



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Third Floor, Suite 1
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: April 5, 2022

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

FROM: Ms. Terri Hancharick, Chairperson *TH*
State Council for Persons with Disabilities

RE: SB 242 (Voluntary Admission for Inpatient Psychiatric Care for Youth
in DSCYF Custody)

The State Council for Persons with Disabilities (SCPD) has reviewed SB 242 which seeks to amend the existing civil commitment statute. Per the current law, for the purposes of voluntary admission to a covered psychiatric facility, a parent or legal guardian must provide consent on behalf of a patient who is under the age of 18. See 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. See 16 Del. C. § 5003(f)(2). The bill would add language giving the Division of Family Services (DFS) authority to consent to admission or discharge on behalf of a child in its custody.

SCPD opposes the proposed legislation as written. SCPD wants to ensure that any adolescents, no matter the underlying conditions or disabilities, can appropriately communicate or participate in the assessment process before involuntarily submitting them to a facility. While removing barriers to emergency medical treatment for children in the child welfare system, including children with disabilities, is a worthy

aim, giving DFS broad authority to consent to inpatient psychiatric care on a child's behalf goes beyond the scope of the problem this bill seeks to address. SCPD recommends 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 very narrow circumstances if a parent or guardian cannot be located (this option is available for youth aged 14 or over for voluntary outpatient mental health treatment, although the youth could not overrule a treatment decision by a parent or legal guardian). SCPD has the following observations and concerns.

The stated purpose of the bill is to expedite the process of admitting children “to residential psychiatric treatment” when they are in the custody of the DFS and the parent cannot be easily reached to provide consent, so that needed treatment can be accessed more quickly and without requiring an involuntary commitment order. It is not clear whether the term “residential psychiatric treatment” is intended to refer to solely to inpatient psychiatric care or to encompass placement at a residential treatment center for longer-term care. Title 16, Chapter 50 of the Delaware Code applies to “designated psychiatric treatment facilities,” which are defined as “all facilities designated by the Secretary to provide psychiatric emergency care for individuals believed to have a mental condition and whose behavior is believed to be dangerous to self or dangerous to others; such facilities include psychiatric hospitals operated by the State of Delaware, privately operated psychiatric hospitals, any psychiatric emergency receiving facilities that provide mental health screenings, evaluations, treatment, and referral services, or other facilities as may be designated by the Department by regulation.” 16 *Del. C.* § 5001(6). It is not clear that the provisions of the Code this bill seeks to amend would apply to longer-term residential placements.

To the extent the bill is seeking to address acute inpatient psychiatric care at a facility otherwise covered by Chapter 50, it still seems problematic to allow DFS to make a decision to admit a child to a psychiatric facility, 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. There is also no indication of what input must be sought from the child. 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, but the synopsis does not address children who would not otherwise be willing 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. It would be concerning to give DFS broad authority to consent to treatment when DFS may not understand a child's needs as intimately as the child and family members would.

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 issues with placing the child in foster care or another 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.

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

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

SB 242 [Inpatient Psychiatric Care for Youth in DSCYF Custody (4-5-22)]