



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: May 4, 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 255 ["Voluntary" Admission for Inpatient Psychiatric Care for
Youth in DSCYF Custody]

The State Council for Persons with Disabilities (SCPD) has reviewed SB 255 which seeks to amend the procedures governing admission for inpatient psychiatric care for youth in the custody of Department of Services for Children, Youth & Their Families (DSCYF). It is very similar to SB 242. 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).

SCPD opposes this legislation as written. 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. SCPD has the following observations and recommendations.

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 involuntary commitment order. While SCPD 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.

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. 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. 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.

In summary, SCPD opposes the bill as written. Council 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 some circumstances. Language that would discourage DFS from relying on inpatient psychiatric care in lieu of a suitable community-based placement is also necessary. Finally, SCPD recommends that facilities, if not already doing so, make reasonable accommodations to include participation of the individual taking the mental health assessment.

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 255 ["Voluntary" Admission for Inpatient Psychiatric Care for Youth in DSCYF Custody (5-4-22)]