

August 25, 2014

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901

RE: DPH Proposed Hospital Standards/Locked Bathroom Door Access Regulation [18 DE Reg. 119 (August 1, 2014)]

Dear Ms. Harvey:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health (DPH) proposal implement the requirements of House Bill No. 129 which was signed by Governor Markell on June 10, 2014.

As background, a 14 year old girl experienced a medical emergency while locked in a hospital bathroom and staff was unable to unlock the door prior to her death. This prompted the introduction and eventual enactment of House Bill No. 129, labeled "Christina's Law. The preamble to House Amendment No. 1 to House Bill No. 129 provides details on the inability of hospital staff to reach Christina without undue delay.

The legislation requires the Department of Health & Social Services to "adopt regulations to ensure that hospital staff persons have ready access to a locked hospital bathroom in the event of an emergency." The Division of Public Health is implementing the statutory mandate by proposing the addition of the following subsection to its regulations covering hospital construction, maintenance, and operation:

4.4. Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.

Council would like to share a few observations.

First, placement of this sentence in the personnel-related "§4.0 Governing Body, Organization and Staff" regulation is unexpected. If someone were looking for a standard on bathroom access, it may be more logical to place the sentence in "§3.0 Physical Environment".

Second, the process that will be used to alert hospitals of the new regulation and what time line applies to “development and implementation” of the policies and procedures is not clear in the proposed regulations. Are hospitals out of compliance if a policy is not operational on the effective date of the regulation (e.g. October 1, 2014) or do they enjoy some time to develop and implement the policies and procedures? The Department of Health and Social Services (DHSS) may wish to consider either inserting a firm effective date (e.g. December 1, 2014) or communicating an expectation through a sub-regulatory letter or guidance document.

Third, in reviewing the regulation, it was noted that versions of national standards from 1977 and 1981 are incorporated by reference. See §§3.1 and 4.1. DPH may wish to review these references to determine if they should be updated. The 1977 and 1981 versions of standards appear to be binding.

Thank you for your time and consideration of our recommendations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

Robert D. Overmiller
Chairperson

RDO:kpc

CC: Dr. Karyl Rattay, Director