

To: GACEC; SCPD:DDC
From: Disabilities Law Program
Date: February 11, 2021
Re: February 2021 Policy and Law Memo

Regulations

1. Proposed DDOE Regulation on 1583 School Psychologist, 24 Del Register of Reg. 758 (February 1, 2021)

DDOE, in cooperation with the Professional Standards Board (hereinafter “The Board”), is proposing to amend this regulation to add definitions to Section 2.0, clarify the requirements for issuing a Certificate, specify application requirements, and add Sections 7.0-10.0, which concern the validity of the Certificate, disciplinary actions, requests for the Secretary of Education to review applications, and the recognition of Certificates granted prior to the effective date of this proposed regulation.

Proposed §1583.2 introduces definitions largely included in 14 Del. Admin. C. § 1505, but also includes additional definitions for “Passing Score” (“a minimum score as established by the Standards Board in consultation with the Department and with the approval of the State Board of Education”) and “Regionally Accredited” (“means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education”).

In proposed §1583.3, DDOE revises the requirements for issuance of a Standard Certificate. The proposed language adds the requirement that existing license or Certificate holders as of August 31, 2003 must also “meet[] the requirements set forth in Section 4.0 of this regulation.” The proposed regulation replaces the language that “the requirements as set forth in 14 DE Admin Code 1505 Standard Certificate...,” with “[h]as met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a school psychologist.” In the proposed language, §1583.3.1.3 is eliminated (the requirement that applicants have “satisfied the additional requirements in this regulation.”) Proposed §1583.3.2 introduces a provision describing circumstances under which it will not act on an application, specifying that will not act “if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications” or “where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation’s resolution.” This language is largely verbatim to the language included and adopted in other recent regulations revising education professional license

and Certificate requirements that have been part of DDOE's review since April 2020. Comments previously submitted by the Councils during earlier related proposed regulations have been adopted in this proposed language.

The most significant changes in this proposed regulation are in §1583.4, (previously titled "Additional Requirements" and renamed "Prescribed Education, Knowledge, and Skill Requirements"). Previously, this section required an applicant to have completed "at least one" of three requirements: a degree from a National Association of School Psychologists (NASP) or American Psychological Association (APA) accredited graduate program and the completion of a supervised internship OR "a valid Nationally Certified School Psychologist (NCSP) Certificate from the National Association of School Psychologists (NASP)" OR "a valid and current license or Certificate from another state in school psychology." The proposed language drastically increases the education, knowledge, and skill requirements to obtain a School Psychologist Certificate, and further clarify existing requirements. Under proposed §1583.4, applicants must now meet all of the following requirements:

4.1.1.1 An Educational Specialist (Ed.S.) degree, the equivalent of an Ed.S. degree, or a doctoral degree through a program approved by the National Association of School Psychologists (NASP) at a Regionally Accredited college or university; or

4.1.1.2 A doctoral degree in school psychology through a program approved by the American Psychological Association (APA) at a Regionally Accredited college or university.

4.1.2 The applicant shall have achieved a Passing Score of 147 on the Praxis Subject Assessment - School Psychology (ETS Test Code # 5042).

4.1.3 The applicant shall have completed a supervised, culminating, comprehensive field experience of at least 1,200 hours, 600 hours of which must have been completed in an educational setting, in an institution or agency that is approved by the applicant's graduate program or the Department, completed at or near the end of formal training, through which the applicant had the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica as well as to acquire new competencies consistent with training program goals.

Proposed §1583.4.2 and §1583.8 also introduce alternative routes to obtaining a School Psychologist Standard Certificate for applicants who may not meet all the requirements under §1583.4.1. Proposed §1583.4 states that

Notwithstanding subsection 4.1, the Department may issue a School Psychologist Standard Certificate to an applicant who holds a Nationally Certified School Psychologist (NCSP) certificate from NASP that is in good standing.

Proposed §1583.8 introduces further discretion in granting applicants a School Psychologist Standard Certificate:

8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Psychologist Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Psychologist Standard Certificate but whose effectiveness is documented by the local school district or charter school.

8.1.1 For school districts, requests shall be approved by the superintendent of the school district.

8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

Proposed §1583.8, in particular, mirrors similar language in other revisions of education professional Certificates that DDOE has introduced this year. We have previously encouraged Councils to request that DDOE remove the language that provides DDOE or the Secretary of Education discretionary authority to grant Certificates when an applicant otherwise does not meet requirements. These comments have not been incorporated into the final versions of similar regulations. However, proposed §§1583.4.2 and 1583.8 do offer greater checks on this discretionary authority than were included in the regulations regarding other professional Certificates. For instance, §1583.4.2 requires applicants to still have a NASP certificate to be considered for a Certificate and §1583.8 requires district or school level leaders to authorize a request for review of an application by the Secretary of Education. Councils may wish to consider whether these are adequate limitations on DDOE and Secretary of Education authority to grant Certificates on a discretionary basis.

Proposed §1583.5 eliminates language requiring an internship (which is now described in greater detail in §1583.4) and instead specifies the documentation that must accompany a School Psychologist Certificate application. The new internship requirements are addressed in greater detail in §1583.4.1.3.

Proposed §1583.6 eliminates language that states that an Emergency Certificate process does not exist. Proposed §1583.6 replaces this with language taken almost verbatim from 14 Del. Admin. C. § 1505.8 stating that:

6.1 A School Psychologist Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 A School Psychologist Standard Certificate is not subject to renewal.

Proposed §1583.7 introduces language specifying disciplinary action that may result in the limitation, suspension, and revocation of Certificates in accordance with 14 DE Admin. Code 1514, 14 Del. C. §1222, and 14 DE Admin. Code 1515.

Proposed §1583.9 introduces language recognizing School Psychologist Standard Certificates granted before this regulation. Similar revisions have been accepted into final

versions of other similar regulations updating and revising the requirements for other education professional standard Certificates.

While Councils have commented on previous proposed regulations since DDOE began reviewing and updating professional Certificate requirements in April 2020, the only comment incorporated into a final regulation was regarding 14 Del. Admin. C. §1571.3.2. In their recommendation, Councils addressed ambiguity in the subsection describing the circumstances under which DDOE would not act on an application. The final regulation of §1571 corrected the ambiguity in this subsection and the revised language included in §1571 is included in this proposed regulation as well. Councils may again wish to address concerns with DDOE or Secretary of Education discretion in granting Certificates to candidates who may otherwise not meet requirements, but as similar comments have not been incorporated in other final regulations, it may be unlikely that they will be included in the final language of §1583.

2. Proposed DDOE Regulation on Scholarship Incentive Program, 24 Del. Register of Regulations 753 (February 1, 2021)

The Delaware Department of Education (“DDOE”) proposes to amend 14 Del. Admin. C. 1203, which outlines the eligibility criteria and application process for the Scholarship Incentive Program (“ScIP”) pursuant to 14 Del. C. §§ 183 and 3402(c). DDOE acting in cooperation with the Delaware Higher Education Office (“DHEO”), seeks the consent of the State Board of Education to amend this regulation to include an updated definition of academic merit to align with federal standards for receiving financial aid at a college or university and an update to the application process to reflect a new online application.

Much of the proposed changes do not warrant much discussion or concern, so they will be mentioned only briefly. Proposed § 1203.2 clarifies the terms used for the Scholarship Incentive Program by adding acronyms to the terms. The following terms and definitions were removed (1) Academic Record, (2) Critical Need Area, (3) Grade Point Average, and (4) Regionally Accredited Institution. The term and definition Satisfactory Academic Progress was added to further define the eligibility requirements for the Scholarship Incentive Program.

Proposed § 1203.3.2.2 establishes the new application process for the Scholarship Incentive Program, pursuant to 14 Del. C. § 3411. Specifically, it abolishes the submission of paper applications by mail, fax, or email. This section outlines the online completion and submission of the Scholarship Incentive Program application. DDOE amends to add the online application would be completed through the DHEO Student Account website. Applications would be submitted during acceptance period.

Councils may wish to recommend that the DDOE consider alternative submission options for individuals with disabilities that are unable to use technology and individuals that do have

access to the internet. For ease, the last date of the application acceptance period should remain the same.

DDOE proposes to amend § 1203.4.1.3 to add a requirement that all eligible applicants should be making Satisfactory Academic Progress.

Proposed § 1203.5 outlines the number and amount of scholarships awarded annually. Proposed § 1203.5.2 clarified how DHEO will determine an applicant's financial need for the purpose of ScIP. The DDOE amends to add the following language "to determine an applicant's financial need for the purpose of ScIP; DHEO will consider the applicant's EFC; the expense of attending the college or university in which the applicant is enrolled; and the applicant's eligibility for Pell grants and other federal, state, or private grant assistance." Specifically, proposed § 1203.5.2.2 have removed language of academic merit, respectively. The DDOE proposes to remove the GPA requirement entirely.

Proposed § 1203.6.1 amends to add the language that DHEO shall contact "a recipient's college or university to verify the recipient's financial and enrollment status and to verify that the student is making Satisfactory Academic Progress each semester prior to the scholarship funds being disbursed." The recipient would have to successfully complete coursework according to the standards of the college or university in which the student is eligible to receive financial aid.

In conclusion, Councils may wish to support the proposed amendment with the included recommendations.

Proposed Legislation

HB 55 – Gun Shop Project

House Bill 55 seeks to establish the Delaware Gun Shop Project, which would operate under the oversight of the Delaware Suicide Prevention Coalition. As referenced in the synopsis of the bill, the first Gun Shop Project was formed in New Hampshire in 2009 (more information about the Gun Shop Project model and existing projects in other states can be found on the Harvard School for Public Health's "Means Matter" website: <https://www.hsph.harvard.edu/means-matter/gun-shop-project/>). Following this model, the Gun Shop Project would encourage collaboration between the Division of Substance Abuse and Mental Health and owners of gun shops to increase awareness of suicide risk factors and prevention strategies. The bill was passed by the House with House Amendment 1 on January 27, 2021, and it has since been assigned to the Health & Social Services Committee in the Senate.

The bill references the grave statistic that while “firearms are used in less than 6% of suicide attempts... firearms are used in over half of suicide deaths.” To address this problem, the Delaware Gun Shop Project would “develop and create suicide prevention education materials,” which would include both written materials and an online training course. The Gun Shop Project would also be required to ensure the availability of those materials online. There is no language in the bill indicating that use of the materials or completing any of the Project’s educational programming would be required of gun shop owners or integrated into any component of the licensure process for gun shops; participation on the part of gun shops would be completely voluntary. The Gun Shop Project would be staffed by the Division of Substance Abuse and Mental Health, and the Project would be required to submit an annual report detailing its activities. House Amendment 1 as passed clarified that the Gun Shop Project would only be required to distribute its own informational materials and would only be required to make them available online as opposed to by delivery to physical locations. House Amendment 1 also removed references to individuals applying for licenses to carry concealed deadly weapons as gun shops are not directly involved in that process.

There does not seem to be substantial available data that demonstrates Gun Shop Projects in other states have directly led to a reduction in suicides using firearms, however they have been touted for raising awareness about gun safety and suicide prevention among gun shop owners and potential gun purchasers. Additionally, some national groups such as the Mental Health Association (MHA) have also endorsed suicide prevention outreach to gun shops as a means of reducing gun violence without unfairly stigmatizing people with mental health disabilities (see, e.g., MHA Position Statement No. 72, *available at* <https://www.mhanational.org/issues/position-statement-72-violence-community-mental-health-response>).

It has been widely reported that gun sales significantly increased in 2020 following the onset of the Covid-19 pandemic and increased social unrest; The Guardian reported that as of October 30, 2020, more than 17 million guns had been sold in the U.S. during the 2020 calendar year (see Lois Beckett, “Americans have bought record 17m guns in year of unrest, analysis finds,” The Guardian, Oct, 30, 2020, *available at* <https://www.theguardian.com/us-news/2020/oct/29/coronavirus-pandemic-americans-gun-sales>). While it is too soon to know the full impact of the Covid-19 pandemic on suicide rates, the long-term impacts of increased isolation and uncertainty on mental health have been cause for concern among experts. Some data indicates that while overall suicide rate has not significantly spiked since the onset of the pandemic, suicide rates for certain populations, particularly in Black communities, has increased more sharply (see Kim Tingley, “Will the Pandemic Result in More Suicides?” New York Times Magazine, Jan. 21, 2021, *available at* <https://www.nytimes.com/2021/01/21/magazine/will-the-pandemic-result-in-more-suicides.html>).

Partnership between mental health practitioners and gun shops seems like a potentially effective way to target prospective gun buyers who are contemplating suicide or have a person who is at risk in their household without unnecessarily targeting or stigmatizing people who identify as having a mental illness. It does not appear that all states with Gun Shop Projects have laws specifically creating them, however enacting legislation would potentially be one way to address needed funding. One concern would be that without further incentive to participate, there is no guarantee that gun shops will buy in to the Project's mission or actively seek out the Project's materials, though some anecdotal information indicates that gun shop owners in other states have been receptive to outreach efforts (see, e.g., Roni Caryn Rabin, "'How Did We Not Know?' Gun Owners Confront a Suicide Epidemic" *New York Times*, Nov. 17, 2020, available at <https://www.nytimes.com/2020/11/17/health/suicide-guns-prevention.html>).

HB 62- Prescription Drug Pricing

House bill 62 amends Title 6 chapter 25. Chapter 25 contains all the prohibited trade practices. This bill adds subchapter XI, Prevention of Excessive and Unconscionable Prices for Prescription Drugs.¹

This bill² is a comprehensive effort to control the prices of generic and off-patent drugs³ sold, dispensed, or delivered to any individual in the state and provides stiff penalties for a violation. The bill is very technical in nature and very specific in the prices of drugs it seeks to regulate. If the bill is enacted, it will take effect on January 1, 2022.

The bill requires Pharmacy Benefits Managers⁴ and State agencies to monitor the prices of generic and off-patented drugs and notify the manufacturers and the Attorney General of any excessive price increases. The bill gives power to the Attorney General to gather information and records from the manufacturer to determine whether a violation of the statute has occurred.

¹ Chapter XI was previously titled Cumulative Remedies and Enhanced Penalties. Section 2598 was previously titled violation of order or injunction; penalty. Section 2598 was repealed 77 Del. Laws, c. 282, § 4, effective June 10, 2010.

² This bill is adopted from the Model Act to Prevent Excessive and Unconscionable Prices for Prescription Drugs developed by the National Academy for State Health Policy (NASHP). According to their website, the NASHP is a "nonpartisan forum of policymakers throughout state government, learning, leading and implementing innovative solutions to health policy challenges."

³ A generic or off-patent drug is any prescription drug to which any exclusive marketing rights held by the manufacturer under the federal Food, Drug, and Cosmetic Act, the federal Public Health Service Act, and patent law have expired. A generic or off-patent drug includes any "drug-device combination product for the delivery of a generic drug." 6 *Del. C.* §2598(1)d.

⁴ A pharmacy benefits manager (PBM) is someone who contracts with pharmacists or pharmacies on behalf of an insurer or third-party administrator to: process claims for prescription drugs or medical supplies; pay pharmacies or pharmacists for prescription drugs or medical supplies; or negotiate rebates with manufacturers for drugs. 18 *Del. C.* §3302A.

6 *Del. C.* §2599(3). The bill allows the Attorney General to utilize the courts to enforce the provisions of the statute when a violation occurs. 6 *Del. C.* §2599(4).

The bill defines excessive price increase as an increase, after adjustment for inflation by the consumer price index, that exceeds fifteen percent (15%) of the wholesale acquisition cost⁵ during the last calendar year or forty percent (40%) of the wholesale acquisition cost during the last three (3) calendar years. 6 *Del. C.* §2598(2)b.1. An excessive price increase also occurs when the increase, after adjustment for inflation by the consumer price index, exceeds \$30.00 for a thirty (30) day supply of the generic or off-patent drug or for a supply for a course of treatment lasting less than thirty (30) days. 6 *Del. C.* §2598(2)b.2. However, a wholesale distributor or pharmacy can increase the price of a generic or off-patent drug if the increase is “directly attributable to additional costs for the drug imposed on the wholesale distributor or pharmacy by the manufacturer of the drug.” 6 *Del. C.* §2598(2)c.

If a manufacturer of generic and off-patent drugs is found by the Attorney General to have imposed an excessive price increase, in violation of the above mentioned definitions, the Attorney General can utilize the courts for a number of remedies. A court can enjoin or stop the violation and order the prices to be lowered to levels that comply with the statute. 6 *Del. C.* § 2599(3)b. The court can require the manufacturer to provide the Attorney General with an accounting that shows the revenues received by the manufacturer as a result of the excess price increase. 6 *Del. C.* §2599(3)c. The court can order restitution of the excess price increase revenues to consumers and third party payers (6 *Del. C.* §2599(3)d.) or to the State if the manufacturer cannot identify the individual transactions entitled to a refund. 6 *Del. C.* §2599(3)e. The court can impose a fine of up to \$10,000 per day for each violation (6 *Del. C.* §2599(3)f.), and every transaction that results in an excess price is considered a separate violation. 6 *Del. C.* §2599(5). The court can also award attorney’s fees and costs to the Attorney General in prosecuting the action. 6 *Del. C.* §2599(3)g.

A manufacturer or distributor of a generic or off-patent drug cannot withdraw the drug from sale or distribution in Delaware to avoid the provisions in the statute. 6 *Del. C.* §2599(6). Any manufacturer who intends to withdraw a generic or off-patent drug from the sale or distribution in Delaware must give at least 180 day notice to the Board of Pharmacy and the Attorney General of its intent to do so. 6 *Del. C.* §2599(7). If the Attorney General determines that the manufacturer withdrew a generic or off-patent drug from distribution or sale, the Attorney General shall impose a penalty of \$500,000 on the manufacturer or distributor. 6 *Del. C.* §2599(8).

⁵ Whole sale acquisition cost is the estimate of the manufacturer’s list price for a drug to a wholesaler or direct purchaser without taking into consideration discounts or rebates. 6 *Del. C.* §2598(1)b.

This bill reflects the sponsor's (Andria L. Bennett) concern about the cost of drugs in general and specifically the cost of generic drugs and drugs where the patent protection has expired. Delaware is among the states that are taking action to control the rising cost of prescription drugs. According to the NASHP, as of the end of October of 2018, state legislators introduced 174 bills addressing the cost of prescription drugs and 45 were enacted into law.

Based on the model act, this is a laudable effort by the legislature to help control the cost of drugs in Delaware and will directly benefit individuals with health conditions, especially low income individuals and those with plans that require the use of generics. DLP suggests that councils consider endorsement.

HB 86- Expansion of K-3 Basic Special Education

House Bill 86 seeks to amend Title 14 of The Delaware Code relating to increased funding for kindergarten through third grade students identified as eligible for basic special education services. The bill was introduced in the Delaware House of Representatives on January 27, 2021, sponsored by forty Representatives and Senators, in conjunction.

The Governor has proposed a budget to the General Assembly for Fiscal Year 2022 that includes an appropriation of not less than \$35 million for Opportunity Funding for 2021-2022 School Year. These increases are the result of litigation after filed against Governor John Carney, Secretary Susan Bunting, and Treasurer Ken Simpler in their official capacities, alleging that the State of Delaware does not comply with the Education Clause of the Delaware Constitution requiring the state to provide an adequate education to all children, specifically all low income children, children with disabilities and children whose first language is not English. Currently, basic special education is provided for students in fourth through twelfth grade who are identified as eligible for basic special education and related services; there is no additional unit funding for students in kindergarten through third grade who may be eligible for basic special education services.

The bill adds a designation of "K-3 Basic Special Education (basic)" and over three years reduces the number of students comprising a unit from the current 16.2 to 8.4. This language would be consistent with the units available to students in grades 4-12. Sections 1 through 3 of the bill changes the funding chart currently in the Code to subsections and provides for a decrease in the ratio between the number of students enrolled and the unit count for basic special education from 16.2 currently to 12.2 in Fiscal Year 2022, 10.2 in Fiscal Year 2023, and 8.4 in Fiscal Year 2024. Section 4 of this bill delays the effect of each Section until the start of each new fiscal year in the 3-year cycle over which this Act's changes are intended to occur.

The DLP suggests that the Councils support this bill, as it expands funding to Kindergarten through third grade students identified as eligible for basic special education. The Governor has suggested to increase the budget gradually over the next three years. This allows students in Kindergarten through third grade students that are eligible for basic special education to receive an adequate education and comply with the settlement in the litigation.

HB 100 – Mental Health Units for Elementary Schools

House Bill 100 proposes the establishment of a mental health services unit in every Delaware public elementary school (including charter schools). The bill would require the State to fund “one school counselor, or school social worker or licensed clinical social worker licensed as a school social worker” per 250 full-time enrolled students, and one school psychologist for every 700 full-time enrolled students. These ratios align with what is recommended by the American School Counselor Association and the National Association of School Psychologists, respectively (see “School Counselors Matter,” American School Counselor Association, Feb. 2019, available at <https://www.schoolcounselor.org/getmedia/b079d17d-6265-4166-a120-3b1f56077649/School-Counselors-Matter.pdf>; “The Shortage of School Psychologists,” National Association of School Psychologists, available at <https://www.nasponline.org/research-and-policy/policy-priorities/critical-policy-issues/shortage-of-school-psychologists>).

The introduction of this bill is very timely as the ongoing coronavirus pandemic has raised serious concerns about the long-term effects of increased isolation and remote learning on child mental health (see, e.g. Jeffrey Kluger, “The Coronavirus Seems to Spare Most Kids From Illness, but Its Effect on Their Mental Health Is Deepening,” Time (July 23, 2020), available at <https://time.com/5870478/children-mental-health-coronavirus/>). A similar bill had been introduced on March 19, 2019 but did not make it out of committee. At that time, the DLP expressed concerns about the ongoing workforce shortages in the mental health field, and the recent introduction of more stringent requirements for Licensed Clinical Social Worker (LCSW) licensure, which could cause potential difficulties for schools in filling the required positions. While those concerns remain relevant in 2021, the potential long-term impact of the current crisis on child mental health simply cannot be ignored, and the Councils should encourage any opportunity for additional funding of mental health resources for school-aged youth.

It is also important to note that in recent years the Division of Prevention and Behavioral Health (DBPHS) has expanded its partnerships with Delaware school districts, which has included placed Family Crisis Therapists (FCTs) in many Delaware elementary schools. According to DPBHS’s website, there are currently FCTs placed at 53 elementary schools throughout Delaware (further information, including a list of participating schools, is available at https://kids.delaware.gov/mss/mss_opei_early_intervention.shtml). Additionally, Delaware received a large grant from the Substance Abuse and Mental Health Services Administration

(SAMHSA) in 2018 to launch Project DeLAWARE, a partnership to pilot expanded in-school mental health screening and services in three Delaware school districts (further information is available at <https://www.doe.k12.de.us/domain/588>). Project DeLAWARE is funded through September 30, 2023. While the existence of these program is not a reason to oppose the bill, should the bill pass it would be crucial for the Department of Education to coordinate effectively with the DPBHS to ensure that they are not duplicating efforts and that their resources can reach as many students as possible.

Another issue to consider in light of the ongoing pandemic is that it would be important to ensure that the allocated mental health resources are still available to students and their families during periods of mandated remote learning; the Councils may wish to suggest that more specific language about this is included in the bill.

HCR 3 – Creation of Delaware Corrections Investigation Task Force

House Concurrent Resolution 3 seeks to create a task force to “investigate and make findings and recommendations regarding the treatment of inmates and the quality of healthcare provided to inmates in this State’s correctional institutions.” According to the introductory text of the resolution, the task force is being formed in light of the Covid-19 pandemic and particular risks that the pandemic poses to incarcerated individuals, however the duties of the task force as described in the resolution are broader and do not specifically relate to Covid-19.

In addition to various legislators, the resolution proposes appointing one member of the judiciary, one Delaware attorney with experience representing criminal defendants or handling prisoners’ rights matters, one member of the public who has expertise in correctional healthcare, and one member of the public who is a licensed physician. The task force would be required to produce a report summarizing its findings and recommendations no later than July 30, 2021. The concurrent resolution would cease to be effective 90 days after the Task Force’s first meeting (the synopsis of the bill states the report must be submitted within 90 days of the Task Force’s first meeting, but that is not actually what the resolution says).

It is also not clear whether this task force would also address the numerous allegations of neglect and malpractice that were made against the Department’s previous medical and behavioral health contractor, Connections CSP. Medical and behavioral health services in state correctional facilities were taken over by a new contractor, Centurion, on April 1, 2020, shortly after the onset of the Covid-19 pandemic.

A critique that opponents of the bill have presented is the overlap between the subject matter of this Task Force and the existing Adult Correction Health Care Review Committee, which is created by statute (see 11 Del. C. § 6518) and serves in an advisory capacity to the

Commissioner of the Department of Corrections as well as the Governor and the General Assembly. Per the enabling statute the Committee is required to issue an annual report each year by December 31; the Committee's annual report for 2020 does not appear on its website (see <https://cjc.delaware.gov/achrc/>) as of February 10, 2021, so it is difficult to assess what issues that body had reviewed during the 2020 calendar year and to what extent it had separately investigated any concerns related to Covid-19 in correctional settings.

It has been well established that congregate environments such as correctional facilities present increased risk for Covid-19. While duplicating the work of an existing committee may not be the most effective way to improve conditions for this vulnerable population, it could be beneficial for the legislature to direct a more focused review on issues related to Covid-19 and the ongoing precautions and available resources for medical care that may be needed. The Councils may wish to suggest that should the Task Force go forward, its focus should be further narrowed to investigate questions related to medical care for Covid-19 that may need more urgent action than could be addressed by the Adult Correction Health Care Review Committee.

One specific issue that may merit further consideration by such a group is the issue of "compassionate release" for individuals who are at particular risk for serious complications or death due to Covid-19. Under current Delaware law, there is not a process for individuals to initiate a request for "compassionate release" or "medical parole" of their own volition; the process needs to be initiated by the Department of Corrections and referred to the Board of Parole. Otherwise, some individuals potentially have the option to go through the lengthy process of requesting a commutation of sentence, but that decision is generally not primarily based on medical concerns. The Department of Corrections has been resistant to previous calls from advocacy groups to consider any sort of broader effort to release individuals who are particularly vulnerable to Covid-19 due to age, disability or other underlying health condition.

Senate Bill 20- DEAL

This bill seeks to expand upon and clarify some aspects of parking for persons with disabilities. The bill would amend the Delaware Equal Accommodations Law (DEAL) and the Motor Vehicle Code.

The amendments to DEAL would make it an unlawful practice for a person (designated as the "owner, lessee, proprietor, manager, director, supervisor, agent, or employee of any place of public accommodation") to fail to allow individuals with a special license plate or persons with disabilities to park at their respective establishments. The amendments specifically make unlawful signs that prohibit parking by the above-mentioned individuals. The amendments to DEAL dovetail with the amendments to the Motor Vehicle Code (MVC) in terms of defining a person with a special license plate and a person with disabilities. As allowed under 2134 through 2135. The procedures for filing a complaint with the State Human Relations Commission (HRC)

and the investigative powers of the HRC and Division of Human Relations and remedies in DEAL for a violation of the conduct proscribed in the amendments would apply.

By making the failure of a person to allow specified parking by a person with a special tag or a person with disabilities unlawful under DEAL, it will bring the conduct under the authority of the State Human Relations Commission (HRC) and the Division of Human Relations. This will allow for the filing of a complaint by the aggrieved party (although the Division of Human Relations can investigate compliance with the statute on its own without a complaint). It will bring into force the investigative powers of the HRC, including the ability to issue subpoenas and order discovery. Upon finding a violation of the statute, the Division of Human Relations can provide relief including damages to the aggrieved party for humiliations and embarrassment, expenses, costs, attorneys' fees, injunctive or other equitable relief. The division can also assess a civil penalty against the perpetrator to "vindicate the public interest." 6 *Del. C.* 4508(h).

The bill also amends the MVC code to allow persons who have a special license plate and persons with disabilities to park in an unmetered parking space for an "unlimited period" of time and in a metered parking space for at least an hour.

This bill both gives more rights and strengthens the rights for persons with disabilities. It makes unlawful for a place of public accommodation to prohibit individuals with a special license plate or persons with disabilities from parking at their respective establishments.

This is an admirable attempt by the legislature to help strengthen the rights of persons with disabilities and should unequivocally be endorsed by councils.

Delaware Senate Bill 56: An Act To Amend The Delaware Code Relating To Educational Opportunity Funding

Delaware Senate Bill 56 introduces an Opportunity Fund which will provide additional funding for schools to support English learner (EL) and low income (LI) students. This bill is introduced as a result of a settlement agreement in RE Delaware Public Schools Litigation C.A. No. 2018-0029-VCL.

Senate Bill 56 requires that "[t]he Department of Education shall adopt regulations identifying the types of services and supports that may be funded with money from the Opportunity Fund." The bill identifies specific expenditures that may be funded with this money (including "additional staff," "contractual services," "supplies and materials"), but does not restrict school districts to these categories, allowing them to spend the funds on "other expenditures necessary to provide additional services and supports for EL and LI students." §1726(b)(1).

The bill also requires the Department of Education to create accountability procedures and logistical support to districts, requiring the Department of Education to "provide an expenditure plan template and plan development supports to school districts and charter schools, including identifying evidence-based practices shown to improve performance outcomes for EL

and LI students.” §1726(b)(2). Under the language of the bill, in order to receive funds, school districts must “submit a proposed expenditure plan to the Department of Education for review no later than the second Friday of July of each fiscal year” and the plan must “separately list each school governed by the school board of the school district of charter school that will receive funding under this section.” §1726(b)(3). School districts and charter schools that receive funds must also “submit an annual report on the use of funding received under this section to the Department of Education no later than November 1 of each year.” §1726(e)(1)

The bill also creates requirements to help ensure that funding is appropriately allocated to support EL and LI students. The bill states that “[f]unding received under this section is supplemental to and may not supplant any state, local, or federal funds.” §1726(4). Councils may wish to request further clarification on this section, and what if any, impact or restriction this might have on local and municipal tax revenue allocation decisions.

Furthermore, Opportunity Fund resources must be allocated “such that not less than 98% of funding received under this section that is generated by a schools LI and EL population calculation is allocated to that school.” §1726(4)(c). There is an exception to this allocation requirement, permitting school districts to allocate funds differently, but they may only do so following the processes described in 14 Del. C. §1704(4). §1726(c)(2). School districts would be required to vote on this proposal at a public school board meeting following two consecutive weeks of public notice in the local newspaper, postings on the school doors, and distribution to the school’s “principal, teacher association building representative, and Parent Teacher Organization/ Parent Teacher Association parent leader of any affected school,” as per 14 Del. C. §1704(4). While this public meeting and notice requirement can make diversion of funds a politically unpopular option, Councils may wish to advocate for stronger language prohibiting or constraining the reallocation of funds under this bill.

The bill proposes amending §1726, Title 14 of the Delaware Code to define the amount per pupil that will be funded through the Opportunity Fund. The bill proposes that the “per pupil amount” will be “calculated as follows: \$55 million divided by the total sum of EL and LI student enrollment in each school district and charter school.” §1726(f)(1). The bill specifies that in calculating the per pupil amount, “a student may be counted as both an EL student and a LI student if the student satisfies the definitions for both groups.” §1726(f)(3). Moving forward, “for each fiscal year after fiscal year 2026, the Opportunity Fund total must be equal to at least the per pupil amount calculated in Fiscal Year 2025 under this subsection and multiplied by the sum of EL and LI student enrollment as of September 30 of the previous fiscal year.” §1726(f)(2). Councils may wish to recommend changing this provision to account for inflation in future fiscal years and to ensure that the value of this funding does not decrease over time.

In addition to the amount provided per pupil, the bill also specifies that “[a]t least \$5 million of the annual appropriation to the Opportunity Fund must be allocated to public schools, including charter schools, identified as having an enrollment of at least 60% LI students or 20% EL students.” For any “public school receiving funding under this subsection,” they must spend “the allocated funds for mental health or reading supports to enhance services and provide additional supports to EL or LI students.” §1726(d)(1). Elsewhere in the bill, the language specifies “public schools, including charter schools” or explicitly mentions “school districts and

charter schools.” Councils may wish to clarify this section to mirror language elsewhere in the bill explicitly mention both traditional public schools and charter schools in this requirement.

While this bill provides substantially more financial resources to schools with higher populations of EL and LI students, the increased funding by no means meets the full needs of these schools and their students. Councils may wish to advocate for greater funding as part of this and similar pieces of legislation. Councils can emphasize that while this is a stride forward in greater and more equitable funding for schools across the state, it is only the start, not the end, of progress taken to improve school funding.

Final:

779- Non-Emergency Medical Transportation- no changes

784-Adult Dentail- more specific regulations request taken under advisement

Emergency Regulation

732- extends emergency order designating SARS- CoV-2 as reportable infectious disease.

Part C Application evaluation will be forthcoming next month prior to deadline.