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MEMORANDUM

DATE: January 30, 2015

TO: Mr. Thomas Murray, Deputy Director
Division of Long Term Care Residents Protection

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

RE: 18 DE Reg. 497 (DLTCRP Financial Capability Reporting Regulation)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Long Term Care Residents Protection's (DLTCRPs) proposal to adopt regulations covering the financial "soundness" of licensed long-term care facilities with three (3) or more residents. The proposed regulation was published in the January 30, 2015 issue of the Register of Regulations. SCPD has the following grammatical and formatting observations.

First, in §3.0, definition of "Affiliate", SCPD recommends deleting the forward slash between "directly" and "indirectly". Council also recommends substituting a comma for the semicolon after "indirectly".

Second, in §3.0, insert a period at the end of the definitions of "Department" and "Division".

Third, in §3.0, definition of "Facility", SCPD recommends substituting "which" for "and" between "§1102(4)" and "is".

Fourth, in §4.1.2, SCPD recommends substituting a comma for the semicolon before "including".

Fifth, the term "home of record" is used in §§4.1.6 - 4.1.9. SCPD is not familiar with this term. It is a term used in the military to denote the location from which one enlisted. It does not appear to be a "term of art" in corporate or financial contexts. To avoid confusion, the Division may wish to adopt a different term or provide a definition.

Sixth, in §7.3, delete the “s” in “Departments”.

Seventh, in §13.1.6, consider inserting “of the” between “any)” and “facility”.

Eighth, in §13.1.9, last “sentence”, the grammar is somewhat awkward. Consider substituting the following sentence: “Prior to the expiration of the emergency order, and any extension of such order, the Department will make a final determination regarding the facility’s ongoing licensure status.”

Ninth, §14.2 recites as follows:

Financial documents submitted pursuant to these regulations are not departmental records and are not subject to 29 Del.C. Chapter 100.

This is inaccurate and could adversely impact the Department’s ability to introduce the documents in any hearing. The financial documents are Departmental records which are acquired in the Department’s ordinary course of business. They qualify as a “record” but they are not a “public” record by operation of Title 29 Del.C. §10002(1)(2) which exempts the following:

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature; ...

Consider the following substitute sentence:

14.2 The Department will consider financial documents submitted pursuant to these regulations as exempt from public disclosure consistent with Title 29 Del.C. §10002(1)(2).

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

cc: Ms. Mary Peterson
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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