



**STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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The Honorable John Carney  
Governor

John A. McNeal  
Director

**MEMORANDUM**

DATE: May 30, 2019

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

FROM: Mr. J. Todd Webb, Chairperson  
State Council for Persons with Disabilities

RE: HS1 for HB 123 (Limited Guardianship) and SCR 30

The State Council for Persons with Disabilities (SCPD) has reviewed HS1 for HB 123, which allows the Public Guardian to act as a representative payee for Social Security benefits or as a VA fiduciary for the Department of Veterans Affairs benefits. This Act also allows the Court of Chancery to appoint a guardian with limited powers, to act as guardian for specific areas of decision-making or for a specific term. While the intent of the legislation is good, SCPD has the following observations and potential concerns.

First, regarding the Court appointed guardian section, the intent of this particular section is to allow acute care facilities (though it is not limited to them) to petition for limited guardianship to assist them in discharging individuals. This bill seems to create a "quickie" guardianship to assist acute care facilities. Acute care facilities can sometimes be "stuck" with patients who no longer require acute care but have nowhere to go, at least absent a payment source. In situations where a person or their family is not cooperating with discharge or with applying for Medicaid or other assistance, this bill would allow the facility and/or the Public Guardian to petition for a limited short term guardian to take over that process (the Public Guardian, it seems). One assumes, but it is unclear, that the patient would still need to meet the legal criteria for requiring a guardian found in 12 Del. Code 3901(a)(2). It would be troublesome to think that a certain subset of individuals could be subject to guardianship irrespective of capacity, or that the fact that a person does not apply for Medicaid or cooperate with discharge is *per se* evidence that they meet the definition of "person with a disability" under the guardianship statute.

The bill makes it easier to obtain guardianships, which runs contrary to current trends, at least in other states. This aside, the bill does not address the main root causes for patients being “stuck” in acute care facilities, which among other things are a lack of community services and placements and discriminatory admissions practices by nursing homes, especially towards individuals who have dementia or behavior issues. Having said that, the benefit of having limited guardianships explicitly made available is that individuals who do not need plenary guardianships may now be able to avoid them.

The other issue addressed in the bill is broadening the authority of the Office of Public Guardian (OPG) to act as a representative payee or VA fiduciary both for individuals in acute care facilities and for any client of DHSS. This would basically include any client of DSAMH or of DDDS. The context of this is that DDDS has been a representative payee for numerous clients for many years, and would like OPG to take that over. OPG has expertise to manage the affairs of others, and in some ways having OPG serve as payee makes sense. SCPD has been informed that OPG will be receiving two positions to help fulfill this responsibility. It is imperative that these positions be filled or there would be a concern whether OPG has the appropriate resources to take on this expanded role. Another concern is that the statute allows OPG to decline to serve in any situation where there is a relative who is either able OR willing to serve as a payee. This may put some clients of DDDS (and their families) in a bind. In addition, there is also concern that DDDS ensure that a person who OPG decides not to assist has access to alternative payee services. SSA will stop payment when there is no payee in place for an individual who has been deemed to need one.

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

cc: Ms. Marie Nonnenmacher  
Ms. Lexie McFassel, Esq.  
Ms. Laura Waterland, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

P&L/HS1 for HB 123 limited guardianship and SCR 30 5-28-19