

Memo

To: SCPD, GACEC and DDC

From: Disabilities Law Program

Date: 6/13/2022

Re: June 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 DDOE Regulation on 1581 School Reading Specialist, 25 Del. Register of Regulations 1100 (June 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 (“Certificate”) pursuant to 14 Del. C. § 1220. DDOE, in cooperation with the Professional Standards Board (“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 and subsequently republished on April 1, 2022.

Councils most recently submitted comments on the April 1, 2022 iteration, which included 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 (related to the definitions for “Valid and Current License or Certificate” and reciprocity).
2. Keep the existing course title Teaching English as a Second Language.

This most recent version is identical to the April 1, 2022 version with the exception of the course title, which the Board reverted back to “Teaching English as a Second Language.” This was done following comments by Councils and other stakeholders on concerns posed by the change. The Board opted not to make the language in proposed Sections 2.0 and 3.0 consistent with prior adopted language because they are adopting this change moving forward. It is possible that these differing definitions could lead to differing interpretations of the same term.

Councils may wish to, again, provide support for the proposed regulation while also noting a concern with the conflicting definitions for the same term leading to a discrepancy in application.

Alternatively, Councils may wish to recommend that the Board consider whether having one section within the 1500 series of regulations which houses all definitions applicable to the series (for example, §§ 1502, 1507, 1508, and 1509 have all previously been repealed and any of those could easily serve as a new designated “Definitions” section).

Proposed DDOE Regulations for Family and Large Family Child Care Homes, 25 DE Reg. 1067 (June 1, 2022)

The Department of Education proposes revisions to 14 DE Admin. Code 934: Regulations for Family and Large Family Child Care Homes. The proposed revisions include requiring family and large family child care homes to:

- To provide a definition of blood lead screening;
- To comply with the Child Care and Development Block Grant by requiring adult volunteers who are present for at least five days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals (certificate required);
- To require a release of children procedure that includes monitoring the entrance of the home or phone, email, or other communication methods used by the home to ensure the child is released from care when requested by the parent, guardian, or authorized release person;
- Removing the requirement regarding completing the Department's approved developmental and social emotional screening tool until the legislation is clarified;
- To comply with Delaware's Lead Poisoning Prevention Act, to require blood lead screening for children at or around 24 months in addition to the screening at or around 12 months, and to require proof of single blood lead screening after age 24 months for all children including school-age, if blood lead tests were not conducted at or around age 12 months and at or around 24 months;
- To not allow semi-solid food to be introduced to an infant until the infant is at least 6 months old and developmentally ready, unless the infant's health care provider states otherwise; and
- To update the requirements for infant feedings to comply with recommendations of Caring for Our Children and the Centers for Disease Control and Prevention to include ready-to-feed formulas and concentrate, to require all bottles be labeled with the child's name, date, and time of preparation or opening, and to require that formula prepared using powder be discarded if not used within 24 hours of preparation.¹

¹25 DE Reg. 1067 DOE Regulations for Family and Large Family Child Care Homes, <https://regulations.delaware.gov/register/june2022/proposed/25%20DE%20Reg%201067%2006-01-22.htm>

Lead-related proposals:

The regulations currently require that “within one month of starting care, each child’s file [shall] contain[] a health appraisal” which must be updated every 13 months. The proposed revisions introduce a new component to the health appraisal, now requiring that the health appraisal include “[p]roof of single blood lead screening after age 24 months for all children including school-age, if blood lead tests were not conducted at or around age 12 months and at or around age 24 months.” The Delaware Department of Health is in the process of revising their regulations regarding lead testing requirements for schools and daycare facilities, but has a slightly different timeline and set of requirements for updating a child’s health file (see footnote).² The proposed daycare regulation provisions should align with the finalized Department of Health regulations regarding when a child’s file must be updated with blood lead testing and how frequently that information be updated.

Further, there are some differences between the exemptions for blood lead testing allowed under these proposed regulations and the current Delaware regulations for Early Care and Education and School-Age Centers. The Family and Large Family Child Care Homes would require “a notarized affidavit of religious belief” to exempt a child from the blood screening lead test requirement. The current regulations for Early Care and Education and School- Age Centers require only “a certificate signed by the parent or guardian stating that the screening is contrary to the parent’s or guardian’s religious beliefs is required for this exemption” (no notarization required).³ Further the Early Care regulations states that “[a] licensee does not need a child’s health appraisal [presumably including the health appraisal requirement for lead testing documentation] if other federal or State laws, such as specified in the McKinney-Vento Homeless Assistance Act, require the center to admit a child without one.”⁴ Neither the current nor proposed Family and Large Family Child Care Home regulations include that broader health appraisal exemption.

Recommendations:

²See Proposed DPH Amendments to 16 DE Admin. Code 4459A, 25 Delaware Register of Regulations 1006 (May 1, 2022) (“10.2 Except in the case of enrollment in kindergarten, the screening may be done within 60 calendar days of the date of enrollment.

10.3 A child’s parent or guardian must provide one of the following to the administrator of a childcare facility, public or private nursery school, preschool, or kindergarten:

10.3.1 A statement from the child’s primary health care provider that the child has received a blood test (screening) for lead poisoning;

10.3.2 A certificate signed by the parent or guardian stating that the blood test (screening) is contrary to the parent’s or guardian’s religious beliefs;

or 10.3.3 Certified documentation of the child’s blood lead analysis, as specified in this regulation, administered in connection with the 12-month visit and 24-month visit to the child’s health care provider not later than:

o 10.3.3.1 30 calendar days from the 12-month visit or 24-month visit;

o or 10.3.3.2 30 calendar days from first entry into the program or system.”)

<https://regulations.delaware.gov/register/may2022/proposed/25%20DE%20Reg%201006%2005-01-22.htm>

³ DELACARE Regulations for Early Care and Education and School-Age Centers,

https://fvacg197xz747ur7h3vi44up-wpengine.netdna-ssl.com/wp-content/uploads/2022/06/DELACARE_Regs_EarlyCare_School_Age_Centers_-June_-2022.pdf, pg. 48

⁴ DELACARE Regulations for Early Care and Education and School-Age Centers,

https://fvacg197xz747ur7h3vi44up-wpengine.netdna-ssl.com/wp-content/uploads/2022/06/DELACARE_Regs_EarlyCare_School_Age_Centers_-June_-2022.pdf

Councils may wish to recommend that the proposed regulations for Family and Large Family Child Care Homes align with finalized DPH regulations regarding lead testing and the current regulations for Early Care and Education and School Age Centers.

The other proposed revisions either bring the regulations into compliance with other legislation or grant requirements, eliminate language relating to legislation that has not yet been clarified, or more clearly define safety procedures for children and staff. These proposals should be supported by Councils.

Proposed DHSS DMMA Regulation Medicaid for Incarcerated Individuals, 25 DE Reg. 1105 (June 1, 2022)

These regulations are promulgated by the Delaware Health and Social Services Division of Medicaid and Medical Assistance (DHSS DMMA). These regulations will amend the State's Incarcerated Individuals Medicaid Program and will apply to services provided as of August 11, 2022. These regulations are based upon information supplied to the states by the Centers for Medicare and Medicaid Services (CMS) and under statutory authority of the Patient Protection and Affordable Care Act (PPACA, Public Law 111-48 as amended). These regulations must be approved by the CMS and are subject to change before they are implemented.

Under the current regulations, an inmate in a public institution is not eligible for Medicaid. 16 **DE Admin. Code** (Department of Health and Social Services, Division of Social Services, Delaware Social Services Manual) 14120. An inmate is an individual who is "serving time for a criminal offense or is confined involuntarily awaiting trial, criminal proceedings, penal dispositions, or other involuntary detainment determination and is living in: a. State or Federal prison b. jail c. a detention facility d. a wilderness camp under government control e. a halfway house under government control f. any penal facility" *Id.* "A public institution is a facility that is under the responsibility of a governmental unit or over which a governmental unit exercises administrative control." *Id.*

The proposed regulations retain the definition of inmate and public institution. However, they would allow inmates of a public institution to enroll in Medicaid but would not provide coverage while the individual is incarcerated unless the inmate is an inpatient at a medical facility for more than twenty-four (24) hours.

16 **DE Reg** 14120 Inmate of a Public Institution. Regulation 60000 Incarcerated Individuals Medicaid Program reiterates the enrollment and limits of coverage specified in Regulation 14120. Incarcerated individuals may have to enroll in a Managed Care Organization (MCO), which will facilitate a "smooth transition to full Medicaid benefits when the inmate is released from jail or prison if the inmate remains eligible for Medicaid after released." *Id.* In the proposed regulations, an inmate is a resident of the state where the crime was committed. Even if the inmate is sent to an out of state public institution to serve his or her sentence, the state where the crime occurred and where the person was first incarcerated remains the state of residence.

16 **DE Reg** 60200. Household composition and eligibility would be determined under the same rules and sections as non-inmates except that "incarcerated individuals are not considered parents/caretaker relatives for Medicaid purposes. However, an incarcerated individual can still

file taxes and claim dependents which would be counted in the incarcerated individual's household size for Medicaid purposes.”

The changes which these regulations would make to the Medicaid program for an inmate in a public institution were mandated by the CMS. Practically, permitting Medicaid enrollment while the individual is incarcerated which would take effect after he or she is released, would remove one barrier an inmate would face when released and enable the person to obtain health services more easily. Councils can and should be in favor of these regulations as they promote health and well-being and support a successful transition to post-incarceration life.

Proposed DHSS DHCQ Training and Qualifications for CNA Regulations, 25 DE Reg. 1102 (June 1, 2022)

On January 24, 2022, the Governor signed House Bill 280 into law. The law amended Title 16 Chapter 30A, Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. Specifically, the law amended sections 3002A and 3004A by eliminating the mandatory training hours (150 hours, 75 hours of classroom instruction and 75 hours of clinical training) and the mandatory orientation hours (between 32 and 80, depending on the type of facility where the nursing assistant will work) required to obtain certification as a certified nursing assistant. Rather, the hours of training required for certification and the requirements for orientation shall be determined in a written order signed by the Secretary of Department of Health and Human Services. The major purpose of the law was to streamline the procedure to become a certified nursing assistant to help understaffed hospitals and long-term care facilities and to enhance the State's response during the COVID-19 pandemic and similar emergencies.⁵

These regulations are promulgated by the Delaware Health and Social Services Division of Health Care Quality (DHSS DHCQ) to implement the law cited above. These regulations will make significant changes to the training and orientation requirements to become a certified nursing assistant.

Under the current regulations, to take the exam for certification as a Certified Nursing Assistant (CAN), an applicant must be a graduate of a CNA program approved by DHSS. **16 DE Reg 2.1.1.** Applicants must pass “the written and clinical portions of the competency test to become certified.” **16 DE Reg 2.4.** The proposed regulations allow the applicant to take the test three (3) times to obtain a passing score (**16 DE Reg 2.1.5**) before having to “repeat the CNA training program before retaking the test.” **16 DE Reg 2.1.5.1.**

Under the current regulations, courses for CNA programs must “provide a basic level of both knowledge and demonstrable skill for each individual completing the program” (**16 DE Reg 3.11.1.1**). The curriculum must meet certain specified content and competencies as specified in the regulations. (**16 DE Reg 3.11.2**). Students must demonstrate competency of each skill as observed and documented by the instructor before performing it on a resident in a nursing

⁵ The original synopsis states: “This Act commits discretion over the length of certified nursing assistant training and orientation programs to the Secretary of the Department of Health and Human Services. This change will facilitate the rapid certification of National Guard members as certified nursing assistants (CNAs) by allowing the Department of Health and Social Services to establish the total required classroom and clinical training and mandatory facility-specific orientation hours. Modeled after a Minnesota initiative, eligible guard members will participate in rapid certification programs through DelTech and be deployed to provide temporary staffing in long term care facilities experiencing staffing shortages under MOUs entered with the facilities. National Guard members have served as a critical part of the state's response efforts throughout the COVID-19 pandemic. Training and deploying National Guard soldiers to work as CNAs will help relieve staffing shortages in health care settings and facilitate the transfer of patients out of Delaware's hospitals to free up in-patient bed space.”

facility. (16 **DE Reg** 3.12). A student cannot work as a CNA until that student has completed a CNA training program and passed the competency test. (16 **DE Reg** 3.13). Under the proposed regulations, the number of hours of classroom instruction and clinical training required is to be determined by the Secretary of DHSS by a written order. However, the classroom and training hours cannot be less than the number prescribed by the Centers for Medicare and Medicaid Services (CMS). 16 **DE Reg** 3.11.1.2.

Under the current regulations, nursing students currently enrolled in a nursing program are deemed to meet the education requirements if they “[s]atisfactorily completed a Fundamentals/Basic Nursing course” (16 **DE Reg** 2.1.6.1) and under the proposed regulations, competently completed “a supervised clinical practicum in either a facility or a hospital . . . setting, under the direct supervision of a nurse.” 16 **DE Reg** 2.1.6.2. The number of hours of clinical training required is to be determined by the Secretary of DHSS by a written order. However, the training hours cannot be less than the number prescribed by the Centers for Medicare and Medicaid Services (CMS). *Id.*

Before a CNA can work in a nursing facility, he or she has to go through orientation, and under the proposed regulations, the orientation requirements shall be enumerated by the Secretary of DHSS by a written order. 16 **DE Reg** 4.1.1.

For renewal of a CNA certification, the proposed regulations expand on the two (2) hours of resident/patient abuse to include “resident/patient abuse/neglect/maltreatment prevention training.” 16 **DE Reg** 2.3.4.1.2.

The proposed regulations also add immunization requirements for CNA training programs and CNAs. The provisions of the State of Delaware, Department of Education pertaining to immunizations are incorporated into the proposed regulations. Students in CNA training programs must have the diphtheria, tetanus, and pertussis vaccine; polio vaccine; measles, mumps, and rubella vaccine; hepatitis B vaccine, Varicella approved vaccine, and the meningococcal vaccine. 16 **DE** 3.14.1. The provisions of DHSS Division of Public Health pertaining to the control of communicable and other diseases are incorporated into the proposed regulations. 16 **DE Reg** 3.14.2. Testing of students and instructors for tuberculosis is also required in the proposed regulations. 16 **DE Reg** 3.15. Students that do not meet the vaccination requirement in the proposed regulations will not be able to do their clinical training. 16 **DE Reg** 3.14.3.

While it appears that the stringent requirements for CNAs could be eroded by the Secretary of DHSS because of the discretion vested in the Secretary to relax the classroom and clinical hours and requirements for orientation, that notion is illusory. The classroom and clinical hours cannot be less than the number prescribed by the Centers for Medicare and Medicaid Services (CMS). As a result, there is a built-in safeguard. These regulations implement the changes in the law, which was directed to helping staff hospitals and nursing homes.

Although relaxing the requirements for training and certification of CNAs is a start, this reviewer, his managing attorney, and the Disabilities Law Program project director are acutely aware of the health care personnel shortage, both with CNAs and private duty nurses (PDN). While Councils can and should be in favor of these regulations, Councils should also advocate

for increased compensation for CNAs and PDN and for expanding the duties and responsibilities of the CNAs in order to make this field a more attractive profession.

HS 1 for HB 144: An Act To Amend Title 14 Of The Delaware Code Relating To Funding For Prekindergarten Special Education.⁶

House Substitute for House Bill 144 (“HS 1 for HB 144”) seeks to amend Chapter 17, Title 14 of the Delaware Code relating to state appropriations for Delaware’s public school system. The bill would increase funding for preschool children with disabilities by lowering the student to teacher unit ratio as well as creating a new “preschool 2” unit. The bill was introduced in the Delaware House of Representatives on January 19, 2022, sponsored by Reps. K. Williams and Dorsey Walker and Sens. Sturgeon and Gay.⁷

The bill was subsequently assigned to the House Education Committee which met on March 9, 2022. There was overwhelming support for the bill by both legislators and stakeholders. The following agencies and organizations offered comments in support of the bill: Delaware Department of Education (“DDOE”), Delaware State Educators Association, Delaware Association of School Administrators, Delaware School Boards Association, Delaware PTA, and Delaware Association of Special Education Professionals.⁸ The Governor’s Advisory Council for Exceptional Citizens provided cautious support because it had not yet had the chance to review HS 1 for HB 144 in detail; however, it had offered support for HB 144⁹, the parent bill.

DLP previously provided analysis on the parent bill:

Per the legislative synopsis, HB 144 is intended to increase the funding for preschool students with disabilities who are not in Intensive or Complex special education units. This is to be accomplished by modifying the ratio of students per preschool unit of pupils. The bill would change the ratio of students from 12.8 to 8.4 over the course of three years as follows:

7/1/2011 – 6/30/2021: 12.8 students per unit

7/1/2021 – 6/30/2022: 11.3 students per unit

7/1/2022 – 6/30/2023: 9.8 students per unit

7/1/2023 – on: 8.4 students per unit

The current ratio of students has been in place since 2011.

Additional changes are not substantive and were made to bring the statute in conformity with the Legislative Drafting Manual (inserting “any of the following” followed by the eligibility list, rather than utilizing “or” between each means for eligibility and modifying punctuation accordingly). Councils should consider endorsing this increase in funding for preschool students.

HS 1 for HB 144 makes several substantive changes to the parent bill, including:

⁶ <https://legis.delaware.gov/BillDetail/79101>.

⁷ HS 1 for HB 144 is co-sponsored by Reps. Baumbach, Bentz, Bush, Chukwuocha, Heffernan, K. Johnson, Lambert, Longhurst, Lynn, Minor-Brown, Mitchell, S. Moore, Morrison, Osienski, and Ramone and Sens. Ennis, Lockman, Mantzavinos, S. McBride, Poore, Sokola, and Walsh.

⁸ Four (4) individual stakeholders offered additional support for the bill.

⁹ <https://legis.delaware.gov/BillDetail/58551>.

1. Adds an additional Preschool 2 Basic Special Education unit at 7:1 (7 students to 1 teacher), which is consistent the Office of Child Care Licensing requirements.¹⁰
2. Removes the tiered reduction in Preschool 3+ ratio and instead requires an immediate reduction to 8.4:1.
3. Adds a requirement that the School District receiving funds for these specific units must use the funds to support services for these students. However, funds may be used for services other than employing teachers, such as hiring paraprofessionals, related services personnel, and contractual services.

The bill passed through the House Education Committee with no resistance; however, it has failed to be brought before the House Appropriations Committee (“AC”). For the bill to move forward, it would need to be placed on the agenda in the AC and brought for a vote. Councils may wish to support the bill by educating the bill’s sponsors and members of the AC of the bill’s importance to education in the state.

HB 454: An Act To Amend Title 14 Of The Delaware Code Relating To Eligibility For Special Education And Related Services.¹¹

House Bill 454 (“HB 454”) seeks to amend Chapters 31 and 17, Title 14 of the Delaware Code relating to Exceptional Children and Unit funding, respectively. The bill would extend eligibility for special education services to August 31 after the school year in which a student turned 22. The bill was introduced in the Delaware House of Representatives on June 2, 2022, sponsored by Reps. Heffernan, Longhurst, Griffith, and K. Williams and Sens. Poore and Sturgeon.

It was subsequently assigned to the House Education Committee which met on May 8, 2022. The bill passed easily through Committee, and Rep. Matthews urged his fellow colleagues to move quickly on continuing the bill through the legislative process.

Currently, Delaware law provides for special education and related services to terminate upon receipt of a high school diploma or on August 31 following the school year in which the student turns 21, whichever occurs first.¹² Under the Individuals with Disabilities Education Act (“IDEA”), States are required to provide special education and related services to eligible children aged three (3) through twenty-one (21), inclusive.¹³ An exception exists for students aged three (3) through five (5) and eighteen (18) through twenty-one (21) where providing special education and related services “would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges.

On March 31, 2022, two Delaware students filed a class-action lawsuit against the DDOE asserting the State was violating federal law by failing to provide special education and related services to students until their 22nd birthday.¹⁴ The lawsuit alleges that because Delaware provides public secondary education to students twenty-one (21) years of age and beyond, it was

¹⁰ 14 Del. Admin. C. 933.27.

¹¹ <https://legis.delaware.gov/BillDetail/109603>.

¹² 14 Del. C. § 3101.

¹³ 20 U.S. Code § 1412(a)(1)(A).

¹⁴ <https://www.classaction.org/media/se-et-al-v-delaware-department-of-education.pdf>.

also then required to provide special education and related services to eligible students until they reach the age of twenty-two (22).

This bill would amend Chapter 31 of Title 14 to bring Delaware in compliance with its duties under the IDEA, by ensuring students with disabilities eligible for special education and related services are provided a free appropriate public education until August 31 after the school year in which the student turns twenty-two (22).

One small, needed change is to 14 Del. C. § 3101(6), which is the definition for students identified as gifted and talented. These students, under HB 454, would still have eligibility end on August 31 after the school year in which they turn twenty-one (21). This should be changed to twenty-two (22) to ensure Delaware's IDEA-equivalent State law is fully consistent and compliant with federal law.

Because this bill is already through committee, Councils may wish to offer support for the bill by encouraging legislators to push the bill, quickly, through the Legislature to ensure its passage prior to the end of the legislative session. This would ensure that students who would otherwise lose eligibility for special education and related services on August 31, 2022 will be able to remain in school and receive their much needed services continue for an additional year.

HB 409: An Act to Amend Title 19 of the Delaware Code Relating to Earned Sick Time and Safety Leave

Summary of bill:

HB409, if passed, would require all employers within Delaware to provide employees (excepting federal employees and employees subject to Railroad Unemployment Insurance Act) with a minimum of one (1) hour of earned sick time and safety leave for every thirty (30) hours worked.¹⁵ Accrued earned sick time and safety leave may be used by the employee for time off with pay at the employee's regular wage (or state minimum wage, if higher) and benefit rate. This paid leave is available except for employees working for employers with fewer than ten (10) employees, in which case the time may be unpaid, job-protected time instead of paid time.

Employers may cap the sick time and safety leave:

- the number of hours earned per year at a minimum of forty (40),
- the carryover from one year to the next at a minimum of forty (40) hours, and
- the total number of unused sick time and safety leave that an employee can access at one time, including carryover and accrued leave, at no less than eighty (80) hours.

Employers may require employees to have been employed at least 90 days before they may take earned sick leave and safety time.

There are a number of different identified approved uses of sick time and safety leave under this bill. The bill includes a number of approved uses that would benefit people with disabilities,

¹⁵ <https://legis.delaware.gov/BillDetail/109463>

including if the employee requires time off (for the employee's needs or the employee's family member's¹⁶ needs) to:

- address mental and physical health needs, including those caused by substance use,
- obtain preventative medical care.
- take time off due to school or daycare closure as a result of a public health or other emergency, is covered as well.
- attend school-related meetings, conferences, or functions, if requested or required by a school administrator, and time to attend meetings regarding the care of a child with disabilities or health needs, is covered as well.
- Take any other action needed to maintain, improve, or restore the physical, psychological, or economic health and safety.

Earned sick time and safety leave may also be used to address the consequences of domestic violence for such things as meeting with lawyers, obtaining services from victim service organizations, and temporary relocation.

The bill includes anti-retaliation provisions and charges the Delaware Department of Labor with setting up a complaint and enforcement process. The bill does not include a deadline within which a complaint must be filed with DDOL for it to investigate the complaint. However, the bill specifies that an employee is not required to use the DDOL complaint process and provides for a three-year statute of limitations from the date of the last violation. The bill also explicitly covers immigrant workers who may not have evidence of legal presence in the United States. The bill provides for equitable relief, costs and expenses, attorneys fees, as well as civil penalties. Generally, the bill sets forth minimum compliance requirements but allows employers to be more generous. There is an exception for employees covered by collective bargaining agreements, to the extent that the requirements of this bill were expressly waived in the agreement in clear and unambiguous terms.

Analysis and recommendation:

This legislation is similar to protections offered by the federal Family Medical Leave Act, 29 U.S.C. 2601, et seq., which provides job protected leave to covered employees, who have family or medical need for leave time. To be eligible to take leave under the FMLA, an employee must work for a covered employer; have worked 1,250 hours during the 12 months prior to the start of leave; work at a location where the employer has 50 or more employees within 75 miles; and have worked for the employer for 12 months, collectively. However, this bill goes much farther than the FMLA in several ways. HB409 covers employees who are not covered by the FMLA due to the employer size – the FMLA requires 50 or more employees whereas HB409 covers all non-federal employers (those with under 10 employees are covered but are not required to provide paid leave). Second, HB409 “kicks in” much sooner than the FMLA. The FMLA requires an employee to have worked 1,250 hours and 12 (not necessarily consecutive) months; HB409 permits a 90 day waiting period before an employee can use the sick/safety leave. Third, with the exception of very small employers, HB409 provides paid leave rather than unpaid leave. Fourth, the reasons one can use sick/safety leave are much more expansive than those under the

¹⁶ Family members are defined broadly and include, for example, individuals *in loco parentis* relationships with a child (acting in a parent role).

FMLA, with explicit coverage for school and daycare related absences. Delaware would be joining a growing number of U.S. states and jurisdictions enacting paid sick leave.¹⁷

Disability advocacy groups, such as the Arc, have advocated for the necessity of paid family and health leave, because “[p]eople with disabilities and their families often experience greater financial insecurity and are more likely to face barriers to employment that can render the financial impact of unpaid time off particularly devastating.”¹⁸ Thus, paid leave “increases opportunities to take time off for a serious medical condition without seeing a sharp drop in income or putting one’s job or employer-based health insurance at risk. In addition, it can increase access to preventive care, such as going to doctor’s appointments, and lead to better overall health and well-being. Access to paid family and medical leave can help workers balance their personal care needs while working and providing support to a family member.”¹⁹ HB409 would address these concerns for employees with disabilities, as well as employees caring for a family member with disabilities: it covers sick time to address medical conditions, it protects employer-based health insurance, it covers time to access preventative care, and can lead to overall well-being by not forcing workers to choose between their medical needs and financial security. Finally, the domestic violence safety provisions of HB409 will also be beneficial to employees with disabilities, who have a higher lifetime prevalence of being abuse victims than those without disabilities.²⁰

The councils may wish to support this legislation.

HB 415 An Act To Amend Title 24 Of The Delaware Code Relating To Practice By Health Care Providers From Other States

Summary of bill:

HB415 sets forth procedures by which a health care provider licensed in another state may provide health care services in Delaware, including the process by which the Division of Professional Regulation must grant a temporary license.²¹ The Bill provides a mechanism for health providers, with licenses in other states, to start work in Delaware while they complete the licensure process. The temporary license expires when the licensing body either grants or denies the provider’s licensing application.

Analysis and recommendation:

Delaware has been experiencing a worker shortage, including in the health care industry. Delaware’s “hospitals have fewer workers than they did [in January 2021]. The hospitals received a combined \$25 million in federal money late last year to cover sign-on and retention bonuses that are in the thousands” but continues to have workforce shortages.²² Niche

¹⁷ See e.g.: <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>

¹⁸ <https://thearc.org/policy-advocacy/paid-family-medical-leave/>

¹⁹ Id.

²⁰ See e.g.: *The association between disability and intimate partner violence in the United States*, Brieding and Armour, available at <https://pubmed.ncbi.nlm.nih.gov/25976023/>

²¹ <https://legis.delaware.gov/BillDetail?LegislationId=109478>

²² *As the pandemic approaches third year, Delaware businesses still face staffing challenges*, Delaware online, available at <https://www.delawareonline.com/story/money/business/2022/01/13/staffing-shortages-affect-restaurants-hospitals-schools-into-2022/9159967002/>

healthcare providers, such as private duty nursing workers, have been reported by families, nurses, and home health agencies to be in short supply, unable to meet the demand for their services.²³ The more rural parts of Delaware face their own provider shortages, especially with pandemic related increased demand for mental health services.²⁴ Temporary licensure may help to attract out-of-state health providers, who may otherwise be hesitant to relocate and potentially take a loss of income while waiting for the licensure process to be completed. This temporary license procedure is unlikely to be a stand alone fix to workforce shortages, but it is one tool that can be added amongst others.

The councils may wish to support this legislation.

HB 414, An Act To Amend Title 10 Of The Delaware Code Relating To Protection From Abuse.

Summary of bill:

HB414 expands the grounds upon which a survivor of domestic violence can seek a Protection from Abuse order in Delaware Family Court. It adds to the definition of abuse “coercive conduct” which restricts, controls, or interferes with an individual’s finances or financial resources including their bank accounts, credit cards, employment, education, and personal identity. It also makes technical changes to conform with the Delaware Legislative Drafting Manual.

Coercive conduct is defined by 11 Del. Code § 791 as conduct that “compels or induces a person to engage in conduct the victim has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which the victim has a legal right to engage, by means of instilling in the victim a fear that, if the demand is not complied with, the abuser will cause physical injury, property damage, commit a crime, accuse someone of committing a crime, expose a secret, and other actions. This bill then proceeds to enumerate conduct that would be included, if the legislation is enacted:

- 1) Restricting or withholding access to money, bank accounts, debit or credit cards, or other assets
- 2) Unauthorized use or misuse of an individual’s personal identity.
- 3) Interfering with an individual’s employment or education.
- 4) Restricting or withholding access to food, clothing, medication, transportation or housing.
- 5) Financial exploitation.

Analysis and recommendation:

HB 414 would increase protections for individuals with disabilities who are experiencing financial abuse or exploitation by family members or intimate partners.²⁵ Financial abuse

²³ University of Delaware - PDN Workforce Study Findings Presentation, available at: https://dhss.delaware.gov/dmma/files/cmc_ud_pdn_workforce_study_findings_presentation.pdf

²⁴ See <https://www.delawarepublic.org/science-health-tech/2021-04-11/health-care-pros-in-sussex-co-say-more-is-needed-to-treat-mental-health-in-the-region>

²⁵ Qualifying relationships: spouse or former spouse; cohabitating couple; current or former dating relationship; co-parents including those living apart; parent and child (including step and in-law); brother or sister (and in-law); son

amongst individuals with disabilities is significant. One survey found 31.5% of respondents had experienced some type of financial abuse.²⁶ Thus Councils may wish to support the bill as it adds financial abuse and exploitation to the definition of abuse, thus offering people with disabilities who are experiencing this type of abuse, a venue to obtain justice.

However, it is not entirely clear how the bill intends to address abusive legal guardians, agents under a Power of Attorney, or representative payees (who also have a qualifying relationship as discussed in fn. 11). The cross reference with 11 Del. Code § 791, which talks about the abuser pressuring a victim to act (or refrain from acting) in a way the victim would otherwise have the legal right to act, muddles the interpretation as in some cases the victim's legal right to act was removed by court order, such as with a legal guardianship, or incapacity, such as with a springing Power of Attorney. A representative payee has the right to restrict a person with a disability's access to the money, because the Social Security Administration decided that the beneficiary was not capable of handling their benefits. However, a payee may restrict access in a punitive or abusive way. This issue could be clarified in the current bill. For example (underlining indicates changes from HB414):

h. Engaging in coercive conduct, as defined in §791 of Title 11, that interferes with, controls, or restricts an individual's ability to acquire, access, use, or maintain their finances or financial resources.

1. Such conduct includes:

- a. Restricting or withholding access to money, bank accounts, debit or credit cards, or other assets.
- b. Unauthorized use or misuse of an individual's personal identity.
- c. Interfering with an individual's employment or education
- d. Restricting or withholding access to food, clothing, medication, transportation or housing.
- e. Financial exploitation.

2. If the individual engaging in such conduct has authority to make decisions on another's behalf, the conduct shall nonetheless be considered abuse when a reasonable person in the circumstances would find those actions to be harmful. Such individuals may include, but are not limited to, parents of minor children, legal guardians appointed by court order, agents under a Power of Attorney, and representative payees. These individuals must also have a relationship listed in 10 Del. Code § 901(12).

The above comments should not prevent the councils from supporting the bill, but the councils may wish to consider advocating for this to be clarified in HB 414, or for it to be addressed in future legislation.

or daughter (and in-law; including when parental rights were terminated); grandparent/grandchild; any other family relationship when you live together in one home.

²⁶ See <https://ncadv.org/blog/posts/domestic-violence-and-people-with-disabilities>, citing the Spectrum Institute Disability and Abuse Project 2013 survey report, available at <https://tomcoleman.us/publications/2013-survey-report.pdf> and <https://spectruminstitute.org/publications/>

Other Bills/Regulations of Interest:

HB 419- custodial interrogations of minors

Citing the increasing number of false confessions recorded by the National Registry of Exonerations and recent science around adolescent brain development, several states across the nation have passed legislation to ban the use of deceptive interrogation techniques on juveniles. Deceptive tactics is limited to the knowing use of misleading statements about evidence or communications of false promises of leniency to extract a confession or other incriminating evidence from a youth suspected of breaking the law. To date, Delaware has yet to have a wrongful conviction case involving a false confession but according to groups such as the Innocence Project, wrongful convictions can often take decades to be revealed. Three other states, Illinois, Utah and Oregon, have passed similar legislation. Additional states, including Colorado and California, are currently considering similar legislation. This Act mirrors efforts in other states by prohibiting the knowing use of false statements about evidence, or false or misleading promises of leniency during custodial interrogations of persons under the age of 18. Any statement elicited from a person in violation of this section is inadmissible in any subsequent juvenile delinquency or criminal court proceeding.

HB 460 Constitutional amendment specifically adding right to privacy

HB 464, related to dementia care in licensed facilities, was pulled and is being revised

HB 448-Accessible parking

This Act adds provisions to Title 21 defining accessible parking spaces, incorporating federal standards for accessible parking spaces found in the Americans with Disabilities Act and applicable regulations. The Act also provides additional requirements that enhance these standards and better reflect the needs of persons with disabilities in Delaware. The Act increases the penalty associated with violating the statute that prohibits individuals who do not possess a parking placard or special license plate from parking in accessible parking spaces, or in the access aisles located next to accessible parking spaces. This Act adds provisions in Titles 9 and 22 to require county and municipal governments to adopt regulations and ordinances incorporating these requirements for accessible parking spaces, including the requirement that property owners have a permit and process to ensure compliance for new modified accessible parking spaces, in order to increase compliance and uniformity statewide

Elections:

HB 25- same day voter registration

SB 320- Vote by mail (silent on accessibility)

Proposed DMMA DHSS Regulation allowing set aside for Guardianship fees for residents in LTC Facilities, 25 Del. Reg of Regs 1108 (June 1, 2022). This regulation allows post-eligibility for maximum \$100 per month for ongoing guardianship fees and \$750 one time to pay fees towards establishment of guardianship, without impact to eligibility or personal needs allowance.