Memo

To: SCPD, GACEC and DDC

From: Disabilities Law Program

Date: 4/15/2022

Re: April 2022 Policy and Law Memo

Please find below per your request analysis of pertinent proposed regulations and legislation identified by councils as being of interest.

Proposed Amendments to 14 DE Admin. Code 933 DELACARE: Regulations for Early Care and Education and School-Age Care , 25 Del. Register of Regulations 910 (April 1, 2022)

Summary

The Delaware Department of Education proposes to make numerous amendments to childcare regulations, including the proposed amendments below that may impact children with disabilities:

- "Allowing for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations";
- "Adding the approved training topic of disability non-discrimination, accommodations, or modifications";
- "Requiring when enrolling a child to inquire if the child has an IFSP or IEP and to discuss with a parent or guardian and service providers as applicable, any reasonable accommodations or modifications needed by a child with a disability to access the program or services";
- "Requiring a licensee to allow services to be provided at the center for a child with disabilities, including services through an IEP or IFSP and at the request of a parent or guardian, a licensee shall permit qualified professionals to complete an observation or assessment of the child while at the center";
- "Beginning July 1, 2023, requiring a licensee to ensure for children who have not begun kindergarten, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool upon within 45 days of enrollment and annually";
    - "Requiring a licensee to ensure that for children younger than kindergarten and initially enrolled in childcare before July 1, 2023, the child's parent or guardian completes the Department's approved developmental and social emotional screening tool by December 31, 2023."
    - "Allowing the licensee or staff member may assist the parent or guardian in completing the screening or, if necessary, complete the assessment";
    - "Exempting children with current IFSPs or IEPs from being screened."

Additionally, the Department of Education proposes the following amendments related to medication usage and safety, which may disproportionately impact children with disabilities:

- "Requiring notification to OCCL within one business day of accidental ingestion of a medication or drug, when the center is informed the child required medical or dental treatment other than any first aid provided at the center";
- "Aligning the regulations and study guide on what is considered a medication error. Medication errors include giving the wrong medication, giving the wrong dose, failing to give the medication at the correct time or at all, giving medication to the wrong child, giving the medication by the wrong route, or giving medication without documenting the administration";
- "Requiring all staff, substitutes, and volunteers working at least 5 days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals as part of the orientation to comply with the Child Care and Development Block Grant, rather than permitting the EC administrator to devise that training";
- "Requiring an owner who works on site at least 7 hours per week and provides direct care to have an administration of medication certificate on file."

Considerations and Recommendations

In general, these proposed recommendations support day care accessibility and accountability for children with disabilities and their families.

The proposal to "[a]llow for OCCL to investigate complaints typically investigated by other entities if the complaint involves a violation of OCCL's regulations" is particularly beneficial to families who have experienced disability discrimination in daycare settings. Previously, if families experienced disability discrimination and contacted OCCL, they were typically directed to contact the Delaware Division of Human Relations (DHR) or the U.S. Department of Justice (USDOJ) to file disability related complaints. DHR has historically denied having jurisdiction over cases related to disability accommodations (although proposed legislation would clarify this issue, see: https://legis.delaware.gov/BillDetail/79173). Additionally, USDOJ does not investigate every reported case of disability discrimination. Families who experienced disability discrimination at daycare centers were left without recourse, even if the daycare center had violated an OCCL regulation in addition to other anti-discrimination laws or policies. This proposed amendment to OCCL regulations would provide families with a practical resource if faced with discrimination and could help hold non-compliant daycares accountable. Councils should consider supporting this change.

The proposed amendment requiring daycares to "inquire if the child has an IFSP or IEP and to discuss… any reasonable accommodations or modifications" may assist families and daycare centers in identifying and providing reasonable accommodations. However, it may be beneficial to requiring training to inform daycare centers about their obligations to provide reasonable accommodations. It would be counterproductive if this requirement led daycares to screen out children who may require accommodations or modifications. There is a proposed amendment to "[a]dd[] the approved training topic of disability non-discrimination, accommodations, or modifications." However, from the language of this proposal, it would only add disability related training to the topics a daycare provider can choose from to meet annual training requirements.

Councils may wish to recommend that at least initial disability-related training be mandatory, particularly in light of the requirement that daycares must inquire about and discuss accommodations and modifications.

The amendments about IFSP/IEP service provision and special education screening would help identify children earlier who many need services and would improve access to those services. Councils should consider supporting these amendments.

The remaining amendments about drug/medication error and medication/ safety training would likely improve child safety and accountability when accidents occur. Councils should consider supporting these amendments.

Proposed DDOE Regulation on 1581 School Reading Specialist, 25 Del. Register of Regulations 934 (April 1, 2022)

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.

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 ("ILA") standards for reading / literacy specialists, and International Dyslexia Association ("IDA") standards. After reviewing the comments and presentations, the Board republished the same proposed amendment, without changes, on May 1, 2021. After receiving written submissions, DDOE withdrew the proposed regulations on June 3, 2021.

This most recent iteration of the proposed amendments is identical to those that were previously published except for the following changes:

1. Revising the definition for "Valid and Current License or Certificate" in Section 2.0 to clarify that it is referring to an educator's license or certificate;
2. Removing the prior proposed section on reciprocity and revising the requirements for the same in Section 3.0;
3. Revising subsection 4.1.1.1 to clarify the requirements and add the IDA standards as an option;
4. Revising the course title in subsection 4.1.1.1.2.5;
5. Moving the section concerning the Secretary of Education review to Section 6.0 and renumbering the subsequent sections concerning validity and disciplinary actions; and
6. Adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Because Councils have already submitted comments on much of the proposed amendments to this regulation, this review will focus only on those proposed changes which are new and relevant in this most recent iteration.

The first proposed change is to the definition of "Valid and Current License or Certificate" in Section 2.0. The definition proposed is "…a current full or permanent certificate or license **as an educator** issued by another state or jurisdiction. This means the **applicant** is fully credentialed by having met all of the requirements for full licensure or certification as an educator in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction." (*emphasis added*). The words "as an educator" were added to clarify that it referred to an educator license or certificate. It also refers then to the individual as an "applicant" rather than an "educator" as was the language in the prior proposed regulations over the course of the past several years. This clarification is helpful; however, as just noted, it makes this definition different than every other definition for this same term that has been more recently proposed and adopted by the State Board of Education.[1]

Councils may wish to recommend that the definition for the term remain consistent with the prior adopted definitions rather than this new proposed alternative. It would not make sense to have, within the same series, at least two different definitions for the same term. Instead, the "clarified" definition could be re-proposed the next time this series of regulations are updated.

The second proposed change involves the language around reciprocity, specifically proposed 1581.3.1.2. The original proposed language, which is consistent with the other language in the series, is "Has met the requirements for licensure and holds a Valid and Current License or Certificate…" The new proposed language is "Has met the requirements for **an educator's license in Delaware and presents proof of** a Valid and Current License or Certificate as a Reading Specialist **issued by another state or jurisdiction**…" (*emphasis* are the new changes). As with the first proposed change, Councils may wish to recommend that this section be consistent with the other proposed and adopted regulations in this series.

The third proposed change separates the requirements for a Certificate into three categories instead of two and adds an option for the completion of graduate-level credit hours aligned to IDA standards.[2] This is a needed change which helps understand the requirements more clearly. Specifically, it separates the requirements for an applicant who has completed a bachelor's degree from an applicant who has completed a master's degree in any content area. This did not result in any substantive change.

The addition of the option for completing courses aligned with the IDA Standards was a request put forth by other stakeholders in prior submissions to the Register. The Board held at least two public meetings and sought information on both IDA and ILA standards. If this proposed change were to be adopted, and the higher education institutions in Delaware were to seek IDA

[1] *See* 14 Del. Admin. C. § 1571.2.0 as an example. The updates to 1571 were adopted and went into effect on July 1, 2020.
[2] https://app.box.com/s/21gdk2k1p3bnagdfz1xy0v98j5ytl1wk.

accreditation, it would join at least twelve other states with at least one program with IDA accreditation.[3] Based on the extensive discussion and research undertaken by the Board on this point, this Reviewer can only guess that this proposed change is needed and thus, Councils may wish to support the addition of an option for completing courses aligned with IDA standards.

The fourth proposed change relates to the revision of a specific course title. Proposed 4.1.1.1.2.5 has changed the course title of "Teaching English as a Second Language (3 credits)" to "Teaching diverse reading profiles, including teaching English as a Second Language (three credits)." Two comments have already been submitted regarding this change. The first by eleven (11) faculty members of the School of Education at the University of Delaware[4] and the second by Kathryn Brown, the Chair for Reading and English as a Second Language ("ESL") programs at Wilmington University.[5] Both comments are in opposition to the proposed change because it is redundant with other course work, inadequate to address the needs of ESL students, and seems to treat ESL students as one single profile within many other profiles rather than giving educators the time and attention necessary to learn effective instructional practices for this diverse group of learners. Councils may wish to echo the sentiments provided in these two comments and recommend that this proposed change not be adopted.

Councils may wish to provide support for the proposed regulation with the following recommendations:

1. Keep the originally proposed language in Sections 2.0 and 3.0 so it is consistent with the other proposed regulations in this series.
2. Keep the existing course title Teaching English as a Second Language.

Proposed DSHS Alcoholic Beverage Control Commissioner, Rule 705, 25 Del Register of Regs 940 (April 1, 2022)

The Alcohol Beverage Control Commissioner has proposed rules concerning the expansion of outdoor seating for serving food and drinks, curbside service provided by package stores, containers used for alcohol to-go from restaurants, taprooms, and taverns, and the age of employed persons who can sell and serve alcohol to customers.

As a result of COVID-19, Governor Carney declared a State of Emergency on March 12, 2020. In subsequent modifications to the original declaration, accommodations were made to lessen the devastating effects of the closure of all restaurants, bars, and taverns. Restaurants, brewpubs, and taverns with a license were permitted to sell alcoholic beverages as part of take out or drive through orders for food.[6] Food and drink establishments were permitted to expand their outdoor seating for serving food and drinks with certain limitations.[7] The provisions of the Second and Nineteenth Modification of the State of Emergency allowing food and drink places to sell alcohol for off-premise consumption and allowing establishments to expand their outdoor seating

[3] https://dyslexiaida.org/university-programs-accredited-by-ida/. It is unclear when this page was last updated, so it is possible that this number is much higher.
[4] https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/89/Reg1581%20UDComment.pdf.
[5]https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/89/1581%20Brown%20Wilm%20U%20Comment.pdf.
[6] Second Modification dated March 18, 2020.
[7] Nineteenth Modification modified 4 *Del. C.* §§ 524, 541, but expired July 30, 2020.

were codified in House Bill 349, which Governor Carney signed on July 16, 2020.[8] Before House Bill 349 expired, the General Assembly enacted and the Governor signed House Bill 1 as amended by Senate Amendment 1 on March 23, 2021. This law amended 4 *Del. C.* §§ 512, 524, 543, 561, and 562, and provided, *inter alia*, that establishments with a valid on-premises license could sell alcoholic beverages in transactions for take-out, curbside, or drive through service (with limitations) and establishments could expand their outdoor seating (with limitations).[9]

The above steps, albeit temporary, were taken by the General Assembly and Governor to help food and drink establishments in particular and the foodservice industry in general.[10] In an effort to make these changes permanent (so they did not expire or sunset), the General Assembly passed House Bill 289 which the Governor signed on February 7, 2022, and House Bill 290, which the Governor signed on February 16, 2022. The laws became effective immediately and permit curbside service for package stores, takeout alcohol sales by restaurants, taprooms, and taverns with a valid license, and an expansion by restaurants of outdoor seating for serving food and drinks.

These rules were promulgated by the Alcoholic Beverage Control Commissioner to implement the changes required by House Bill 289 and House Bill 290. Rule 705 deals with the expansion of outdoor seating. The establishment must first have a license to sell alcohol for consumption and then submit a request to expand the outdoor seating to serve food and alcoholic beverages for review and approval by the Commissioner. The request must be accompanied by the following documentation, including: a letter from the political subdivision where the establishment is located approving the expansion request and addressing compliance with traffic patterns and the Americans with Disabilities Act (ADA) and adherence to noise ordinances; a detailed floor or construction plan showing the expansion of the outdoor seating; and the starting and completion times for any intended construction (4.1). Once the expansion passes final inspection and approval, the Commissioner then authorizes the establishment to use the area as an expansion of outdoor seating. (4.5). The expansion of outdoor seating is for serving food and drinks and there is to be no live entertainment; speakers, sound systems or amplifiers; "audible paging system;" and wet bar. (6.0). Comments can be submitted to the proposed rules by e-mail or in writing to the Commission by May 2, 2022.

The rules announced by the Alcoholic Beverage Control Commissioner are extremely detailed and directed, and address a specific need and purpose, namely, to help establishments severely affected by COVID-19 and the pandemic. The emergency declaration and statutory provisions allowed the changes to Title 4 to be implemented on a trial basis so to speak, because

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[8] House Bill 349 was scheduled to sunset on March 31, 2021.

[9] House Bill 1 as amended by Senate Amendment 1would expire March 31, 2022.

[10] House Bill 1 as amended by Senate Amendment 1 stated how the pandemic affected the food and drink industries.

(6) Food and drink establishments have suffered significant losses as a result of their closures and restrictions due to COVID-19. Nationally, just in November 2020, food and drink establishments lost 17,400 jobs, with an unemployment rate of 13.8%.

(8) In 2019, restaurant and food industry jobs in Delaware totaled 50,800 which equaled 11% of the total employment in this State. Between February and April 2020, Delaware lost 66% of its food or drink establishment jobs which made Delaware the 3rd highest in the nation.

(7) Nationally, the foodservice industry lost $165 billion in revenue from March to July 2020 and is on track to lose $240 billion in sales by the end of the year.

(7) In Delaware, food and drink establishments in Delaware lost more than $160 million in sales in April 2020 alone. Between March and July 2020, the foodservice industry lost an estimated $700 million. Revenue from restaurant gross receipts dropped to less than 50% of 2019 receipts. 81% of Delaware restaurant owners estimate they will continue to operate at a loss for the next 6 months. Under the current restrictions, approximately 40% of Delaware restaurants will be forced to shut their doors within a year.

they ended or expired. Since those interim measures were successful in helping the affected businesses financially, they were made permanent. These rules implement the changes and provide the nuts and bolts that establishments must comply with to take advantage of the increased opportunities to sell alcoholic beverages.

People with disabilities have noted and complained about businesses who failed to comply with ADA standards when encroaching on sidewalks. Therefore, Councils should consider supporting the inclusion of ADA compliance in these regulations to put businesses on notice that they can only expand into outside areas when they have taken care to comply with accessibility guidelines.

HB 304: An Act to Amend Title 14 Of the Delaware Code Relating to Reading Competency.[11]

House Bill 304 ("HB 304") seeks to amend Subchapter III, Chapter 1, Title 14 of the Delaware Code relating to the state public education assessment and accountability system by adding a new § 158, which would require that all public-school students in kindergarten through third grade (hereinafter, "K-3") participate in universal reading screening three (3) times per year and that District and Charter schools (hereinafter, "LEAs") provide literacy interventions as needed, provide the results and information about interventions to parents, and provide data to DDOE on the same. DDOE would then be required to report on this information to the General Assembly, the State Board of Education, and the Governor. Finally, the bill would require DDOE compile a list of reading screeners and literacy intervention approaches which are "aligned to the science of reading" which LEAs may use. The bill was introduced in the Delaware House of Representatives on March 24, 2022, sponsored by Rep. K. Williams, Sens. Sturgeon, S. McBride, and Lockman.[12]

Specifically, HB 304 requires the following:

1. Beginning July 1, 2023, LEAs must screen each enrolled K-3 student three (3) times per year for reading competency. The results and any intervention approaches implemented must be communicated to the parent;
2. Beginning July 1, 2024, LEAs must provide at least one (1) literacy intervention for each student or group of students identified with a potential reading deficiency;
3. No later than December 1, 2022, DDOE must maintain and publish a list of universal reading screeners and literacy intervention approaches which are aligned with the essential components of evidence-based reading instruction as described in 14 Del. C. § 1280(c)(3). With these lists, DDOE must include an explanation of how the screeners and interventions were selected, including consultation with national expert organizations and the evidence base as demonstrated by the National Center on Intensive Intervention or similar validated research;
4. Beginning in 2023, each LEA must report annually to DDOE no later than October 31 on the number and percentage of (1) K-3 students identified with a potential reading deficiency and the literacy intervention approach(es) being provided; and (2) K-3

[11] https://legis.delaware.gov/BillDetail?LegislationId=89280.
[12] HB 115 is co-sponsored by Sens. Hansen and Sokola and Reps Baumbach, Heffernan, K. Johnson, Kowalko, Longhurst, Morrison, and Osienski.

students receiving specific dyslexia intervention approaches and the name of the intervention being provided; and

5. Beginning in 2023, DDOE must compile the information received from LEAs and deliver a comprehensive report to the State Board of Education, the Governor, the Chairs of the Education Committees of the Senate and House of Representatives, the Director and the Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives. Additionally, DDOE must make the report publicly available on its website.

At first blush, this bill seems as though it is filling a much-needed hole in providing for early identification of literacy issues. In actuality, the framework for this universal screening in K-3 is already being provided through Delaware's Multi-Tiered System of Supports ("MTSS").[13] Under MTSS, any "[s]creening, diagnostic assessment and progress monitoring processes shall be used as part of MTSS procedures."[14] Furthermore, MTSS requires that universal screening occur within the first four weeks of the school year or within the first four weeks of the student entering school as well as "at least two more times during the school year at spaced intervals."[15]

MTSS is not specific to identifying and addressing literacy deficits in students but rather provides a comprehensive framework for identifying when a student needs interventions for written expression, reading, oral expression, listening comprehension, mathematics, behavior, and social-emotional skills. Furthermore, MTSS is applicable to all students in Delaware LEAs. This bill is responsive only to identifying and providing for K-3 students with early literacy challenges.

Therefore, it may be considered redundant to have legislation related to universal screening three (3) times per year, even if targeted at K-3 students, when there are regulations already requiring it. However, where this bill goes beyond MTSS is in its requirements of DDOE and its requirements related to the efficacy of the universal screening tool and interventions.[16]

Presently, MTSS requires only that the interventions provided be "high quality, evidence-based and aligned with the State's content standards"[17] and that processes for screening and diagnostic assessments and progress monitoring be "norm-referenced, criterion-referenced, or curriculum-based as appropriate."[18] This bill would require that the intervention approaches be aligned with the essential components of evidence-based reading instruction[19] but are otherwise identical to the requirements under MTSS. Similarly, the HB 304 universal reading screener has the same requirements under MTSS with the addition of requiring alignment with the essential components of evidence-based reading instruction as well as measure, at a minimum, phonemic

[13] 14 Del. Admin. C. § 508.
[14] 14 Del. Admin. C. § 508.4.0.
[15] 14 Del. Admin. C. § 508.6.1.1.1.
[16] MTSS already requires that LEAs inform parents of their student's involvement including information related to the MTSS intervention plan and data collected. *See* 14 Del. Admin. C. § 508.5.6.
[17] 14 Del. Admin. C. § 508.3.0.
[18] 14 Del. Admin. C. § 508.4.0.
[19] *See* 14 Del. C. § 1280(c)(3). Includes: language acquisition, literacy development, phonological processing, phonics and word recognition development, spelling, fluency and automaticity development, vocabulary development, assessment administration and interpretation, letter formation, orthographic processing, morphological awareness, structure of language, language-based learning disabilities, written expression, and interventions for struggling readers.

awareness, phonological awareness, symbol recognition, alphabet knowledge, decoding and encoding skills, fluency, and comprehension.

In general, the decision regarding which assessments or interventions to provide under the MTSS Framework lie with the LEA. In contrast, HB 304 would require that DDOE be responsible for compiling a list of screeners and intervention approaches from which LEAs may choose. By requiring DDOE to create a list from which LEAs can pick and choose, it would remove some local control that LEAs currently enjoy in determining the best tools to use for their students.

Furthermore, HB 304 would impose additional reporting requirements on DDOE and LEAs regarding literacy screening and interventions for K-3 students. Under MTSS, LEAs are required to provide information to DDOE, only upon DDOE's request, about methods used to implement and evaluate the effectiveness of their MTSS programs. Under HB 304, DDOE would be responsible for including, in its compiled list of screening tools and interventions, information related to how and why those particular tools were selected and how DDOE consulted with national expert organizations. Furthermore, DDOE would be required to report publicly and to the Delaware legislative and executive branches on data related to the number of students identified as having early reading deficiencies and the interventions used. DDOE would compile this report from the information provided to it by the LEAs.

All of this is not to say that Councils should oppose HB 304. Research on this topic has repeatedly and consistently found that identifying children with learning disabilities, including dyslexia, as early as possible is so important and necessary. Not only is intensive reading intervention more impactful in younger students, those who are poor readers at the end of first grade rarely attain average-level reading skills by the end of elementary school.[20]

Instead, Councils may wish to recommend that the legislators responsible for this bill reflect on whether it is needed considering what is already provided for under MTSS as well as under the Delaware Early Literacy Initiative ("DELI").[21] Furthermore, Councils may wish to ask how this bill aligns with, promotes, or furthers the work DDOE engaged in during its participation in the K-3 Formative Assessment Consortium.[22] Are there lessons DDOE learned through that involvement that was not considered in putting forth this bill?

Alternatively, or in addition to, Councils may wish to recommend that the legislators considered whether the substance of the bill would be better served either in regulations promulgated by DDOE or moved to a different section within Subchapter III, Title 14 of the Delaware Code. To that end, Councils may wish to recommend that if legislators believe HB 304 is needed, whether the language in the bill would make more sense if it were instead included within 14 Del. C. § 151(g)-(i). Section 151(g) requires that for K-2 students, school districts are required to follow

[20] https://fordhaminstitute.org/national/commentary/case-k-2-testing and https://www.aft.org/periodical/american-educator/fall-2004/avoiding-devastating-downward-spiral.

[21] "The [DELI] provides elementary educators and school leaders with high-quality professional learning and coaching focused on evidence-based literacy instruction within a [MTSS]. The goal of DELI is to improve literacy outcomes for all students, including students with disabilities or other intensive learning and behavior needs, with a focus on students in prekindergarten to third grade. DELI offers in-person and virtual professional development and coaching on essential topics in early literacy and MTSS, including foundational reading skills, literacy screening, diagnostic assessment, progress monitoring, data-based decision making, and explicit and systematic instruction." https://www.doe.k12.de.us/Page/4481.

[22] https://www.childtrends.org/wp-content/uploads/2019/05/State-Reflections-on-EAG.pdf.

the state standards, assess student's progress, and report that progress to parents. Section 151(h) requires DDOE adopt rules and regulations for implementing the statewide kindergarten readiness tool, which includes a review of the student's language and literacy development.[23] Finally, section 151(i) provides for the timeline of statewide implementation of the DE-ELS, including the requirement that it be completed within thirty (30) days of the start of school.

In any case, Councils should encourage either DDOE in adopting regulations or the legislators in pushing the bill, to include a requirement that DDOE / LEAs review existing assessments to eliminate any redundancy. Test and assessment burn out is a legitimate concern that can lead to inaccurate results, which does little to benefit the students, and cause students stress and fatigue.[24]

SB 255 – "Voluntary" Admission for Inpatient Psychiatric Care for Youth in DSCYF Custody

SB 255, which was introduced in the Senate Health and Social Services Committee on March 31, 2022, seeks to amend procedures governing admission for inpatient psychiatric care for youth in the custody of the Department of Services for Children Youth & Their Families (DSCYF). It is very similar to SB 242, which had been introduced in the Senate Health and Social Services Committee on March 8, 2022, and was sponsored by the same legislators.

The Delaware Code currently gives DSCYF authority to consent to medical care for a child after the Family Court has granted custody of the child to DSCYF, with the exception that DSCYF may not consent to inpatient psychiatric treatment. 13 Del. C. § 2521(2). Further, for the purposes of voluntary admission to a covered psychiatric facility, the Code's provisions for civil commitment require that for purposes of a voluntary admission for inpatient psychiatric treatment, a parent or legal guardian provide consent on behalf of a patient who is under the age of 18. 16 Del. C. § 5003(f)(1). Similarly, a parent or guardian must submit a written request for discharge on behalf of a minor patient who was admitted voluntarily, and discharge may be conditioned on the parent or guardian's consent. 16 Del. C. § 5003(f)(2).

The bill would add language to 13 Del. C. § 2521(2) making it clear that there would be an exception to the limitation on DSCYF's ability to consent to inpatient psychiatric care. The bill would also add language to the civil commitment statute giving DSCYF's Division of Family Services (DFS) authority to consent to admission or discharge on behalf of a child in its custody in the place of a parent or guardian. While the bill's synopsis implies that the consent would be given by either the DFS Division Director or Deputy Director, the wording proposed by the bill states this consent would be given by "the Department's Director or Deputy Director of the Division of Family Services." This inconsistency should be addressed.

The stated purpose of the bill is to expedite admission for inpatient psychiatric care when a child is in the custody of the DFS and a parent or guardian cannot be easily reached to provide consent, so that needed treatment can be accessed more quickly and without requiring an

[23] This has become the "Delaware Early Learner Survey" ("DE-ELS"). Information found here: https://education.delaware.gov/families/office_of_early_learning/deels_survey/.
[24] https://projects.iq.harvard.edu/files/eap/files/c._simpson_effects_of_testing_on_well_being_5_16.pdf. Caveat: K-2 students and students in grades 9-12 are tested significantly less than students in grades 3-8. Despite the caveat, the effects on students do not change.

involuntary commitment order. See Synopsis of SB 255. While the Councils would support the legislation's broader goals of addressing barriers to treatment, it seems problematic to allow DFS to make a decision to admit a child for inpatient psychiatric care, potentially over the child's objection and without the parent or legal guardian's consent. There is no language in the bill that would require DFS to make reasonable efforts to locate the parent or guardian or account for those efforts. It is also worth noting from CLASI's anecdotal experience that DFS staff and contractors are not always well trained in the needs of parents or children with disabilities. It would be concerning to give DFS broad authority to consent to inpatient psychiatric treatment when DFS may not understand a child's needs as intimately as the child and family members would. The bill's synopsis states that sometimes children are willing to receive treatment but must be involuntarily committed because a parent or guardian cannot be located to provide consent, however the bill's synopsis does not address children who would not otherwise consent to be admitted for inpatient psychiatric care or whose parents are known to be opposed to a certain course of treatment. This dynamic could encourage DFS to only make minimal efforts to reach a parent or guardian.

There is also no indication in the bill of what input must be sought from the child regardless of their age. Existing Delaware law allows for youth aged 14 or over to consent to voluntary outpatient mental health treatment on their own, although the youth could not overrule consent to treatment by a parent or legal guardian, but not to inpatient treatment. See 16 Del. C. § 5003(f)(3). Some other states such as Pennsylvania allow for youth aged 14-18 to consent to inpatient treatment so long as they "substantially understand [] the nature of the voluntary treatment." 50 P.S. § 7201. The bill does not contemplate giving youth in these circumstances the authority to consent to treatment on their own behalf.

Additionally, the bill appears to allow discharge from a facility to be potentially conditioned on the consent of a parent or guardian, or DFS. This could lead to scenarios where a child is stuck in an inpatient facility for longer than necessary because DFS consented to voluntary admission on behalf of the child and then there are problems with discharge planning relating to the circumstances of DFS's involvement or because DFS is having difficulty placing the child in foster care or another residential setting due to behavioral concerns. This would particularly be a concern for transition-age youth who are close to aging out of DFS's services. An inpatient psychiatric facility is a very restrictive setting and is in most cases intended to be for acute care only, and unnecessary institutionalization in such a facility would perhaps be more likely to affect children with disabilities who are in DFS's custody. Further, part of the problem in these circumstances may be that existing home or community-based services are not sufficient to meet a child's needs and the existing service plan needs to be re-assessed. Ironically, psychiatric facilities or other involved state agencies often make reports to DFS when a facility is recommending discharge and a parent does not agree to the discharge or to come pick up the child, but it is not clear what recourse a facility or child might have if the child is admitted based on DFS's authority and then DFS will not agree to the child's discharge.

While in many respects SB 242 and SB 255 are identical there are a couple of notable changes. First, the synopsis of SB 242 referred to "residential psychiatric treatment," which was confusing language because it was not entirely clear whether the proposed legislation intended to cover acute care inpatient admissions to psychiatric hospitals or longer-term placement at facilities like residential treatment centers (RTCs). SB 255's synopsis consistently refers to

"inpatient psychiatric treatment," implying it is intended to cover admissions to psychiatric hospitals. Second, SB 242 proposed to amend only the civil commitment statute, while SB 255 also proposes adding language to Title 13, Chapter 25, which governs DSCYF custody of children.

The Councils should consider not supporting this bill in its current form. While removing barriers to emergency psychiatric treatment for children in the child welfare system, including children with disabilities, is a worthy aim, there are concerning aspects to the breadth of authority this bill would give DFS to consent to treatment, particularly as the law as currently written explicitly does not give DFS this authority. The Councils may wish to advocate for more safeguards in terms of when such authority could be exercised by DFS, such as needing to provide documentation that DFS made reasonable efforts to contact the parent or legal guardian and were unsuccessful, or only allowing DFS to consent when a physician has determined the child would otherwise meet the criteria for involuntary commitment or in other clearly defined emergency circumstances. Additionally, it may be worth considering a provision that would allow youth over a certain age to voluntarily consent to inpatient treatment in some circumstances. Finally, additional language that would discourage DFS from relying on inpatient psychiatric care in lieu of a suitable community-based placement may be necessary.

HB 364. State Registry for Deaf Interpreters

Currently interpreters for the deaf are not regulated in Delaware. This means that any person with or without professional training can hold themselves out as a deaf interpreter and charge for their services. Certain businesses and entities insist that the interpreters they hire have certifications, for example in courtroom settings. However, many times no professional qualifications[25] are required. Using untrained or partially trained interpreters can lead to serious consequences if information is not accurately communicated to the deaf or hard of hearing person. Moreover, individuals who are deaf should not be denied the protections that consumers in other contexts routinely have under the law. [26]

Many states either have a registry for deaf interpreters or have a licensing scheme. A working group under the auspices of the SCPD met for several years (7 in fact) to discuss the best path forward for Delaware. The decision was made to require certification through RID[27] and maintenance of a registry maintained by DVR, rather than licensure. This decision was based in large part because the lack of infrastructure to support licensure in Delaware and the need to be able to easily use interpreters from neighboring states. Certification through RID is a national certification. Licenses are state- specific, and certain hoops have to be jumped through to gain reciprocity. We have attached a Memo from SCPD explaining these rationales.

It is worth noting that there are some individuals in the deaf community who prefer licensure or no regulation at all. We have included a memo from them with responses from SCPD.

[25] The ADA requires that public and private entities provide effective communication, which can include qualified interpreters. The ADA does not require the provision of "certified" interpreters. This has no legal bearing on whether a state chooses to regulate the qualifications of interpreters who hold themselves out professionally.
[26] https://delcode.delaware.gov/title24 for list of professions subject to some sort of regulation.
[27] Registry of Interpreters for the Deaf, Inc. https://rid.org/;

Councils should consider endorsement of the bill, because there was a concerted, thoughtful effort to come up with an approach that will work in Delaware, and something must be done to regulate this profession, to improve the quality of interpreter services, stop amateurs from providing shoddy services that can cause harm, and to provide an avenue for complaints.

SB 243- Baby Bond Account Fund.

This bill amends Chapter 4 of Title 31 (Delaware Children's Trust Fund Act) to create the "Baby Bond Account Fund." [28] The Bill sets up the administrative apparatus to manage a fund to hold individual accounts of $2000 for each new child born in Delaware. Each individual account will have a unique identifier number, and the bill includes the development of financial literacy training. The account will be credited and debited every year with its share of earnings and losses. "An individual" can make additional contributions to an individual account. Distributions, which must be vetted by the administrator, are restricted to: before age 18, qualified tuition expenses; and after age 18, post-secondary educational expenses; acquisition of a primary residence; qualified business capitalization expenses; or investment in "financial assets or personal capital that provides long-term gains to wages and wealth."

From the Councils' perspectives, what is primarily relevant is whether these funds will interfere with receipt of public benefits. [29] Most public benefits programs such as SSI, Medicaid long term care and HCBS programs, TANF and SNAP have asset/resource limits- frequently very low ones.

The first question is whether the individual account created under this program is a resource. The answer depends on whether the program is set up with the individual as account owner or whether the money is pooled in an account owned by the administrative entity. Although it is not expressly stated, the Baby Bond Fund holds the individual accounts in a pooled manner, and ownership rests with the Bond Fund, and not individual account holders.

Nevertheless, it would be preferable for the bill to expressly state that no ownership interest attaches to individual account owners or their families. It would also be highly preferable for the bill to expressly state that these funds cannot be counted as a resource attributable either to the minor child or his household for any state-administered public benefits.

Distributions are much more problematic from a public benefits perspective. As noted, the current bill is silent on whether these distributions would count either as income or as a resource for public benefits purposes. Unfortunately, many of these benefits programs are federally regulated, and do not currently exclude these types of distributions. At a bare minimum, the bill should include a requirement that recipients be educated and notified of the potential impacts of taking distributions so that they can plan. Better still, language should be added that excludes

[28] These "Children's Savings Accounts" or "CSAs" are meant to expand educational and economic opportunity for low- and middle-income families. Baby Bonds are being pushed at the federal level by Sen. Booker and Sen Mitt Romney. https://socialequity.duke.edu/wp-content/uploads/2019/12/ICCED-Duke_BabyBonds_December2019-Linked.pdf; Connecticut and Washington DC have versions of the program. https://portal.ct.gov/OTT/Debt-Management/CT-Baby-Bonds; For a more thorough analysis of CSAs, please see https://prosperitynow.org/sites/default/files/resources/Baby%20Bonds%20-%20One%20Pager.pdf.

[29] . Contributions and distributions are excluded from federal adjusted gross income for state tax purposes

these distributions as income for the individual account holder for all public benefits programs in which the state has the ability to set and control those limits.