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MEMORANDUM

DATE: July 24, 2013

TO: The Honorable Members of the Delaware General Assembly

FROM: Terri Hancharick, Chairperson
GACEC

RE: **House Bill No. 154 (Medication Diversion and Drug Abuse Training)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 154 on Medication Diversion and Drug abuse Training which requires a 2/3 vote (H.A. No. 2, lines 2-3) for enactment. Council understands the legislation has multiple purposes, including the following: 1) facilitation of prosecution of perpetrators of abuse, neglect, and mistreatment of residents and patients in licensed long-term care facilities and hospitals; 2) explicit inclusion of "medication diversion" as a form of "abuse"; and 3) promotion of training by healthcare providers in controlled substances and recognition of dependency.

With this legislation, prosecution of abuse, neglect and mistreatment will no longer require a showing that conduct was "knowing". It will be sufficient if the conduct is "reckless" (line 71). This is a lesser standard. See Title 11 Del.C. §231.

"Medication diversion" is broadly defined (lines 15-19) and is now included in the definition of "abuse" (line 6).

Practitioners registered to prescribe or distribute controlled substances would generally be required to complete continuing professional education related to prescribing/delivering controlled substances or recognizing symptoms of dependency (H.A. No. 2, lines 8-14).

The GACEC believes this legislation is well intentioned and supports the proposed bill subject to two significant concerns.

First, the scope of criminal liability for "medication diversion" seems too broad. Literally, if a guardian or person authorized to provide consent to medical treatment [Title 16 Del.C. §§1121(34), 1122, and 2507] withheld or refused to consent to a prescribed medication, they would be guilty of a class G felony (lines 15-19 and 76-77). They would be "interrupting" or "obstructing" the delivery or

administration of a prescription drug. The “good faith” exception would be inapplicable since limited to healthcare providers (lines 22-23). Indeed, although the Long-term Care Bill of Rights explicitly authorizes a competent individual to refuse medication [Title 16 Del.C. §1121(4)], the legislation could literally expose a competent individual refusing medication to prosecution since this would be obstructing administration of a prescribed drug (lines 15-19 and 76-77). It would be preferable to exempt refusal to provide consent to prescribed medications from prosecution.

Second, the legislation provides conflicting “state of mind” standards. As defined at lines 15-16, “medication diversion” constitutes “abuse” only if “knowing” or “intentional.” However, another section authorizes prosecution for “abuse” based on “recklessness” (lines 71-72). A third section authorizes prosecution for medication diversion if “knowing” (omitting “intentional” and “reckless” states of mind). This lack of consistency may result in confusion.

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