



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904  
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## **MEMORANDUM**

**DATE:** April 25, 2013

**TO:** The Honorable Sens. Hall-Long, Ennis, Henry, Sokola, and Venables and Reps. Barbieri, Carson, Heffernan, Hudson, Jaques, Q. Johnson & Keeley

**FROM:** Dafne Carnright, Vice Chairperson  
GACEC

**RE:** **Senate Bill No. 13 with Senate Amendment 2 (Long Term Care Ombudsman)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill No. 13 which reflects the transfer of the Office of the Long Term Care Ombudsman from the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) to the Delaware Health and Social Services (DHSS) Office of the Secretary. DHSS is substituted for DSAAPD as the agency designating the ombudsman to witness advance health care directives executed by residents of long term care facilities.

As background, the statutory advance health care directive law in Delaware requires execution of an Advance Health Care Directive (AHCD) by a resident of a long-term care facility to be witnessed by a representative of DSAAPD or the Public Guardian. Historically, representatives of the Long-term Care Ombudsman Office (part of DSAAPD) generally witnessed the execution of AHCDs by covered residents. However, the Office of the Long-Term Care Ombudsman was transferred from the DSAAPD to the DHSS Office of the Secretary in 2011 through enactment of Senate Bill No. 102. As a result, the references to "DSAAPD" in the AHCD law need to be changed since DSAAPD is no longer involved in witnessing the execution of AHCDs. Unfortunately, the current version of Senate Bill No. 13, as amended by Senate Amendment No. 2, is problematic.

First, in the amendment, the reference to "Delaware Health and Social Services" should be "Delaware Department of Health and Social Services". Compare Title 16 Del.C. §1150.

Second, the amendment contemplates either DHSS or the Public Guardian designating a "patient advocate or ombudsman". Council is not aware of the Public Guardian designating a "patient advocate or ombudsman". According to information we were able to obtain, the Public Guardian does not designate patient advocates or ombudsmen. The word "either" should therefore be removed from the amendment.

Third, another statute [Title 16 Del.C. §1121(15)] still refers to "DSAAPD" in the context of traditional Ombudsman duties. The term "Department of Health and Social Services" should be

substituted through this legislation.

Thank you in advance for your time and consideration of our position. Please feel free to contact me or Wendy Strauss should you have questions or concerns.

CC: The Honorable Rita Landgraf, DHSS  
Lexie McFassel, Esq., Office of the Public Guardian