



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: February 27, 2015

TO: Members of the Delaware State Senate

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

RE: H.B. 8 (Mental Health Commitment Code)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 8 which seeks to address two (2) concerns with changes in the mental health commitment code adopted in 2014 through H.B. 346. First, the definition of "psychiatrist" was limited to practitioners who completed residency in a program certified by a particular entity. There is at least one psychiatrist in Delaware who completed a residency program certified by a different entity. The bill proposes to resolve this issue by simply referring to "an accredited residency training program in psychiatry" (lines 12-14). Second, the existing law excludes physicians employed by the Delaware V.A. Medical Center from serving as mental health screeners if not licensed to practice medicine in Delaware. The bill proposes to authorize such V.A. physicians to qualify for credentialing as mental health screeners (lines 6-9).

SCPD has the following observations and recommendations.

First, the current law bars a V.A. psychiatrist from qualifying as a "psychiatrist" if not licensed in Delaware (line 12). As a result, such a V.A. psychiatrist could not qualify as a "psychiatrist" authorized to serve as a "credentialed mental health screener" under 16 Del.C. §5001(1)a. Pursuant to 16 DE Admin Code 6002.3.1, psychiatrists are authorized to serve as "screeners" without additional coursework required of physicians. The V.A. psychiatrist would also be unable to serve as an independent psychiatrist in commitment hearings [16 Del.C. §5007(3)] even if he/she were the primary treating practitioner prior to initiation of the commitment process. Finally, treating a V.A. psychiatrist as a "non-psychiatrist" creates some "tension" with the following statute within the commitment code:

§5021 Veterans Administration hospitals.

The provisions in the Delaware Code pertaining to the admission, commitment, care and discharge of persons diagnosed with a mental condition at state institutions shall apply with the same force and effect to persons entitled to the services of hospitals for people with a mental condition operated by the Veterans Administration. Persons so entitled may be transferred from state institutions to such Veterans Administration hospitals subject to the statutory provisions affording interested parties the right to have the status of the person with a mental condition determined as provided by law.

The “bottom line” is that practitioners employed as psychiatrists by the V.A. Medical Center who are not licensed in Delaware should be included within the definition of “psychiatrist” in §5001.

Second, the sponsors may also wish to consider whether simply addressing V.A. physicians and psychiatrists is sufficient. Consistent with the attached prior version of §5001, a “psychiatrist” was defined as including the following:

b. Any physician employed by the United States government within the State in the capacity of psychiatrist and certified by the Delaware Psychiatric Center Medical Director to the Medical Council of Delaware as qualified in the diagnosis and treatment of mentally ill persons.

For example, a physician or psychiatrist employed by the Dover Air Force Base who is only licensed in another state would ostensibly not qualify as a “physician” or “psychiatrist” under Delaware’s mental health code. The sponsors may wish to consider whether to adopt a broader approach to federally employed or contracted practitioners than simply addressing V.A. employees.

Third, SCPD assumes the V.A. may have medical practitioners who are either employees or independent contractors. The use of the term “employment” in line 8 could create ambiguity for physicians who are serving as independent contractors. The sponsors may wish to consider whether the reference to “employment” merits revision.

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

cc: Members of the Delaware House of Representatives
Deborah Gottschalk, DHSS
Sarah Goncher, DOJ
DSAMH Advisory Council
Mr. Brian Hartman
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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