



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: March 28, 2018

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Jamie Wolfe, ^{J Wolfe} Chairperson
State Council for Persons with Disabilities

RE: H.B. 331 (Amends Title 16 of the Delaware Code Relation to Benzodiazepine and
Non-Benzodiazepine Hypnotics)

The proposed legislation was introduced and assigned to the House Health & Human Development Committee on 3/1/18.

House Bill No. 331, an act to amend Title 16 of the Delaware Code relating to benzodiazepine and non-benzodiazepine hypnotics, requires "[p]ractitioners to obtain consent from a minor's parent or guardian prior to prescribing Benzodiazepine and Non-benzodiazepine Hypnotics drugs." Benzodiazepines are classified as Schedule IV in the Controlled Substances Act.¹ Non-benzodiazepine hypnotics are C-IV controlled substances and cause less dependence and abuse potential than benzodiazepines.

Drugs that fall into the categories above are generally seen by agencies such as the DEA to have a high potential for abuse and dependence. The DEA says that "[a]buse is frequently associated with adolescents and young adults who take the drug orally or crush it up and snort it

¹ Benzodiazepines, Center for Substance Abuse Research,
<http://www.cesar.umd.edu/cesar/drugs/benzos.asp#2> (last visited Mar 2, 2018).

to get high. Abuse is particularly high among heroin and cocaine abusers."² It would stand to reason that House Bill 331 is trying to address issues of potential drug abuse, on the heels of the opioid pandemic.

One potential area of concern is that there is some argument that some older adolescents may have an independent right to refuse or consent to psychotropic medications. States vary in their practices as to requiring parental consent of older minors. For example, in New Mexico and New York, older minors can consent to medication under certain circumstances. In other states, such as California and Illinois, for example, minors cannot legally consent to psychotropic medication.

Under 16 Del. Code §5003(f)(3)(e), at least in the outpatient treatment context, while a minor between 14 and 18 can consent to treatment, they cannot consent to psychotropics. DSCYF policy is found in Delaware Children's Department Policy #216. The Policy says that "it is expected that the child's parent or legal guardian makes decisions regarding the use of psychotropic medication" and that "[a]ssent to taking medication should be obtained from children under age 18 in a developmentally appropriate way." Assent includes a thorough discussion and obtaining acceptance of treatment by a minor.

There is some literature advocating that obtaining informed consent of an older minor who appears competent is required. They make the argument that "a minor's desire to consent to, or refuse, psychotropic medication should trump his or her parents' (or legal guardians' wishes if the minor is found to be competent."³ It can be problematic when providers assume that parents should absolutely control the mental health treatment of their children. For instance, "a parent might merely desire to sedate his child or cure his behavioral issues, when in actuality, those issues are caused by disturbances at home or dysfunctions in the family."⁴

The bill attempts to address one of the many gateways to opioid abuse that is currently plaguing Delaware. For this reason, the SCPD is endorsing this legislation, with a suggestion that language be added requiring the consent of an older minor who appear competent.

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

² Benzodiazepines, DEA Drug Fact Sheet, https://www.dea.gov/druginfo/drug_data_sheets/Benzodiazepines.pdf (last visited Mar 5, 2018).

³ Alexa E. Craig (2015) "Diazepam Discord: A Competent Minor's Constitutional Right to Seek and Refuse Psychotropic Medication," *Journal of Legislation*: Vol. 41: Iss. 1, Article 3.

Available at: <http://scholarship.law.nd.edu/jleg/vol41/iss1/3> (I have attached a copy of this document with this paper)

⁴ Richard E. Redding, *Children's Competence to Provide Informed Consent/or Mental Health Treatment*, 50 WASH & LEE L. REV. 695, 700 (1993). *See also* Therese Powers, *Race for Perfection: Children's Rights and Enhancement Drugs*, 13 J.L & HEALTH 141, 143 (1999) (arguing that "It may become impossible to differentiate ADHD from symptoms of a child's social environment when a child is subjected to inadequate, disorganized, or chaotic environments.").

cc: Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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