

To: GACEC, SCPD and DD  
From: Disabilities Law Program  
Date: May 14, 2021

Re: May 2021 Policy and Law Memo

Consistent with council requests, DLP is providing an analysis of certain proposed regulations appearing in the May 2021 issue of the Delaware Register of Regulations as well as certain proposed legislation.

Proposed Regulations

**1. Proposed DDOE Regulation on 1581 School Reading Specialist, 24 Del. Register of Regulations 981 (May 1, 2021)**

The Delaware Department of Education (“DDOE”) proposes to amend 14 Del. Admin. C. § 1581, which describes the requirements for obtaining the School Reading Specialist standard certificate (hereinafter “Certificate”) pursuant to 14 Del. C. § 1220. DDOE, in cooperation with the Professional Standards Board (hereinafter “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, discipline actions, requests for the Secretary of Education to review applications and, recognizing past certifications, respectively.

DDOE originally published this proposed amendment in the Delaware Register of Regulations (“Register”) on November 1, 2020. After receiving written comments, DDOE republished the same proposed amendment, without any changes, in the Register on January 1, 2021 to allow additional time for written comments. Furthermore, the Board held a public hearing on February 4, 2021 concerning the proposed amendments. Subsequently, the Board held presentations on April 1, 2021 regarding school reading specialists, International Literacy Association standards for reading / literacy specialists, and International Dyslexia Association standards. After reviewing the comments and presentations, the Board is republishing the same proposed amendment, without changes.

As a reminder, the following is the recommendation previously submitted to Councils for both the November 1, 2020 and January 1, 2021 versions (which were the same):

“DDOE, in partnership with the Board, has been systematically reviewing and updating the requirements for the different Standard Certificates since approximately April of 2020. Councils have previously submitted comments to several of these proposed regulations with little to no effect. Of the recommendations put forth by Councils, DDOE and the Board have adopted only one – clarifying the language of subsection

3.2, which was ambiguous in the proposed regulation for the Special Education Teacher of Students with Disabilities (found at 14 Del. Admin. C. § 1571). This change has been adopted in the proposed regulations which followed. As this proposed regulation is nearly identical to the previous, Councils may wish to support the proposed regulation as is.”

Individuals who have previously submitted comments are not required to resubmit their comments. Therefore, Councils need not submit additional comments.

## **2. Proposed DDOE Regulation on 1011 Interscholastic Athletics During the COVID-10 Pandemic, 24 DE Reg. 971 (May 1, 2021).**

The Delaware Department of Education (“DDOE”) proposes new edits to regulations governing school interscholastic activities during the COVID-19 pandemic. These proposals include: adding informal instruction to defined terms in Section 2.0 and in the Return to Play Stages in Section 3.0; repealing the pre-participation physical examination requirements that applied to the 2020-2021 school year; revising the four Return to Play Stages to eliminate sports categorized as low, medium, and high risk for COVID-19 spread based on guidance from the American Medical Society for Sports Medicine and the National Federation of State High School Associations; repealing Section 5.0, which provided the dates for the fall, winter, and spring sport seasons during the 2020-2021 school year and set forth sport-specific requirements; revising the face covering requirements in subsection 3.5.3.3; and adding the previous requirements that the Board may mandate sport-specific requirements that are designed to protect the physical well-being of student athletes and that Member Schools follow any sport-specific plans approved by the Board to Section 3.0.

DDOE makes some minor additions and edits to its definitions in this regulation, including adding the term: “Informal Instruction” [to] mean[] drills to teach sport-specific skills with only demonstration-level contact permitted. Informal instruction does not involve team competitions or contests. Intentional or direct contact is not permitted as provided in 14 DE Admin. Code 1009.DDOE also proposes to make minor edits and additions to its “Return to Play” stages of reopening sports activities for students. Throughout each stage of “Return to Play,” DDOE removes references to temperature screenings (3.5.3.2), and proposes some edits to its face covering requirements, removing the requirement that “student athletes shall wear face coverings based on the Delaware Division of Public Health’s current guidance applicable to sports,” (3.5.3.3) and adding language the following language:

If face coverings are required, breaks of at least two minutes during which student athletes remove their face coverings while maintaining a distance of six feet from others shall be taken every 20 minutes during Practices, Scrimmages, and Competitions in continuous running sports, including field hockey, lacrosse, and soccer. If face coverings are no longer required for a particular sport, a student athlete who participates in the sport may choose to wear a face covering. (3.5.3.3).

DDOE also proposes minor edits to decrease restrictions on hydration stations (3.5.3.8) and the use of whistles (3.5.3.11), and removes earlier COVID restriction on scrimmages and

competitions against schools in other states (4.5.3.15-16). DDOE also proposes to remove language about “covering equipment that has holes with exposed foam, such as athletic pads” and requiring athletes to come to sports activities in their equipment and uniforms/ workout clothing and to wash workout clothing immediately upon getting home. (4.5.4.6.5-5; 4.5.5.8.4-5; 4.5.6.8.4-5) DDOE also proposes to eliminate language requiring contact tracing plans in Stage 4 of the Return to Play plan.

Throughout, DDOE also proposes edits to requirements regarding COVID-19 screening and approvals to engage in interscholastic competitions and other athletic activities, changing the language from more specific requirements to more general requirements that schools follow the Division of Public Health’s latest guidance. DDOE also proposes to remove language specific to Fall, Winter and Spring Sports of the 2020- 2021 school year (5.0) and sports- specific restrictions and requirements, although they do propose language that sports-specific requirements and restrictions may be mandated as needed. (3.5.6.6.5).

Throughout these proposed regulations, DDOE makes relatively few changes to restrictions and requirements regarding athletic activities and “vulnerable individuals.” DDOE proposes to edit the definition of “vulnerable individual” removing the language that a “vulnerable individual” is someone “strongly advised to shelter in place,” leaving instead the language that someone “qualifies as vulnerable based on the Delaware Division of Public Health’s guidance.” (2.0). In DIAA Return to Play Stage 1, DDOE retains the language that “vulnerable individuals shall not attend workouts,” the only type of sports activity permitted play during this stage (3.5.4.1). In Stage 2, DDOE makes minor but not substantive edits to the restrictions on vulnerable individuals and their ability to participate in this stage, proposing that in Stage 2, “vulnerable individuals shall not attend workouts, practices, conditioning programs, informal instruction, or open gym programs.” (3.5.5.1). (“Scrimmages” and “competitions” were removed from the list as they are prohibited for everyone in this stage, while “informal instruction” was added to the activities discussed in this stage and the list of prohibited activities for vulnerable individuals). (3.5.5.1). In Stages 3 and 4, DDOE proposes no edits besides adding “informal instruction” to the activities vulnerable individuals may participate in. (3.5.6.1; 3.5.7.1).

In our previous comment from October 2020 on DDOE regulations regarding student athletic activities during the COVID-19 pandemic, we noted that while the more restrictive limitations proposed by DDOE for “vulnerable individuals” are likely proposed to ensure safety and health for all, they may raise concerns about compliance with the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“Section 504”), which require equal access to all students with disabilities to the programs, activities, and facilities of a school and school district. In our previous comment, we recommended that:

Instead of completely restricting the participation for a “vulnerable individual” in interscholastic activities, there should be an individualized assessment to determine whether it is appropriate for a student to participate. Failure to do so could lead to a violation of the ADA or Section 504 and will surely begin and continue to further segregate students with disabilities from their peers. Councils may wish to recommend that DDOE and the DIAA either (1) completely remove the restriction for a “vulnerable individual” or (2) change the language to remove the complete

restriction (the words “shall not”) and instead include a more individualized assessment for each student.

Because DDOE did not propose substantial changes related to additional restriction for “vulnerable individuals,” we again urge Councils to recommend a more individualized assessment of a student’s ability to participate safely under each stage of the DIAA’s Return to Play plan.

### **3. Proposed DELJIS Regulations - Delaware Criminal Justice Information System Rules and Regulations, 24 Del. Register of Regulations 963 (May 1, 2021)**

The Delaware Criminal Justice Information System (DELJIS) Board of Managers has proposed amendments to existing regulations at 1 Del. Admin. C. § 1301. The stated purpose of these amendments is to ensure that DELJIS conforms to the requirements of the relevant statutes, codified at 11 Del. C., Ch. 85 – 86. In addition to some minor wording changes there are two primary substantive changes in the proposed regulations. First, there are new subsections detailing the responsibilities of Contracting Government Agency (“CGA”) and private contractors who have access to DELJIS through a contract with a CGA, detailing what CGAs are required to put in place for the oversight of contractors and employees of contractors, as well as the obligations of contractors with respect to appropriate access and use of DELJIS. Notably under the proposed regulations at 7.3, the CGA would only be able to share CJIS information with a contractor orally or by a secured and encrypted e-mail that cannot be printed or forwarded.

Second, there is language added to the subsections related to suspension of access to DELJIS for an individual user arrested for a criminal offense and to administrative investigations of improper access or breach to clarify that in the case that a user does not request a hearing within fifteen days, the Board will review a summary of the matter and issue a decision during a regularly scheduled meeting of the Board. The affected user would receive some form of written notice prior to the meeting. Additionally, the subsection regarding record retention and destruction has been moved to a different place in the proposed regulations and slightly reformatted, however the provisions appear to be the same as the existing regulations.

The proposed amendments do not appear to have a significant impact on privacy concerns, however the added details regarding CGA and contractor responsibilities surrounding access and use to data may further promote the security of data contained in DELJIS. Councils may wish to endorse or not make any recommendation one way or the other.

#### **Legislation:**

##### **House Bill 166- Funding for education in trades**

House Bill 166 is an Act to amend Chapter 34, unemployment compensation dealing with counseling, training, and placement activities, of Title 19, Labor. The Bill was introduced on April 29, 2021, was assigned to the Labor Committee, and is awaiting a hearing.

This Act would create a program, called Elevate Delaware. The program would provide tuition, up to \$10,000.00, for eligible individuals to obtain training and education in a field that does not require a college degree, such as HVAC (heating, ventilation, and air conditioning), plumbers, electricians, and construction.

In addition, the act allows the Department of Labor to provide eligible individuals with payments to cover basic living expenses while attending the non-degree credit certificate program and up to ninety (90) days following completion of the program to search for a job.

To be eligible for the program, an individual must be a Delaware resident who has achieved a high school diploma, Diploma of Alternate Achievement Standards, or a Delaware secondary credential and enrolled in an approved non-degree credit certificate program.

The Act would create a Workforce Development Board to oversee the program, maintain a list of non-degree credit certificate programs approved for Elevate Delaware, and update the list annually (Section 1. §§ 3404(c)(1) and 3404(c)(1)b.).

Monies to fund the program, in an amount not to exceed \$1,500,000.00, shall be paid out of the General Fund (Section 4).

The Act would be effective as of the date it was enacted into law. It would be implemented the earlier of one (1) year from the date of enactment or upon publication in the Register of Regulations by notice from the Secretary of the Department of Labor that the regulations have been promulgated to implement the act (Section 2.).

This Bill, if enacted, would provide both an opportunity and monies to individuals who wanted to attend training programs for a skilled trade rather than attend college. This program would enable the participants to have a career in the trades. Delaware is seeing a shortage in skilled tradespeople as retirement exceeds new workers. It is an easy bill for Councils to support.

Councils should also be aware that a similar bill was introduced in the Senate on February 26, 2021 and is awaiting consideration in committee. Senate Bill 65 also seeks to amend Chapter 34, unemployment compensation dealing with counseling, training, and placement activities, of Title 19, Labor.

The Act would create the Focus on Alternative Skills Training Program (FAST) within the Division of Employment and Training (Section 1. § 3404(a)). The program would provide tuition, up to \$9,000.00, for eligible individuals to obtain training and education in a field that does not require a college degree, such as HVAC, plumbers, electricians, and construction (Section 1. § 3404(d)(1)).

Similar to the requirements of Elevate Delaware, to be eligible for the FAST program, an individual must be a Delaware resident who has achieved a high school diploma, Diploma of Alternate Achievement Standards, or a Delaware secondary credential and enrolled in an approved non-degree credit certificate program. However, unlike Elevate Delaware, FAST

requires the eligible individual to enroll in an approved program no later than eighteen (18) months after graduation from high school (Section 1. § 3404(b)(3)).

The Act would likewise create a Workforce Development Board to oversee the program, maintain a list of non-degree credit certificate programs approved for Elevate Delaware, and update the list annually (Section 1. § 3404(c)(1)).

Monies to fund the program, in an amount not to exceed \$1,000,000.00, shall be paid out of the General Fund (Section 4). This provision on funding for the program is \$500,000.00 less than the Elevate Delaware program.

Like House Bill 166, Senate bill 65 would be effective as of the date it was enacted into law. However, the act would be implemented the earlier of one (1) year from the date of enactment or upon the compilation of the list of approved non-degree credit certificate programs and publication in the Register of Regulations by notice from the Secretary of the Department of Labor that this was done.

Like the House Bill, the Senate Bill would provide both an opportunity and monies to individuals who wanted to attend training programs for a skilled trade rather than attend college. This program would enable the participants to have a career in the trades. The Senate Bill is less generous than the House bill. The total monies that can be obtained is less, it does not cover living expenses, and it imposes an eighteen (18) month requirement for eligible individuals to enroll and attend an authorized program. Nevertheless, if asked, it is also an easy Bill for Councils to support.

### **House Bill 162: An Act to Amend Title 31 Of the Delaware Code Relating to Services For Youth.<sup>1</sup>**

House Bill 162 (“HB 162”) seeks to amend Chapter 51, Title 31 of the Delaware Code relating to services for youth by adding § 5113 to establish a fund which would allow the Department of Services for Children, Youth, and their Families to award grants for targeted provision of effective services in helping youth avoid contact with the juvenile justice system. It also would allocate \$500,000 for fiscal year (“FY”) 2022 to the fund for the provision of cognitive behavioral therapy (“CBT”) and vocational training services. Finally, the bill updates outdated language. The bill was introduced in the Delaware House of Representatives on April 28, 2021, sponsored by Rep. Minor-Brown, Sens. S. McBride and Sturgeon, and Rep. S. Moore.<sup>2</sup>

It was subsequently assigned to the House Health & Human Development Committee, which met on May 12, 2021 and voted the bill out of committee with nine (9) Favorable votes and two (2) votes On Its Merits.<sup>3</sup> The bill is now placed on the “Ready List,” meaning if it is required to go through committee, it is available to be placed on an agenda for its third and final reading.

---

<sup>1</sup> <https://legis.delaware.gov/BillDetail?LegislationId=68636>

<sup>2</sup> HB 115 is co-sponsored by Sens. Ennis, Paradee, and Townsend and Reps. Baumbach, Heffernan, Lambert, Longhurst, Mitchell, Morrison, Michael Smith, and Wilson-Anton.

<sup>3</sup> A vote on its Merits means the legislator recommends the full Chamber take action on the legislation, but the legislator does not take a position on what action should be taken.

Specifically, HB 162 will create the “Juvenile Re-Entry Services Fund, which shall:

1. be overseen and administered by DSCYF;
2. be used exclusively for the provision of re-entry services for minors who have been adjudicated delinquent or convicted of a crime and detained in a secure facility as a result of adjudication;
3. include an appropriation of \$500,000 for FY 2022 to be used *exclusively* for CBT and vocational services;<sup>4</sup> and
4. award grants to public or private third parties through a competitive process for the provision of proven, evidence-based re-entry services.
- 5.

It is unclear whether funds will be allocated past FY 2022 and any remaining monies at the end of the FY will return to the General Fund. The Fiscal Note submitted with the bill only indicates funding for FY 2022, with an “N/A” for FYs 2023 and 2024.<sup>5</sup>

The following were notable comments and suggestions made during the House & Human Development Committee hearing:

1. In introducing the bill, Rep. Minor-Brown noted that according to a recent report released by the Criminal Justice Council (“CJC”), approximately 86% of youth are rearrested within eighteen (18) months of release. Furthermore, she said that CBT and vocational training have been proven to help reduce the risk of recidivism in youth; however, Delaware has very few programs that use those strategies.
2. Rep. Briggs King had the following comment read by Rep. Michael Smith: any programs receiving funds must be evidence-based and appropriately and properly monitored.
3. Rep. Morrison said he had researched reentry programs that use CBT and vocational training and found that they have been proven to work.
4. Rep. Johnson commented that the \$500,000 allocated to this fund is a “drop in the bucket” compared to what is actually needed.
5. Rep. Collins expressed concern with the reporting requirements and suggested that an amendment be made to require the reporting of actual results seen from the programs that are awarded grants under this fund. Rep. Minor-Brown noted that youth are already tracked for DSCYF reporting requirements, so the efficacy of these programs will be seen when those reports come out.
6. Rep. Chukwuocha expressed support for the Bill and said these types of services are so much needed throughout Delaware. He noted that young people receive CBT and vocational training when they are in the custody of the Division of Youth Rehabilitative Services (“YRS”) but lose it when they are released back into the community.
7. Building off Rep. Chukwuocha remarks, Rep. Smith noted that if we don’t reach young people once they are back in the community, we are likely to lose them again to the system.
8. Adam Kramer and Jasmine Loudon with the Green Beret Project, an organization in New Castle County which provides programming to at-risk youth, offered comments in support of the Bill.

---

<sup>4</sup> *Emphasis added.*

<sup>5</sup> <https://legis.delaware.gov/BillDetail?LegislationId=68636>

Over the course of the late 20<sup>th</sup> century, there has been a push to rethink how we, as a country, have considered and dealt with juvenile delinquency. In a line of U.S. Supreme Court cases, the highest court recognized that young people are inherently different than adults. Considering the social and neuroscience literature available in 2005, the Court held that sentencing a young person to death for a crime committed when they were under the age of eighteen (18) was unconstitutional.<sup>6</sup> In its ruling, the Court recognized three general characteristics that separated young people from adults: (1) lack of maturity and possession of an underdeveloped sense of responsibility, which result in impetuous and ill-considered actions and decisions; (2) more vulnerable and susceptible to negative influences and outside pressures; and (3) early stages of character development.<sup>7</sup> Because of these, and other, characteristics, youth are considered much more able to be rehabilitated than adults; a developing brain is different than a developed brain.

Although it would be better / preferable for our communities if we could establish programs that would prevent, or at least reduce, the opportunities for young people to come in contact with the juvenile justice system<sup>8</sup>, the next best option is a focus on preventing, or reducing, subsequent contacts with the juvenile justice system. That is to say, it would be preferable to review why young people come into contact with the juvenile justice system in the first place and tackle those problems – such as expulsion or suspension from school<sup>9</sup>. But that does not diminish the importance of establishing reentry programs that are evidence-based with proven efficacy.

Youth.gov – a website run by the U.S. government and aimed at helping individuals create, maintain, and strengthen effective youth programs – outlines five (5) factors to consider when planning for a successful reentry<sup>10</sup>:

1. Family: What services and supports are needed to ensure family and home stability, skill development, and healing of damaged relationships?
2. Substance abuse: What are the services and supports that promote a reduction or cessation of substance use and/or abuse?
3. Peer association/friends: What services and supports need to be in place to promote positive use of leisure time, prevent gang involvement, and discourage association with peers engaged in delinquent activities? Learn more about positive youth development.
4. School conflict and achievement: What services are in place to promote the transference of educational records and placement in the appropriate school settings that will support educational success and achievement?
5. Mental, behavioral, and physical health: What services and supports are in place to address mental health, social/behavioral concerns, and/or chronic health problems?

---

<sup>6</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>7</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>8</sup> **Out-of-home placements, including juvenile detention, have been linked with: higher rates of recidivism, increased likelihood of incarceration as an adult, increased likelihood of dropping out of school, decreased educational achievement, decreased likelihood of employment, and decreased earning potential in the labor market.**

<https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/Baltimore%20Youth%20Diverison%20Assessment%20-%20Final.pdf>

<sup>9</sup> <https://youth.gov/youth-topics/juvenile-justice/youth-involved-juvenile-justice-system>

<sup>10</sup> <https://youth.gov/youth-topics/juvenile-justice/reentry>



In terms of vocational training, youth.gov points to a study from 2009 which finds that reentry and aftercare programs which connect youth with professionals and employment opportunities have been found to reduce recidivism rates.<sup>11</sup> Likewise, CBT has been proven effective at reducing recidivism rates among young people. In a study by Crime Solutions, CBT programs were found to be 79.2% effective or promising among a cohort of twenty-four (24) young people.<sup>12</sup>

HB 162 is the third bill introduced this legislative session relating to juvenile justice. And it follows a slew of other bills in Delaware signed into law in 2017 which were aimed at diverting young people from the juvenile and criminal justice systems.<sup>13</sup>

Furthermore, HB 162 seems to partly heed the recommendations of Delaware's Juvenile Justice Advisory Group ("JJAG"), a specialized committee with knowledge and expertise in juvenile justice. In March of 2019, JJAG released its annual report and recommendations to the Governor and the Delaware State Legislature.<sup>14</sup> JJAG puts forth nine (9) policy recommendations including, but not limited to, investing in prevention-based services for young people, potentially establishing a mentoring program, and allocating state and local resources to fund programs aimed at strengthening family units. Furthermore, JJAG notes the importance of reentry services for young people:

Consistent with the adult justice system, re-entry services and coordination are essential to aiding the successful return to the community for juveniles exiting secure detention in our state. The JJAG will continue to seek ways to improve community-based support services for youth prior to exiting Delaware facilities, and once they are in the home setting to maximize the youth's potential for success after secure detention. The JJAG recommends the further analysis of existing re-entry services for youth within the [DSCYF], and the Department of Corrections (DOC) and committing state and federal resources where applicable and available to meet the needs of the DSCYF.<sup>15</sup>

Although children with disabilities are not specifically mentioned in the bill, data shows that such children will likely be impacted by its passage (or failure). According to a 2015 white paper, 65-70 percent of justice-involved youth have a disability.<sup>16</sup> Furthermore, in its Juvenile Justice Guide Book for Legislators focused on reentry and aftercare, the National Conference of

---

<sup>11</sup> <https://youth.gov/youth-topics/juvenile-justice/reentry>; *see also*: <https://cte.ed.gov/initiatives/juvenile-justice-reentry-education-program#portland> (shows four (4) career and technical education programs across the country who won grant awards through the U.S. Department of Education's Office of Career, Technical, and Adult Education.)

<sup>12</sup> <https://nij.ojp.gov/topics/articles/does-cognitive-behavioral-therapy-work-criminal-justice-new-analysis-crimesolutions>; *See also*: <https://nicic.gov/cognitive-behavioral-therapy> and <https://thecrimereport.org/2018/08/15/can-cognitive-behavioral-therapy-help-juvenile-offenders/>

<sup>13</sup> <https://why.org/articles/delaware-juvenile-justice-reforms-signed-law/>

<sup>14</sup> <https://cjc.delaware.gov/wp-content/uploads/sites/61/2019/06/Delaware-2018-JJAG-ReportvPRINTER.pdf>  
<sup>15</sup> *Id.*

<sup>16</sup> The Arc's National Center on Criminal Justice and Disability. "Justice Involved Youth with Intellectual and Developmental Disabilities: A Call to Action for the Juvenile Justice Community." (2015). [https://thearc.org/wp-content/uploads/forchapters/15-037-Juvenile-Justice-White-Paper\\_2016.pdf](https://thearc.org/wp-content/uploads/forchapters/15-037-Juvenile-Justice-White-Paper_2016.pdf).

State Legislatures reports that “[a]bout 70 percent of juveniles in the system are affected with at least one mental illness.”<sup>17</sup> The number is likely similar in Delaware.

As written, HB 162 will continue Delaware’s trend toward recognizing that young people, including those with disabilities, are separate and distinct from adults. Although HB 162 will surely make an impact, Councils may wish to support the bill with the following recommendations / suggestions:

1. Consistent with Rep. Briggs King’s comments during the May 12 Committee hearing, HB 162 should be written to ensure / require that the grantees use evidence-based vocational and CBT programs.
2. Consistent with Rep. Briggs King’s comments during the May 12 Committee hearing, HB 162 should be written to ensure / require that the grantees are adequately monitored in their provision of services to this population.
3. Consistent with Rep. Collins’ comments during the May 12 Committee hearing, HB 162 should be amended to require specific reporting related to results of the programs awarded funds under this grant. Specifically, the reporting should include the number of young people served, the program implemented, and the recidivism rate. As it is currently written, it may be difficult to discern which programs / grantees are actually making a positive impact and reducing recidivism rates.

Furthermore, Councils may wish to ask how the drafters of the bill arrived at the \$500,000 amount for the fund. It is likely that \$500,000 is not enough to make the type of difference Councils want to see – which could lead to a reduction in funding for subsequent years if there is a lack of positive movement.

### **Senate Bill 12 – SEEDS Program**

Senate Bill 12 intends to amend Title 14 of the Delaware Code Relating to Academic Progression, Duration of Eligibility, Adult Students, and Workforce Development Programs under The Delaware Student Excellence Equal Degree Act. Senator Poore believes the expansion of the SEED grant program will encourage adult learners to return to school to enhance their knowledge and skills and increase their job opportunities. Adult individuals with a high school diploma or less education were significantly impacted by COVID-19-related job loss.<sup>18</sup>

Due in large measure to the COVID-19 pandemic, about 125,0000 Delawareans filed for unemployment benefits and are facing an uncertain future for themselves and their families. Many of these jobs will be gone forever. The purpose of this act is to jump-start Delaware’s economy by opening The Delaware Student Excellence Equals Degree Act (SEED) to adult Delaware residents, who are not recent high school graduates, and to include short-term workforce development programs that

---

<sup>17</sup> <https://www.ncsl.org/documents/cj/jjguidebook-reentry.pdf>

<sup>18</sup>§ 3401A.

put Delawareans to work in high demand fields where jobs presently exist. Currently, about 56% of Delawareans aged 25-64 lack a post-secondary degree. This legislation can help to mitigate the effects of the pandemic on those adults. Tennessee has instituted a similar program called the Tennessee Reconnect Act.

The proposed amendments have added, “qualified, college-bound state resident students are relieved of the burden of paying undergraduate tuition at Delaware Technical and Community College, or the University of Delaware, Associate in Arts Program provided that these students meet the criteria set forth in this subchapter and are enrolled in a credit or non-credit program leading to the award of a recognized academic credential or pursuing studies leading to an associate degree at Delaware Technical and Community College.”

Students who qualify shall not have to repay the State because it is the intent and purpose of the General Assembly, to help ensure that Delaware students stay in high school, excel academically, and have better access to higher education regardless of a family’s financial circumstances and therefore payments under this program shall be grants, not loans.

The proposed amendments added “Recognized academic credential” shall mean a diploma or certificate of completion for credit or non-credit training program consisting of 100 hours of instruction or more, or that requires a student to pass a licensure or certification examination approved by a federal, state or local government, regulatory body, or industry/trade group. Also, students who enroll in an associate’s degree program as the holder of a Delaware State Board of Education Endorsement Secondary Credential shall have earned a cumulative score on the GED examination that is equivalent to a 2.5 G.P.A. on a 4.0 scale based on the standard formula for converting GED to GPA.

The DLP encourages the Council to support this bill to support expanding the Delaware Student Excellence Equals Degree Act.

### **Senate Bill 109- Medicaid Reimbursement Rates HHA**

Senate Bill 109 is an Act to amend Section 7931 of Title 29 pertaining to Medicaid reimbursement rates for home health-care services.

Section 7931(a) created the Division of Medicaid and Medical Assistance (DMMA). Section 7931(c) gives DMMA the responsibility “for the performance of all of the powers, duties, and functions specifically related to, Medicaid . . . .”

Section 7931(d) required DMMA to establish a minimum or floor rate for reimbursement for “all hourly home health-care nursing services paid for by Medicaid-contracted organizations” to a home health-care nursing services provider.

This Act would add section (f) to Section 7931. This section is similar to and based upon section 7931(d). It would require DMMA to establish a minimum or floor rate for reimbursement for “all

home health-care services for Medicaid long-term care services and support providers paid for by Medicaid-contracted organizations” to home health-care services providers.

This Bill provides conformity in reimbursement with other services (home health-care nursing services) and requires DMMA to set a minimum reimbursement rate for all home health-care services for Medicaid long-term care services and support providers. Although Medicaid-contracted organizations can reimburse at a higher rate, they, at a minimum, have to reimburse providers at the rate set by DMMA. Councils should be in favor of and support this Bill.

### **Senate Bill 118 – Long-Term Care Facility Participation in the Delaware Health Information Network (DHIN)**

Senate Bill 118, introduced on April 27, 2021, seeks to require long-term care facilities to enroll and share data with the Delaware Health Information Network (“DHIN”). The DHIN is a statewide health information exchange first launched in 2007 and widely used by medical providers.

The proposed legislation would require a long-term care facility that “provides services to a Delaware resident” to enroll in the DHIN “as an active user of the Community Health Record, no later than 30 days after the long-term care facility begins providing the services.” Additionally, facilities using electronic health records in providing services to a Delaware resident would be required to enter into an agreement with the DHIN to “provide the DHIN with a summary of each episode of care in an electronic format that DHIN establishes” within 90 days of when the facility begins providing services. Should this legislation be enacted, long-term care facilities already serving a Delaware resident or using electronic health records in providing services to a Delaware resident would also need to come into compliance with the law within the timelines specified after the date of enactment.

This legislation was suggested by the Joint Legislative Oversight and Sunset Committee (“JLOSC”) Task Force on the DHIN. The Task Force had been formed in 2019 to recommend legislation implementing certain recommendations by JLOSC following its review of the DHIN earlier that year. While the Task Force’s final report does not appear to be available online, it appears that this legislation would support the JLOSC’s broader recommendation to “[m]aximize the number and types of entities that submit clinical information to the DHIN,” as detailed in the JLOSC annual report. See Joint Legislative Oversight and Sunset Committee 2020 Final Report at pages 91-111, available at [https://legis.delaware.gov/docs/default-source/jloscdocuments/jlosc\\_finalreports/2020jloscfinalreport.pdf](https://legis.delaware.gov/docs/default-source/jloscdocuments/jlosc_finalreports/2020jloscfinalreport.pdf).

According to the DHIN website, 100% of long-term care facilities in the state are already using the DHIN. It is unclear from the information provided, however, whether that means that all long-term care facilities are using the Community Health Record or have entered into the data sharing agreements for electronic health records that this legislation would require. Additionally, this legislation appears to apply to out-of-state facilities, that may not otherwise have an immediate reason to enroll in the DHIN, when they are providing care to a Delaware resident; as

many Delaware residents may travel to nearby states for care, this would help ensure that individual health records are complete.

One reason that long-term care providers have been encouraged to use health information exchanges is that many individuals in long-term care settings may have numerous co-occurring health issues and sometimes require frequent transfer between various types of facilities; health information exchange would ensure that no important information is lost the shuffle and various treating clinicians can appropriately coordinate care regardless of where the individual patient is currently located. See, e.g., “Long-Term and Post-Acute Care (LTPAC) Providers and Health Information Exchange (HIE),” The Office of the National Coordinator for Health Information Technology, available at

[https://www.healthit.gov/sites/default/files/ltpac\\_providers\\_and\\_hie\\_082516\\_final\\_2.pdf](https://www.healthit.gov/sites/default/files/ltpac_providers_and_hie_082516_final_2.pdf).

The Covid-19 pandemic has only further highlighted how health information exchanges may benefit residents in long-term care facilities and make it easier for facilities to monitor residents’ health during emergency situations. In response to the Covid-19 public health emergency, CMS waived many existing restrictions on when and how residents could be moved within long-term care facilities or transferred between facilities. These measures were taken so facilities could act quickly in the case of a potential outbreak and to encourage “cohorting” based on residents’ Covid-19 status as recommended by public health officials. In this situation facilities using the Community Health Record and other features of the DHIN would be able to ensure that all necessary medical information traveled with a resident, even if a transfer occurred on short notice. While some of the CMS emergency waivers relating to transfers are no longer in effect as of May 10, 2021, similar measures could certainly be taken in case of a future public health emergency. According to the DHIN website, the DHIN began receiving data from Curative, a major provider of Covid-19 testing, in February 2021. Long-term care providers using the DHIN would therefore have quick access to residents’ Covid testing results to inform appropriate measures that need to be taken to protect both the individual resident and other residents and staff within a facility. Additionally, the pandemic has emphasized the need for public health officials to have access to current information in real time as well as tools for data aggregation and analysis. Long-term care facility participation in the DHIN would help to ensure that public health officials have accurate data regarding long-term care facility residents, a population that has been especially vulnerable during the Covid-19 pandemic.

Although long-term care facilities may already be participating in the DHIN, the DLP recommends that the Councils support this bill as it may help facilitate continuity of care for residents of long-term care facilities and to ensure that all facilities have access to the same tools to protect residents in public health emergencies like the Covid-19 pandemic.

Additionally, the first sentence of the proposed § 1119D(a) in the bill appears to be missing a word, as it currently reads “A long-term care that provides services...”. The Councils may wish to include this in their comments so that it can be corrected.