulation, save space in the body of the regulation, and allow the regulation writer to control the meaning of a word. Define a term only when the meaning of a word is important and it is used more than once in the regulation. Do not define ordinary words that are used in their dictionary context.

Regulatory information should not be included in the definition.

Example of a Definition that is Too Substantive:

"**Lockup facility**" means a secure adult detention facility used to confine prisoners waiting to appear in court and sentenced prisoners for not more than 90 days. In addition to the cell, a lockup facility must include space for moderate exercise and activity, such as weight lifting, ping-pong, table games, reading, television, and cards. . . .

This definition should end at "90 days."

STATE OF DELAWARE

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

November 30, 2015

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901

RE: DPH Proposed Personal Assistance Services Regulations [19 DE Reg. 392 (November 1, 2015)]

Dear Mr. Mack:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health proposal to revise its personal assistance services regulations in order to comply with House Bill No. 107. This recently enacted legislation removes a ban on the provision of personal assistance services in hospitals and nursing facilities.

The preamble describes the purpose of the changes as follows:

> One purpose of the amendments is to allow for the provision of services by these agencies in nursing facilities and hospitals. This change will allow consumers to receive the services necessary to safely achieve their highest level of independence and optimal quality of life while residing in their own home or during a necessary hospitalization. In addition, amendments were made to update the requirements to ensure patients receive safe and quality care.

At 392.

Council would like to share the following observations on the proposed regulations.

First, in §1.0, definition of "Personal Assistance Services Agency", first sentence, Council recommends a grammatical correction. There are singular pronouns (his/her) with a plural antecedent (consumers). This may be corrected by substituting "their" for "his/her".

Second, in §1.0, definition of "Personal Assistance Services Agency", the second sentence reads as follows: "The personal assistance services agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent." This new

limitation may be ill-conceived. A "Personal Assistance Services Agency" "located" in Kent County could serve the entire State. However, an Agency "located" in New Castle County (NCC) could not serve clients in Sussex and an Agency "located" in Sussex could not serve clients in NCC. The rationale for this change is not provided. The term "located" is not defined. It is not based on statute. See 16 Del.C. §122(3)x. Delaware is a small state and this limitation may unnecessarily restrict the choice of providers by residents.

Incidentally, inclusion of this limitation in a definition violates Section 4.3 of the Delaware Administrative Code Style Manual since it creates a substantive standard in a definition.

Third, in §5.4.2.2, simple fingernail care by a direct care worker is authorized. However, toenail care is categorically banned. This is counterintuitive. If someone can trim a fingernail, the same skills would logically apply to trimming toenails. For example, simple "soaking of fingernails" is authorized but soaking of toenails is banned. Moreover, the ban would apparently conflict with the statutory authorization that authorizes personal assistance workers to provide "those other services set out in §1921(a)(15) of Title 24", i.e. acts individuals would normally perform themselves but for functional limitations. [16 Del.C. §122(3)x2]. Individuals could normally provide their own toenail care. The Division may wish to consider whether a categorical ban on toenail care is justified.

Fourth, the following new limitation is added:

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Since personal assistance workers, by statute, can perform acts individuals could normally perform themselves but for functional limitations, the restriction is "overbroad". See 16 Del.C. §122(3)x2 and 24 Del.C. §1921(a)15). Many of the services authorized by statute would amount to "healthcare". Indeed, the above statutes specifically authorize personal care workers to perform "healthcare acts".

Thank you for your consideration of our observations. If you have any questions, please contact me or Wendy Strauss at the GACEC office.

Sincerely,

Robert D. Overmiller GACEC

Robert D. Overmiller
Chairperson

RDO:kpc

§ 8237 Omnibus School Safety Act.

(a) *Purpose.* — The purpose of the Omnibus School Safety Act is to enhance public safety in all of Delaware's public schools (including charter schools) and school districts through the development and maintenance of comprehensive, site-specific, National Incident Management System (NIMS)-compliant safety and emergency preparedness plans for each public school and district. This act is intended to promote a cohesive and coordinated approach between state and local emergency responders, education professionals, and other supporting agencies and disciplines during a critical incident within a school setting, in a manner that minimizes administrative and other burdens upon schools and districts.

(b) *Definitions.* — Unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

(1) "Act" means the Omnibus School Safety Act.

(2) "Charter school" means a charter school established pursuant to Chapter 5 of Title 14.

(3) "Critical incident" means any situation that causes or has the potential to cause injury or loss of life to faculty, staff, students or the public, and shall include but not be limited to any weather-, crime- or terrorism-related event that threatens: the life, health and safety of people; damages or destroys property; or causes major disruptions of regular activities.

(4) "Critical incident or emergency event exercise" means any operational simulation performed in a school or district pursuant to this section for the purposes of training and practicing prevention, protection, mitigation, response and recovery capabilities in a realistic, but risk-free environment.

(5) "CSSP" means a Comprehensive School Safety Plan.

(6) "Department" means the Department of Safety and Homeland Security.

(7) "District" means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14.

(8) "DOE" means the Department of Education.

(9) "Emergency Preparedness Guidelines" means the templates developed by the Department which outline the steps, processes, procedures, audits and actions that shall be used by a school or district to develop, implement, exercise and update its comprehensive school safety plans to respond to an emergency event or unusual crisis situation.

(10) "First responder" means any federal, state and local law-enforcement officer, fire, and emergency medical services personnel, hazardous materials response team member, 911 dispatcher, emergency manager or any other individual who is responsible for the protection and preservation of life, property, or evidence.

(11) "NIMS" means the National Incident Management System developed by the federal government pursuant to Homeland Security Presidential Directive-5 and representing a core set of doctrines, concepts, principles, terminology, and organizational processes that enables effective, efficient, and collaborative incident management.

(12) "School" means any public school within the State, including any charter school.

(13) "School safety team" means those individuals who have been identified by a school or district as members of a team responsible for the development and implementation of a CSSP for a particular school or district.

(14) "Secretary" means the Secretary of the Department of Safety and Homeland Security or his or her designee.

(15) "Tabletop exercise" means a discussion-based critical incident or emergency event exercise involving key personnel comprised of first responders, emergency management personnel, school officials or other individuals where simulated scenarios are discussed in an informal setting.

(c) *Duties and responsibilities of Department.* — The Department, by and through the Secretary, shall have overall operational responsibility for the implementation of the act. In connection therewith, the Department's duties and responsibilities shall include but not be limited to:

(1) Serving as the lead agency in the development of CSSPs for each school and district;

(2) Assisting schools and districts in conducting critical incident and tabletop exercises;

(3) Adopting, publishing and updating Emergency Preparedness Guidelines;

(4) Reviewing and certifying CSSPs submitted by schools and districts;

(5) In consultation with the Department of Education, adopting such rules and regulations as shall be necessary or desirable to implement the provisions of the act;

(6) Reviewing proposed revisions and updates to CSSPs; and

(7) Ensuring that the act is fully implemented and operational by September 10, 2014.

(d) *Duties and responsibilities of schools and districts.* — Each school and district shall:

(1) Create a school safety team for each school and district;

(2) Collaborate with the Department and any relevant first responders to develop and submit to the Department a school- or district-specific CSSP;

(3) Conduct critical incident and tabletop exercises in accordance with subsection (f) of this section hereunder; and

(4) Collaborate with the Department and any relevant first responders in submitting revisions and updates to CSSPs, at such times and upon such circumstances as shall be warranted.

(e) *Initial review and approval of CSSPs.* — Each school and district, through its school safety team, shall collaborate with the Department and any relevant first responders to develop and submit a school- or district-specific CSSP that is NIMS-compliant and is otherwise approved by the Department in accordance with the regulations adopted in connection with this section. The Department shall provide such assistance as shall be necessary in connection with the development of CSSPs, and shall coordinate schools and districts with first responders and other relevant stakeholders, including but not limited to the Capitol Police, for the development of CSSPs hereunder.

(f) *Critical incident and tabletop exercises; revisions to CSSPs.* —

(1) Each school and district, through its school safety team, shall collaborate with the Department and any relevant first responders to conduct at least 1 tabletop exercise every year, and at least 2 lockdown/intruder drills per school year. Such exercises shall assess emergency readiness as well as the effectiveness of the existing CSSP, and shall include such members of the school safety team, first responders and such other stakeholders as shall be appropriate. Exercises may also be utilized to identify gaps in the CSSP, assess and improve performance, test equipment and technology, and develop robust community and first responder resolve to prepare for major incidents.

(2) Following any exercise hereunder, a school or district shall submit to the Department verification of the exercise and proposed revisions or updates to its CSSP. However, nothing herein shall limit the ability of schools or districts to submit to the Department proposed revisions or updates to CSSPs at any other time during the year. Proposed revisions or updates shall be reviewed and approved by the Department in accordance with procedures established by the Department.

(g) *Progress reports.* — The Secretary shall provide a report on the progress on the implementation of the Omnibus School Safety Program to the General Assembly by May 31 of each year until such time that implementation of the program is completed and it is fully operational.

78 Del. Laws, c. 405, § 1; 79 Del. Laws, c. 426, § 1.;

TITLE 11

Crimes and Criminal Procedure
Delaware Criminal Code
CHAPTER 5. SPECIFIC OFFENSES
Subchapter II. Offenses Against the Person

§ 612 Assault in the second degree; class D felony.

(a) A person is guilty of assault in the second degree when:

(1) The person recklessly or intentionally causes serious physical injury to another person; or

(2) The person recklessly or intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(3) The person intentionally causes physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, correctional officer, a sheriff, a deputy sheriff, public transit operator, a code enforcement constable or a code enforcement officer who is acting in the lawful performance of duty. For purposes of this subsection, if a law-enforcement officer is off duty and the nature of the assault is related to that law-enforcement officer's official position, then it shall fall within the meaning of "official duties" of a law-enforcement officer; or

(4) The person intentionally causes physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering ~~emergency~~ care; or

(5) The person recklessly or intentionally causes physical injury to another person who is 62 years of age or older; or

(6) The person intentionally assaults a law-enforcement officer while in the performance of the officer's duties, with any disabling chemical spray, or with any aerosol or hand sprayed liquid or gas with the intent to incapacitate such officer and prevent the officer from performing such duties; or

(7) The person intentionally, while engaged in commission of any crime enumerated in this chapter, assaults any other person with any disabling chemical spray, or with any aerosol or hand sprayed liquid or gas with the intent to incapacitate the victim; or

(8) The person intentionally causes physical injury to any state employee or officer when that employee or officer is discharging or attempting to discharge a duty of employment or office; or

(9) The person recklessly or intentionally causes physical injury to a pregnant female. It is no defense to a prosecution under this subsection that the person was unaware that the victim was pregnant; or

(10) A person who is 18 years of age or older and who recklessly or intentionally causes physical injury to another person who has not yet reached the age of 6 years. In any prosecution of a parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child victim pursuant to this paragraph, the State shall be required to prove beyond a reasonable doubt the absence of any justification offered by § 468(1) of this title. In any prosecution of a teacher or school administrator pursuant to this paragraph, the State shall be required to prove beyond a reasonable doubt the absence of any justification offered by § 468(2) of this title; or

(11) The person recklessly or intentionally causes physical injury to a law-enforcement officer, security officer, fire police officer, fire fighter, paramedic, or emergency medical technician in the lawful performance of their duties by means of an electronic control device shall be a class C felony.

(b) It is no defense, for an offense under paragraph (a)(5) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.

(c) It is no defense, for an offense under paragraph (a)(10) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be 6 years of age or older.

(d) The exception to paragraph (a)(4) is if the accused has impaired ability to function related to psychiatric or psysiological distress; alterations in thinking, perceiving, and communicating due to psychiatric disorders or mental health problems; symptoms, side effects or toxicities associated with prescribed self administered drugs; psychopharmacological intervention and other treatment modalities; physical symptoms that occur along with psychological status or psychological symptoms that occur along with altered physiological status.

(e) The exception to paragraph (a)(4) is if the accused has an intellectual disability characterized by significant limitations both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and practical skills. Considerations are given to community environment typical of the accused's peers and cultural differences in communication, movements, and behavior.

~~(d)~~ (f) Assault in the second degree is a class D felony.

11 Del. C. 1953, § 612; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 50, § 1; 63 Del. Laws, c. 237, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 129, §§ 1, 3; 69 Del. Laws, c. 24, §§ 3, 4; 69 Del. Laws, c. 189, § 1; 69 Del. Laws, c. 367, § 1; 70 Del. Laws, c. 128, §§ 1-5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 307, § 1; 71 Del. Laws, c. 374, §§ 4, 5; 72 Del. Laws, c. 34, § 10; 72 Del. Laws, c. 43, § 5; 72 Del. Laws, c. 173, §§ 1, 2; 73 Del. Laws, c. 126, §§ 3, 16; 74 Del. Laws, c. 199; 76 Del. Laws, c. 270, § 3; 77 Del. Laws, c. 119, § 1; 77 Del. Laws, c. 265, § 1; 78 Del. Laws, c. 325, § 1.;

§ 613 Assault in the first degree; class B felony.

(a) A person is guilty of assault in the first degree when:

(1) The person intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(2) The person intentionally disfigures another person seriously and permanently, or intentionally destroys, amputates or disables permanently a member or organ of another person's body; or

(3) The person recklessly engages in conduct which creates a substantial risk of death to another person, and thereby causes serious physical injury to another person; or

(4) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person intentionally or recklessly causes serious physical injury to another person; or

(5) The person intentionally causes serious physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, public transit operator, a code enforcement constable or a code enforcement officer who is acting in the lawful performance of duty; or

(6) The person intentionally causes serious physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering ~~emergency~~ care; or

(7) The person intentionally causes serious physical injury to another person who is 62 years of age or older.

(b) It is no defense, for an offense under paragraph (a)(7) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.

(c) The exception to paragraph (a)(6) is if the accused has impaired ability to function related to psychiatric or psysiological distress; alterations in thinking, perceiving, and communicating due to psychiatric disorders or mental health problems; symptoms, side effects or toxicities associated with prescribed self administered drugs; psychopharmacological intervention and other treatment modalities; physical symptoms that occur along with psychological status or psychological symptoms that occur along with altered physiological status.

(d) The exception to paragraph (a)(6) is if the accused has an intellectual disability characterized by significant limitations both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and

practical skills. Considerations are given to community environment typical of the accused's peers and cultural differences in communication, movements, and behavior.

~~(c)~~ (e) Assault in the first degree is a class B felony.

11 Del. C. 1953, § 613; 58 Del. Laws, c. 497, § 1; 63 Del. Laws, c. 50, § 2; 63 Del. Laws, c. 237, § 2; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 129, §§ 2, 3; 69 Del. Laws, c. 24, §§ 5, 6; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 34, § 11; 73 Del. Laws, c. 126, §§ 4, 16; 74 Del. Laws, c. 106, § 1; 75 Del. Laws, c. 168, § 1; 77 Del. Laws, c. 119, § 2; 77 Del. Laws, c. 265, § 2; 78 Del. Laws, c. 325, § 2.;

On Dec 14, 2015, at 12:22 PM, "sarah@denurses.org<mailto:sarah@denurses.org>" <sarah@denurses.org<mailto:sarah@denurses.org>> wrote:
Hello Rep. Baumbach.

In a DNA workplace violence survey of Delaware nurses conducted in 2014, almost 28% participants responded that patients were the most prone to violent acts in the workplace. Under current Delaware law, it is a second degree class D felony if a person intentionally causes physical injury to a nurse, doctor, or EMT/paramedic only when providing 'emergent' care. Of the survey respondents, almost 69% worked in a hospital/acute care.

According to a January study in the Journal of Emergency Nursing, in 2014, three in four nurses experienced verbal or physical abuse—such as yelling, cursing, grabbing, scratching or kicking—from patients and visitors,. Three in 10 nurses reported physical abuse, the study found. In the DNA survey, almost 59% of respondents reported that patient on worker violence which includes any type of verbal or physical assault (i.e. patient or patient's family member assaults nurse on duty) is most prevalent in their workplace.

This is a problem that needs to be address to attract and retain nurses in the profession and at the bedside. I am hoping that perhaps you would be willing to sponsor a bill to address this issue. Additional information can be provided.

Thank you for considering this request.
Sarah

Sarah J. Carmody MBA
Executive Director

Delaware Nurses Association
4765 Ogletown-Stanton Road, Suite L10
Newark, DE 19713
(302) 733-5880
www.denurses.org<http://www.denurses.org/>

BILL NO. ____

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE STATE USE LAW AND THE COMMISSION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED INDIVIDUALS.

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

Section 1. Amend § 9601 - § 9605 of Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Health and Safety

Persons With Disabilities ~~and Partial Disabilities~~

CHAPTER 96. STATE USE LAW

§ 9601. Declaration of purpose.

The purpose of this chapter is to further the policy of the State to encourage and assist ~~blind and other severely handicapped~~ individuals with visual impairments and other disabilities to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for their products and services, thereby enhancing the dignity and capacity for self-support of ~~blind and other severly handicapped persons~~ individuals with visual impairments and other disabilities, and ~~minimizing their dependence on welfare~~ decreasing their reliance on government benefits ~~as well as the need for the State to provide costly institutionalization~~.

§ 9602. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

(1) "Agency of this State" shall include all counties, towns, school districts or any other entity which is supported in whole or in part by funds appropriated by the General Assembly.

(2) "Blind" shall include all persons with visual impairments whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the better field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(3) "Central Nonprofit Agency (CNA)" means a public or private agency organized under the laws of Delaware, which is selected by the Commission for Statewide Contracts to Support Employment for Persons with Disabilities to facilitate the provision (by subcontract or other means) of set-aside services and/or the production and distribution of set-aside commodities, in order to employ individuals with visual impairments or other disabilities; to provide information required

by the Commission according to this chapter and implemented regulations.

(4) "Commission for Statewide Contracts to Support Employment for Persons with Disabilities" is, for purposes of this chapter "The Commission".

(5) "Community Rehabilitation Program (CRP)" is a public or private agency that provides or coordinates rehabilitation services for individuals with visual impairments or other disabilities, including but not limited to assessment, customized employment, medical, personnel assistance, psychiatric, psychological, rehabilitation technology, supported employment, and/or vocational services.

(~~3~~6)"Delaware Association of Rehabilitation Facilities (DELARF)" or any succeeding name of this entity means the State Association whose membership includes CRPs and other organizations, both public and private~~, whose primary purpose is to provide rehabilitation services, and individuals who have a recognized interest in rehabilitation~~. The State Association's ~~purpose is to stimulate interest and help to insure suitable programming of vocational, medical, social, psychological rehabilitation~~ mission is to support its members working to enhance the quality of life for people with disabilities by increasing opportunities for all people to live, learn, and work in the community.

(7) "Disability" shall be defined by the Americans with Disabilities Act of 1990 (42 U.S. C. 12102).

(8) "Family Member" means the parent, grandparent, step-parent, sibling, or spouse of an individual.

(49) "Food service" means restaurant, cafeteria, snack bar, vending machines for food and beverages and goods and services customarily offered in connection with any of the foregoing.

(~~5~~10) "Public office building" means any building owned or leased by the State, used for governmental purposes. It does not include public schools, or buildings at residential institutions operated by the State. No building or property, used as a public recreational facility, owned or leased by the State and operated or occupied by the Department of National Resources and Environmental Control or the State Forestry Department, shall be included within this definition. Food service located in or on any public building on the Delaware Turnpike shall not be included in this definition.

~~(6) "Qualified rehabilitation facility" shall mean a rehabilitation facility:~~

~~a. Which is owned and operated by a corporation or association organized under the laws of the United States or of this State, operated in the interest of severely handicapped individuals, no part of the net earnings of which inures, or any lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954, as amended; and~~

~~b. Which is certified as a sheltered workshop and/or work activities center by the Wage and Hour Division of the United~~

~~States Department of Labor; and~~

~~c. Which meets the national standards for accepted rehabilitation facilities, as certified by a national rehabilitation accreditation association such as the Commission of Accreditation of Rehabilitation Facilities (CARF); and~~

~~d. Which complies with any applicable health and safety standards prescribed by the Secretary of Labor of the United States.~~

~~(7) "Severely handicapped" and "severely handicapped individuals" mean:~~

~~a. An individual or class of individuals who is under a physical or mental disability other than blindness which constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from engaging in normal competitive employment. The handicap substantially limits 1 or more of the person's major life activities.~~

~~b. An individual who has met the admission requirements of a qualified rehabilitation facility.~~

~~(8) "Workshop" or "sheltered workshop" shall mean the Delaware Industries for the Blind.~~

(11) "Set-aside" – a service or product that has been exempted from procurement under 29 Del. C. ch. 69 and awarded by the Commission for Statewide Contracts to Support Employment for Persons with Disabilities with a price that is approved by the Commission.

§ 9603. ~~Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals~~ Commission for Statewide Contracts to Support Employment for Persons with Disabilities – Appointed; composition; terms; vacancies; compensation.

(a) ~~A~~ The Commission for Statewide Contracts to Support Employment for Persons with Disabilities ~~for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals~~ shall be appointed by the Governor to fulfill the duties described in § 9604. ~~to advise the Director of the Division for the Visually Impaired in the management of the Delaware Industries for the Blind operated by the Division.~~

(b) The Commission shall be composed of ~~9~~ the following, serving at the pleasure of the Governor, as voting members: ~~From the private sector, a person with business experience in production, a person skilled in marketing, a person experienced in industrial purchasing, a person experienced in industrial engineering, a person experienced in sales, a person experienced in accounting, a person experienced in the field of advertising; and from state government, the Director of Government Support Services and the Secretary of Finance or their designated representatives, and, ex officio, the Director of the Division for the Visually Impaired and a representative from the Delaware Association of Rehabilitation Facilities. The members of the Commission shall be appointed for terms of 4 years and shall serve until new appointments~~

~~are made at the end of their terms. Four of the members appointed in 1982 shall serve terms of 2 years in order to stagger the expiration dates of the terms of the members from the private sector. No more than 5 of the members from the private sector shall be members of the same political party.~~

(i) Director of Government Support Services or designee;

(ii) Director of the Division of Vocational Rehabilitation or designee;

(iii) Secretary of Finance or designee;

(iv) Three public members, who shall include at least one person with a disability or a family member of an individual who is 14 years of age or older and has a disability, who are appointed by the Governor;

(v) The Chair shall be appointed by the Governor.

(c) Non-voting members shall consist of the following:

(i) A representative of a CRP that employs persons with disabilities, appointed by the Governor;

(ii) The Director of Delaware Association of Rehabilitation Facilities or designee;

(iii) The Director of the Division for the Visually Impaired or designee.

~~(b) Any private citizen member appointed under subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term~~.

(d) The number of members needed to be present at a Commission meeting in order to have a quorum and conduct official business shall be the majority of appointed voting members.

(e) Members of the Commission shall serve without compensation other than reimbursement for expenses actually incurred in connection with the work of the Commission, and for travel expenses when away from their homes or regular places of business.

(~~d~~f) The Commission may secure, directly from any ~~agency~~ Agency of this State, information necessary to enable it to carry out this chapter. Upon request of the Chairperson of the Commission, the head or administrator of such ~~state agency~~ Agency of this State shall furnish the requested information to the Commission.

(~~e~~g) The Commission shall, not later than 90 days following the close of each fiscal year, transmit to the Governor and to

the General Assembly a report which shall include the names of the Commission members serving in the preceding fiscal year, the dates of the Commission meetings in that year, a description of its activities during that year, and any recommendations for changes in the law which the Commission might suggest.

(~~f~~h) Notwithstanding any other provision of the Delaware Code, members of the Commission may participate in a meeting of the Commission by means of conference telephone or other communications equipment by which all persons participating in the meeting can hear each other. Participating in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

§ 9604. ~~Commission for the Purchase of Products and Services for the Blind and Other Severely Handicapped Individuals~~ Commission for Statewide Contracts to Support Employment for Persons with Disabilities -- Powers and duties; ~~sheltered workshop Delaware Industries for the Blind;~~ CRPs and CNA~~squalified rehabilitation facility~~.

(a) The Commission for Statewide Contracts to Support Employment for Persons with Disabilities ~~for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals~~ shall ~~provide~~ assure an expanded and constant market for products and services of ~~visually handicapped and severely handicapped~~ CRPs and other employers of individuals with visual impairments and other disabilities. The Director of the Division for the Visually Impaired, ~~and the representative from the Delaware Association of Rehabilitation Facilities~~ the Director of the Delaware Association of Rehabilitation Facilities and the Commission representative of a CRP that employs persons with disabilities shall ~~determine, with the advice of the~~ propose to the Commission~~,~~ potential set-aside contracts and the price of those products manufactured and services provided by ~~the Delaware Industries for the Blind and~~ a CRP or a CNA ~~or qualified rehabilitation facility which~~ that are offered for sale to the various ~~agencies~~ Agencies of ~~the~~ this State. The price shall recover for the ~~Delaware Industries for the Blind~~ a CRP or a CNA ~~qualified rehabilitation facility~~ the cost of raw materials, labor, overhead and delivery costs~~. but shall not include a profit to the Commission or to the Delaware Industries for the Blind or qualified rehabilitation facility. The Director of the Division for the Visually Impaired and the representative from the Delaware Association of Rehabilitation Facilities, with the advice of the~~ The Commission~~,~~ may revise such prices from time to time in accordance with changing cost factors, with advice from the Director of the Division for the Visually Impaired, ~~and~~ the ~~representatives from the~~ Director of the Delaware Association of Rehabilitation Facilities and the Commission representative of a CRP that employs persons with disabilities, and may make such rules and regulations concerning specifications, time of delivery and other matters of operation as shall be necessary to carry out the purposes of ~~the Delaware Industries for the Blind and~~ the CRPs or CNAs ~~qualified rehabilitation facility~~ and this chapter.

(b) The Commission shall create subcommittees to facilitate its work. ~~It~~ These subcommittees shall act as ~~an~~ advisory committees to the ~~Director of the Division for the Visually Impaired and the appointee from the Delaware Association of Rehabilitation Facilities in the operation of the Delaware Industries for the Blind and qualified rehabilitation facility~~ Commission and shall provide technical assistance to the Commission ~~to the Delaware Industries for the Blind~~ in ~~the~~ areas such as ~~of~~ employment practices, sales promotion, public relations, market development, market analysis, and budget preparation.

(c) The Commission shall create regulations that govern its operations. These regulations will address the process by which: CNAs are selected; contracts, or portions thereof, are set-aside and are awarded to the CNAs or individual CRPs; and how prices are set. ~~a subcommittee comprised of the Director of Government Support Services or the Director's designated representative, 2 appointed members of the Commission and the representative from the Delaware Association of Rehabilitation Facilities. This subcommittee shall function as advisors for qualified rehabilitation facilities and shall adopt policies and procedures for the awarding of contracts or subcontracts to qualified rehabilitation facilities. This subcommittee will select a provider for a product or service when more than 1 qualified rehabilitation facility submits quotations. Selection of the provider will be based on criteria set by this subcommittee to facilitate the equitable allocation of orders among qualified rehabilitation facilities. The subcommittee shall encourage diversity in products and services provided by qualified rehabilitation facilities and shall discourage unnecessary duplication or competition between qualified rehabilitation facilities.~~

(d) ~~The Director of the Division for the Visually Impaired and the appointee from the Delaware Association of Rehabilitation Facilities~~ When the Commission grants a set-aside contract, or a portion thereof, and establishes a price for the products or services to be sold to Agencies of this State pursuant to that contract, it will transmit a letter with this information to Government Support Services to ~~shall~~ publish ~~periodically a~~ the existing list of products and services provided by the ~~Delaware Industries for the Blind and~~ CRPs or CNAs ~~qualified rehabilitation facilities~~ which the Commission recommends as suitable for procurement by ~~agencies~~ Agencies of this State pursuant to this chapter. ~~The list shall be distributed to every person who procures materials for each agency of the State.~~

§ 9605. Procurement requirements for the State.

(a) If any ~~agency~~ Agency of this State intends to procure a product or service on the procurement list, that agency shall, in accordance with the rules and regulations of the Commission, procure such product or service, at the price established by the Commission, ~~from the Delaware Industries for the Blind and~~ from the CNA(s) or individual CRPs ~~qualified~~

~~rehabilitation facilities~~. If the product or service is available within the period required by that agency, such procurement shall be mandatory. This chapter, however, shall not apply in any case where products or services are available for procurement from any ~~agency~~ Agency of this State and procurement therefrom is required under any statute, rule or regulation.

(b) In the procurement of any product or service under this chapter preference shall be given by an ~~agency~~ Agency of this State to a product or service of the Delaware Industries for the Blind. Waiver of such preference shall be provided in writing by the Director of Government Support Services upon approval by the Commission. ~~Director of the Division for the Visually Impaired to the Chairperson of the Commission for the Purchase of Products or Services of the Blind and Other Severely Handicapped Individuals.~~

(c) In furthering the purposes of this chapter, as set forth in § 9601 of this title, and in contributing to economy of government, it is the intent of the General Assembly that there be close cooperation between the Commission and any ~~agency~~ Agency of ~~the~~ this State from which procurement of products or services is required under any state law. The Commission and any such ~~agency~~ Agency of this State are authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of this chapter and any other law requiring procurement of products or services from any ~~agency~~ Agency of this State.

§ 9606. Food service in public office buildings.

(a) If any governmental agency of this State intends to operate or continue food service in a public office building, that agency shall procure such food service from the Delaware Division for the Visually Impaired under the vending facility program authorized by 20 U.S.C. § 107 et seq. No governmental agency shall charge the Division for the Visually Impaired or its food service vendors rent for food service operations operated under this section. In the event the Delaware Division for the Visually Impaired certifies in writing that it is unable to provide food service to a governmental agency who requests such service, the governmental agency may seek food service from another provider.

(b) This section shall not impair any valid existing contracts by governmental agencies; however, at the expiration of such existing contracts, the mandates contained in this section shall be binding on the governmental agency.

(c) This section shall not apply to any office building owned or leased by any county or municipal corporation. This section shall also not apply to any building leased, used or owned by any institution of higher education.

(d) Notwithstanding any provision of subsection (a) of this section to the contrary:

(1) Any provision of 20 U.S.C. § 107 et seq. that limits accrual of vending machine income to the Division for the Visually Impaired on the basis of the annual income from such vending machines is not incorporated into the laws of this State by this section; and

(2) Any provision of 20 U.S.C. § 107 et seq. that governs the use of vending machine income which accrues to the Division for the Visually Impaired is not incorporated into the laws of this State by this section.

(e) The Secretary of the Department of Health and Social Services shall have the power to promulgate all rules and regulations necessary to accomplish the purposes of this section.