



STATE OF DELAWARE
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MEMORANDUM

DATE: December 21, 2012

TO: Ms. Susan C. Sargent
USDOJ Settlement Project Director
Division of Substance Abuse & Mental Health

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

RE: 16 DE Reg. 611 [DSAMH Proposed MH Screener & Voluntary Admission
Payment Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Substance Abuse and Mental Health's (DSAMHs) proposal to adopt standards in two contexts: 1) credentialing of mental health screeners; and 2) provider payment for voluntarily admitted patients. The proposed regulation was published as 16 DE Reg. 611 in the December 1, 2012 issue of the Register of Regulations. As background, H.S. 1 for H.B. No. 311 was enacted and signed by the Governor on July 24, 2012. The bill revised the mental health commitment process. DHSS is authorized to issue regulations implementing the revised law. See Title 16 Del.C. §5122(m). SCPD has the following observations.

1. The regulation is inaccurate in some contexts. For example, the "background" section (p. 612) recites as follows:

Title 16 Ch. 51, Subchapter II now requires an assessment by a credentialed mental health screener before an individual is detained on a 24-hour psychiatric hold...

To the contrary, Title 16 Del.C. §5121A, which remains in effect until July 1, 2013, confers mental health detention authority on peace officers and physicians, not mental health screeners.

2. Section 1.0 recites as follows:

Title 16, Chapter 51 of the Delaware Code states that only psychiatrists and people credentialed by the Department of Health & Social Services (DHSS) as a Mental Health

Screeners (MH Screener) have the authority to detain or abrogate a detainment of a person involuntarily for a psychiatric evaluation.

A. This is inaccurate since it ignores Title 16 Del.C.§5121A which remains in effect until July 1, 2013.

B. The reference to “a detainment of a person involuntarily for a psychiatric evaluation” is oddly worded. It suggests that there could be a “voluntary” detainment. Moreover, the statutory term is “detention” and there is a statutory definition of “involuntary detention”. See Title 16 Del.C. §§5122 and 5122(a)(9). Finally, since the DHSS regulation only covers adults, the reference could be more specific. Consider substituting “detention of an adult for a psychiatric evaluation”.

3. The title to §1.0 (Mental Health Screener Credentialing) is inapposite. The title to the overall regulation identifies two (2) topics: 1) credentialing of MH screeners; and 2) payment for voluntary admission. It makes no sense to have §1.0 titled “Mental Health Screener Credentialing” since this is the topic of §§1.0-8.0. It would be much clearer if the regulation were divided into two prominent subparts with headings, i.e. Mental Health Screener Credentialing and Payment for Voluntary Admission. The current format is to have §§1.0- 8.0 and 10.0 address credentialing and then to “bury” payment for voluntary admission out of order as §9.0. The current text in §1.0 could be placed under a heading of “Purpose; Use of Mental Health Screener Designation” or “Background; Use of Mental Health Screener Designation”.

4. In §1.0, substitute “professionals” for “people” to conform to Title 16 Del.C. §5122(a)(9).

5. In §1.0, second sentence, substitute “regulation” for “chapter”.

6. In §1.0, second sentence, the reference to “himself or herself” is disfavored. The Delaware Administrative Code Style Manual provides the following guidance:

3.3.2 Gender

3.3.2.1. Avoid using pronouns that indicate gender. Use the noun which the pronoun would replace. However, if pronoun gender must be indicated, use “his” instead of “his/her” and “he” instead of “he/she” or “(s)he.” The use of the masculine gender is addressed in 1 Del.C. §304 of the Delaware Code.

7. In §2.0, the definition of “Credentialed Mental Health Screener” uses a plural pronoun (“their”) with a singular antecedent (“DSAMH”). However, the entire reference to “or their designee” should be stricken. The statute contemplates credentialing by the Department, not some non-Departmental entity.

8. In §2.0, substitute “Correction” for “Corrections” to conform to Title 29 Del.C. Ch. 89.

9. Section 2.0, definition of “Crisis Experience in a mental health setting” is grammatically infirm. In pertinent part, it recites as follows:

“Crisis experience in a mental health setting” means a crisis experience in a mental health setting is defined as direct experience...

Substitute: ““Crisis experience in a mental health setting” means direct experience...”

10. In Section 2.0, definition of “Licensed Mental Health Professionals”, the grammar merits correction. Consider inserting a period after the term “Chapter 51”. Then, begin the next sentence with “The term includes licensed physicians...”

11. In Section 2.0, definition of “Licensed Mental Health Professionals”, SCPD questions the requirement that a licensed registered nurse have “a bachelor’s degree in nursing (BSN)” since this is not required by the licensing statute. See Title 29 Del.C. §1910. There may be many qualified registered nurses with considerable experience who would be disqualified by this extraneous limitation.

12. In Section 2.0, the definition of “Supervision of unlicensed mental health professionals by a psychiatrist” is problematic.

A. It would be preferable to convert this section to a substantive standard rather than a definition. For example, the second sentence is an operational protocol, not a definition.

B. There are multiple grammatical errors in this definition. For example, there is a singular indefinite adjective (“an”) with a plural noun (“professionals”).

C. The references to “need to work” and “will need to be placed” are not typical regulatory terms. Consider substituting “must work” and “shall be placed”.

D. The reference to “agency’s by-laws” makes no sense. Most agencies do not have “by-laws” apart from corporate by-laws defining the work of the board of directors. Moreover, some individuals may not work for an “agency”. Cf. §3.4.1.1 reference to “professional not affiliated with any Delaware health care facility”.

13. In Section 3.2.2, strike “that such person is licensed” and substitute “that he is licensed” or “of a current license”.

14. In §3.4.1, it is anomalous to require 5 years of experience for DSAMH employees but only 2 years of experience for employees of any other public or private health care facility.

15. In §3.4.2, there is no provision for a public agency apart from DSAMH (e.g. Veterans Hospital) “vouching” for the years of experience.

16. In §3.4.1.2, there is a plural pronoun (“their”) with a singular antecedent (“facility”).

17. In §3.4.2.1, there is a plural pronoun (“they”) with a singular antecedent (“applicant”). Moreover, consistent with Par. 11 above, SCPD questions the categorical requirement that a licensed RN have a BSN degree.

18. In §3.4.2, the multiple references to “relating to Professions and Occupations” are superfluous and should be deleted.

19. In §§3.4.2, strike the multiple references to “that such person is licensed” and substitute “that he is licensed” or “of a current license”.

20. SCPD recommends deletion of §3.4.2.4.2 as superfluous. See Title 24 Del.C. §3908.

21. SCPD recommends deletion of §3.4.2.5.2 as superfluous. See Title 24 Del.C. §3032. If not deleted, the reference to “Board” makes no sense in the context of the regulation.

22. SCPD recommends deletion of §3.4.2.6.2 as superfluous. See Title 24 Del.C. §3052. If not deleted, the reference to “Board” makes no sense in the context of the regulation.

23. Section 3.5.1 requires unlicensed mental health professionals applying for screener status to pay both an application fee and credentialing fee. There is no analog for licensed professionals. It is unclear if the latter professionals are expected to pay such fees.

24. Since the standards are identical, §§3.5.1.1 and 3.5.1.2 could be merged.

25. In §§3.5.1.3 and 3.5.1.4, it is anomalous to allow an unlicensed State employee to qualify with a Bachelor’s degree while requiring a Master’s degree for a private sector employee. This is reminiscent of the former practice of allowing unlicensed physicians to practice at DPC. There is little logic to adopting a lesser credentialing qualification for State employees.

26. While the credentials sections address clinical experience, they are completely silent on expertise in utilizing police power and involuntary detention procedures. The statute contemplates the screeners promptly “taking into custody” individuals whose behavior constitutes a danger to self or others. See Title 16 Del.C. §5122(b). The statute also contemplates the screener transporting the individual involuntarily to another screener or facility. See Title 16 Del.C. §5122(c). The former Attorney General opposed granting police power to mental health personnel in the commitment context based on concerns about lack of training and capacity to detain violent individuals. Query whether physical fitness standards should be included in the credentialing criteria? Obviously, the ability to physically detain an unruly individual is contemplated by the statute and some individuals may initially appear cooperative but change their “affect” quickly. Training would also be essential.

27. Definitions should be compiled in the front of the regulation. See Delaware Administrative Code Style Manual, §3.1.2. It makes no sense to have both a §2.0 definitions section and a §4.0 definitions section. Alternatively, Section 4.0 contains substantive standards rather than “definitions” and could be converted to a “contents of initial application” section and a “reapplication standards” section. The format of §4.0 could then be converted to the following: “An initial application for approval as an MH Screener shall include the following:...”. The 2-year term of approval should then be inserted. Finally, a section could then require a reapplication to be filed at least X days prior to the expiration of the 2-year term. Otherwise, the

regulation would literally permit a reapplication to be filed on the 2-year expiration date.

28. In §4.0, delete “or their designee”. See Par. 7 above.

29. In §4.0, the reference to “group” is inapposite since there are two sets of exempt professionals.

30. In §5.1, first definition, substitute “credentialed” for “credential”.

31. Consistent with Par. 27 above, it makes no sense to have a §2.0 definitions section, §4.0 definitions section, and §5.0 definitions section.

32. In Section 5.0, there is no operative sentence. The section consists of definitions and an outline. There is no sentence akin to “(T)he following standards will apply to the credentialing and recredentialing of MH screeners...”

33. The grammar in §5.1, first definition, is incorrect. At a minimum, consider inserting “which” prior to “will”. However, substantively, the “definition” makes no sense and is not used anywhere in the text of the regulation.

34. The grammar in §5.1, second definition, is incorrect. At a minimum, consider inserting “which” prior to “will”. However, substantively, the “definition” makes no sense and is not used anywhere in the text of the regulation.

35. In §5.0, the third definition is a putative substantive standard, not a definition.

36. In §5.2.1.1, SCPD suspects the word “specific” was intended to be “specified”.

37. In §5.2, the multiple references to “specified above” should be converted to “specified in §5.1” for clarity.

38. Punctuation is missing from the end of §5.3.2.2.

39. There is a lack of parallel form in §§5.2.4.4, 5.3.1.3, 5.3.2.3, and 5.3.3.3. See Delaware Administrative Code Style Manual, §6.2.3

40. Section 6.0 (“Data”) is not within the scope of the title to the regulation which is limited to credentialing and payment for voluntary patients. Moreover, the lengthy narrative is not written in regulatory form and is extremely difficult to follow.

41. In §6.0, substitute “detentions” for “detainments” to conform to the statute and §7.0. See discussion in Par. 2. B. above. The Delaware Administrative Code Style Manual provides the following guidance:

6.2.2. Strive for consistency in terminology, expression and arrangement. Avoid using the same work or term in more than one sense. Conversely, avoid using different words

to denote the same idea.

42. Section 7.0 has a plural pronoun (“their”) with a singular antecedent (“client”).

43. In §7.0, substitute “self” for “that person”.

44. Section 9.0 consists of a single 78-word sentence. Consider “breaking out” the last three concepts as subparts. For example, it could be revised as follows: Payment....confirmation of the following: 9.1. The admission represents...; 9.2. The duration of stay...; and 9.3. The State is the payer...

45. In §10.0, there are three instances of use of plural pronouns (“their”) with a singular antecedent (“individual”).

46. SCPD respectfully requests clarification that the Division has not overlooked conducting criminal background checks in connection with the certification, particularly in the context of unlicensed screeners since they would not have been vetted through the licensing process.

47. SCPD has reviewed the attached comments from the Disabilities Law Program and endorses the substance of the commentary.

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

cc: The Honorable Rita Landgraf
Ms. Kevin Huckshorn
Ms. Deborah Gottschalk
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

16reg611 dsamh-mh screener vol admission payment 12-20-12



DISABILITIES LAW PROGRAM

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December 21, 2012

BY U.S. MAIL AND FAX TO (302) 255-4428

Susan C. Sargent
USDOJ Settlement Project Director
Division of Substance Abuse and Mental Health
1901 North DuPont Highway
New Castle, Delaware 19720

Re: Proposed DSAMH regulations "Credentialing Mental Health Screeners and Payment for Voluntary Admissions"

Dear Ms. Sargent:

Below please find the Disabilities Law Program's comments to the proposed regulations pursuant to 16 Del. C. § 5122(m), for credentialing mental health screeners and paying for voluntary admissions of adults whose admissions are eligible for payment by the State. Thank you for the opportunity to provide comments on these regulations.

Comments:

1. In § 1.0 a Mental Health Screener is referred to as a "MH Screener," a reference which is repeated throughout the regulations in §§ 4.0, 6.0 and 8.0. However, in § 2.0 "Credentialed Mental Health Screener" is made a defined term. Because Credentialed Mental Health Screener is a defined term, it should be used consistently throughout the regulations. All references to "MH Screener" should be replaced by "Credentialed Mental Health Screener."
2. In § 2.0, the reference to DSAMH's "designee" should be deleted because 16 Del. C. § 5122(a)(1)(b)-(d) provides for credentialing by the Department of Health and Social Services, not a non-Departmental designee.
3. In § 2.0, the definition of "Crisis experience in a mental health setting" unnecessarily states in that is defining a term ("Crisis experience in a mental health setting' means a crisis experience in a mental health setting *is defined as* . . ."). This sentence should be modified to read "'Crisis experience in a mental health setting' means direct experience . . ."



4. In § 2.0 the definition of an “Unlicensed mental health professional” is very vague and anyone who is directly supervised by a psychiatrist and does not hold a professional license issued by the State of Delaware may satisfy the criteria. For example, a receptionist who works for a psychiatrist would satisfy the definition because he or she would be directly supervised by a psychiatrist and would not hold a professional license issued by the State of Delaware. These criteria should be further developed so that only those individuals who have relevant mental health experience can satisfy the definition.
5. In § 2.0 the definition of “Supervision of unlicensed mental health professionals by a psychiatrist” is not structured as a defined term. The definition of a defined term should be able to be substituted into any sentence in which the defined term is used and make sense to the reader. The current definition of “Supervision of unlicensed mental health professionals by a psychiatrist” does not so much define the term, but rather sets out specific conditions for the supervisory relationship as well as documentation requirements.
 - a. The first sentence of this definition, which sets out the requirements of the supervisory relationship, would make more sense under § 3.5 “Unlicensed Mental Health Professionals under Direct Supervision of a Psychiatrist.”
 - b. The second sentence of this definition, which requires a faxed or original detainment form with the supervising psychiatrist’s signature to be placed in the client’s medical record within 24 hours, would make more sense under § 6.0 “Data.”
6. In § 3.2 “Board Certified Emergency Physicians,” all references to “physicians” should be modified to “board certified emergency physicians.” Physicians who are not board certified emergency physicians are subject to a different set of qualification and certification requirements. For this reason, the text of the regulations should differentiate between these two sets of physicians and should not use interchangeable terminology. DSAMH should consider making “Psychiatrists,” “Board Certified Emergency Physicians,” and “Physicians” defined terms under § 2.0 to further reduce potential confusion.
7. Sections 3.2.1, 3.3.1, 3.4.1, and 3.5.1 all require applicants who wish to be credentialed mental health screeners to submit “qualifications,” however the regulation does not state what specifically what “qualifications” entails. Moreover, it is unclear whether these “qualifications” are intended to be in addition to the evidence of licensure and years of relevant experience as also required by the regulations (see §§ 3.2.2, 3.3.2, 3.4.1.1, 3.4.1.2, 3.4.2.1 - 3.4.2.7.1 and 3.5.1.1 - 3.5.1.5). This will likely create confusion for applicants who will be unsure of what documentation they must submit in order to apply to be credentialed mental health screeners. Likewise, individuals wishing to challenge why they were not found eligible to become credentialed mental health screeners may have a strong argument that the regulations were unclear as to what they were required to submit.

8. In § 3.4.2.2. Advanced Practice Nurses are required to show that they are “working under a formal protocol with a Delaware licensed physician.” This criterion is not required of any other non-physician applicant to be a credentialed mental health screener. If this criterion is intended to address situations in which an Advanced Practice Nurse is practicing independently it should be addressed explicitly.
9. In § 3.4.2.4.2 Licensed Clinical Social Workers who wish to be credentialed mental health screeners must show that they are licensed by the State of Delaware as a Licensed Clinical Social Worker as well as show they passed the American Association of State Social Worker Boards. The requirement that applicants show they passed the American Association of State Social Worker Boards is duplicative. Pursuant to 24 Del. C. § 3908 an individual cannot be licensed as a Licensed Clinical Social Worker in Delaware without having passed the American Association of State Social Worker Boards.
10. In § 3.4.2.5.2 Licensed Professional Counselors of Mental Health who wish to be credentialed mental health screeners must show they are licensed by the State of Delaware as a Licensed Professional Counselor of Mental Health as well as show they are certified by the National Board for Certified Counselors, Inc., or the Academy of Clinical Mental health Counselors, or other national mental health specialty certifying organization acceptable to the Board. The requirement that applicants show they are credentialed by the appropriate body is duplicative. Pursuant to 24 Del. C. § 3032(a)(1) an individual must obtain one of these certifications in order to be licensed as a Licensed Professional Counselor of Mental Health. Additionally, the reference in this subsection to the “Board” makes no sense. “Board” is not a defined term, nor is there any other reference regarding to which “Board” this provision is referring.
11. In § 3.4.2.6.2 Licensed Marriage and Family Therapists who wish to be credentialed mental health screeners must show they are licensed by the State of Delaware as a Licensed Marriage and Family Therapist as well as show they have passed the Association of Marital and Family Therapy Regulatory Boards or other examination acceptable to the Board. The requirement that applicants show they have passed the Association of Marital and Family Therapy Regulatory Boards or other examination. Pursuant to 24 Del. C. § 3032(a)(1) an individual must obtain one of these certifications in order to be licensed as a Licensed Marriage and Family Therapist. Additionally, the reference in this subsection to the “Board” makes no sense. “Board” is not a defined term, nor is there any other reference regarding to which “Board” this provision is referring.
12. Section 3.5.1.3 and 3.5.1.4 specify different standards for unlicensed mental health professionals applying to be credentialed mental health screeners, depending on whether they are employed by the State or a private facility. Unlicensed individuals who wish to work for the State are only required to have a bachelor’s degree, whereas unlicensed individuals who wish to work for a private facility are required to have a master’s degree. It is illogical to hold individuals working for the State to a lesser standard than those working in the private sector. The credentialing requirements should be standardized regardless of whether an individual works for a public or private facility.

13. Section 4.0 should not contain “definitions.” There should only be one “definitions” section, which should be in the front of the substantive regulations. Section 2.0 should be the only definition section. Moreover, the terms contained in § 4.0 are substantive standards regarding applications and re-applications for credentialing, rather than true definitions. See Par. 5 above. Section 4.0 should be modified to reflect its substantive nature. The term “Definitions” should be deleted, and “Application for Credentialing” and “Application for Re-credentialing” should be numbered as §§ 4.1 and 4.2 respectively.
14. Section 4.0 does not specify to whom an application or re-application for credentialing should be sent.
15. In § 4.0 the reference to “or their designee” should be deleted. See Par. 2 above.
16. Section 5.0 should not contain “definitions.” See Pars. 5 & 13 above. Additionally, the terms which are defined in § 5.0 are not used anywhere in the text of the regulations. It makes no sense to define terms which are never subsequently used. Moreover, the “definitions” in § 5.0 are not true definitions, but rather substantive standards.
17. The requirements in § 3.0 “Qualifications for Applicants for Credentialed Mental Health Screener” and § 5.2 “Credentialing” would be clearer and more understandable for both professionals and lay people if they were combined into a single section. If these sections are not combined, the term “qualifications” as used through § 5.2 should be clarified by cross-referencing the analogous subsections in § 3.0. For example, § 5.2.1.1 should be modified to read “Compliance with qualifications specified above in Section 3.2”; § 5.2.2.1 should be modified to read “Compliance with qualifications specified in Section 3.3” and so on.
18. In § 5.2.2.2 the reference to “DHSS Division of Substance Abuse and Mental Health” should be replaced by “DSAMH.” “DSAMH” is defined as the appropriate acronym for the Division of Substance Abuse and Mental Health in § 1.0 and should be used consistently throughout the regulation.
19. Sections 5.3.1.1, 5.3.2.1, and 5.3.3.1 all refer to “qualifications specified above,” however, the regulations do not cross-reference which specific qualifications are being cited. For clarity, these subsections should include a cross-reference to the particular “qualification” an individual must comply with in order to be eligible for re-credentialing. See Par. 17 above.
20. Sections 5.3.1.3, 5.3.2.3, and 5.3.3.3 refer to DSAMH’s acceptance of “CMUs.” However, the text does not explicitly state if CMUs will be accepted *in lieu of* additional DSAMH training, required in order to be re-credentialed as a mental health screener. This should be clarified. Additionally, the regulations should specify if a certain number of CMU hours are required in order to be accepted in lieu of DSAMH training.

21. In § 6.0 all references to “clients” should be replaced by “individuals” or “persons”
22. In § 6.1 substitute “release” for “undo a detainment.”
23. In § 7.0 the reference to “clients” should be replaced by “individuals” or “persons”
24. In § 7.0 the language “pursuant to 16 Del. C. § 5122” should be added after “the intent of the law is to ensure that no client is detained.” The revised language should read “The intent of the law is to ensure that no client [individual] is detained pursuant to 16 Del. C. § 5122. . . .” This will add clarity to the paragraph.
25. In § 8.1 the reference to “general facilities” is vague.
26. Section 8.1 effectively makes the only reason a credentialed mental health screener can lose his or her credential due to failure to comply with federal confidentiality laws. There is no mention of the potential revocation or suspension of a screener’s credential due to abuse or neglect of patients or inappropriate use 24-hour detainments. Language should be added to include these circumstances as reasons a screener may lose his or her credential. It would be helpful to cross-reference 16 Del. C. § 5161(6), “Mental Health Patient’s Bill of Rights,” which creates an enforceable right to be free from abuse, mistreatment, neglect, unjustifiable force, and seclusion, physical restraint, drugs or other interventions administered primarily for purposes of staff convenience (and excluding seclusion, physical restraint, drugs and other interventions which comply with safeguards proscribed by the statute). If additional language is not added to § 8.1, then DSAMH will not have the authority to revoke or suspend a screener’s credential for anything other than failure to comply with federal confidentiality laws. This section should also specifically state what criteria DSAMH will consider when evaluating whether an individual’s credential should be revoked or suspended.
27. There is no definition of “records” for the purpose of § 8.1. Additionally, record keeping requirements of credentialed mental health screeners is out of place in § 8.1 which is about the suspension or revocation of an individual’s credential to be a screener. This will likely create confusion for credentialed mental health screeners who may not realize they have specific record keeping duties in addition to those outlined in § 6.0. Any record keeping requirements should be incorporated into § 6.0.
28. Section 8.2 does not state who should be notified should a credentialed mental health screener lose his or her professional license or cease to work under the supervision of a psychiatrist.
29. The reinstatement standard pursuant to § 8.2 is very weak and should include the criteria which DSAMH will consider when deciding whether to reinstate and individual’s credential. Section 8.2 should also state whether an individual’s credential to be a screener is automatically reinstated at the end of an individual’s suspension or reinstatement of their professional license.

30. Section 10.0 "Appeal Process" should be included under § 8.0 or renumbered as Section 9.0. Currently, § 8.0 which addresses the suspension and revocation of the mental health screener credential and § 10.0 which addresses appeals of the suspension or revocation of the mental health screener credential are separated by § 9.0 which addresses payment for voluntary and involuntary admission. This is incongruent. I would make much more sense to address all procedures related to the revocation and reinstatement of an individual's credential sequentially.
31. Section 10.0 "Appeal Process" should be enhanced to include whether individuals appealing the suspension or revocation of their mental health screener credential can submit additional records to be considered by DSAMH, have an opportunity to present his or her case in person, be represented by counsel, etc. Likewise the decision from the Director of DSAMH should be required to be in writing and set forth with specificity the reasons an appeal was granted or denied. Appeal rights will be especially crucial for licensed screeners, who, depending on the precipitating reason their credential was suspended or revoked, may face additional consequences from their relevant licensing board. For example, doctors may be disciplined by the medical board for actions including "[a]ny dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public," "misconduct, including but not limited to sexual misconduct, incompetence, or gross negligence or pattern of negligence in the practice of medicine or other profession or occupation regulated under this chapter," or "willful violation of the confidential relationship with or communications of a patient." 24 Del. C. § 1731 (a), (b)(9) & (b)(11)-(12). These criteria for discipline from the medical board may be satisfied, depending on the relevant circumstances, by events precipitating a doctor's suspension or revocation of his or her screening credential. Therefore, given the potential ramifications for licensed screeners, the appeal process should be strengthened and clarified.
32. In § 9.0 the reference to "hospitals" should be should be replaced by "designated psychiatric treatment facilities as defined in 16 Del. C. 5122"
33. In § 9.0 the reference to "clients" should be replaced by "individuals" or "persons."
34. Section 9.0 allows payment to hospitals only upon independent review that an admission was the most appropriate and least restrictive treatment for the client in crisis and the state is the payer of last resort. There are several issues which this raises:
 - a. It is unclear whether this section covers 24-hour emergency detentions *only* or payment for longer civil commitments as well. Given its placement in the regulations to Chapter 51, it would make sense for it to only cover 24-hour emergency detentions. However, the use of the term "admission" and referral to independent review of "the duration of stay for the admitted client" indicates that it may cover admissions lasting longer than an initial 24-hour emergency detention. This confusion should be rectified.

- b. It is unclear based on the current language of this section whether an individual who received treatment may be billed for that treatment by the hospital if the State disagrees with a hospital's admission of the individual and withholds payment. This may potentially create a situation in which an individual is detained for 24 hours or even committed for a longer period of time, the State disagrees with that treatment decision and withholds payment, and the hospital then bills the individual for payment. This would obviously not be the intended outcome of a provision that tries to penalize hospitals for inappropriate care. Language should be added to this section which clarifies that if the State's independent review of an admission determines that it was not the most appropriate and least restrictive treatment option available and withholds payment, the hospital shall not bill the person who was detained or committed for payment.

If there are any questions about the comments submitted above, please contact me by phone at (302) 575-0660, ext. 241 or by email at sfishman@declasi.org. Thank you for the opportunity to provide input regarding these important regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah G. Fishman", written over the typed name.

Sarah G. Fishman
Staff Attorney