



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: April 26, 2016

TO: The Honorable Members of the Delaware General Assembly

FROM: Robert D. Overmiller, Chairperson
GACEC

RE: **House Bill No. 268 (Substance Exposed Infants and Medically Fragile Children)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **Senate Bill No. 186**, which implements the federal Child Abuse Prevention and Treatment Act (CAPTA) requirements for States to have policies and procedures in place to address the needs of infants born with and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure or Fetal Alcohol Spectrum Disorder. Council would like to share the following observations.

Approximately three percent of babies born in Delaware qualify for a diagnosis of neonatal abstinence syndrome (NAS) in which the infant undergoes opiate withdrawal. That percentage has been growing in recent years. The Division of Family Services (DFS) substantiates abuse in approximately 10% (44/448) of cases of suspected neglect or abuse reported to it among babies born with drugs or alcohol in their system. See March 7, 2016 News Journal article. Medical professionals prefer to place pregnant women with addictions on methadone resulting in only short-term effects on babies treated for withdrawal upon birth. See "Addicted babies", Delaware News Journal (November 20, 2015).

House Bill No. 268 (lines 63-64) would require health care providers to report substance exposed infants not more than 4 weeks of age (line 51) to the DSCY&F. Such reports would be entered into the child protection registry on the same basis as reports of abuse or neglect (lines 79-81). Although reports of abuse or neglect can be made anonymously, this is not permitted for reports of substance exposed infants (lines 82-84). A "plan of safe care" would be developed for cases

accepted by DFS for investigation or family assessment (lines 16-19 and 110-111). Apart from substance exposed infants, the bill would also require development of a plan of care for cases accepted for investigation or family assessment involving any “medically fragile child” (lines 126-127) of any age (lines 42-44).

I have the following observations.

First, the legislation reinforces an autocratic model in which the State imposes requirements and offers little help to new mothers with substance abuse profiles. The bill (lines 45-50) contemplates unilateral development of the “plan of safe care” with zero input from the parent. This “top-down” plan is then shared with agencies but not the parent (lines 47-49). This kafkaesque approach is not a collaborative model which “engages” the new mother in a joint venture to benefit her infant.

Second, the articles describe successful outcomes for parents receiving wrap-around services while highlighting the paucity of resources available to many parents:

Holly Rybinski, of Newport, said she had to go to jail in order to get the drug treatment she needed. That was almost two years ago. She had stayed clean for five years, but while she was pregnant with his child, her partner overdosed and died. Consumed with grief, Rybinski turned to heroin and cocaine during the last five months of her pregnancy. After she gave birth to the son James April 8, 2014, at Christiana Care’s Wilmington Hospital, she was ready to be clean. She said the Division of Family Services told her that they had to take custody of him since James tested positive for drugs, she wasn’t in a treatment program and Rybinski had a record. They told her she had 90 days to find employment, treatment and stable housing and then they could discuss putting him back in her care. That request was easier said than done. ...”I tried five different times to get into treatment,” Rybinski said. “It was one obstacle after the other.” As the number of pregnant and addicted mothers grows, the need for treatment is even more critical. Community members, families and those now in recovery, like Rybinski, have long lamented Delaware’s lack of residential treatment options. Many people have to wait days and even weeks to get a bed. ...Currently, there is one state-run treatment program for expectant or new mothers recovering from addiction in Delaware, but it is only for women who are incarcerated and it is in Newark. ...Brandywine Counseling ran a program for expecting moms wrestling with addiction, called Lighthouse, downstate in Ellendale, but is closed in September due to budget cuts and staffing shortages. ...(I)t was extremely successful. Nearly 100 percent of women were able to give birth to babies free of drugs.

“More treatment key for addicted moms”, Delaware News Journal (March 4, 2016)

Third, the bill envisions development of the same autocratic “plan of safe care” for any parent of a “medically fragile child” of any age if the parent is “unable” to “provide or ensure necessary care” (lines 42-44 and 126-127). The definition of “medically fragile child” is extremely broad, i.e., essentially covering any child at risk of a condition that requires services of a type or amount beyond that of an average child (lines 42-44). The implication is that parents of a child with a disability are at fault, culpable if they cannot guarantee (“ensure”) necessary care, and subject to the same “plan of safety care” as parents delivering addicted babies. This is reminiscent of the 1960s view of autism as caused by “frigid” mothers - stereotyping parents of children with

disabilities as ‘at fault’ for their child’s medical condition.

Fourth, the central plan of care for medically fragile infants and toddlers is the collaborative family support plan developed under Title 16 Del.C. §§214 and 215. It is counterproductive to supplant the family support plan with a “plan of safe care” administered by a child neglect/prevention agency.

The Councils may wish to consider the following recommendations:

1. The “medically fragile child” references (lines 42-44 and 126-127) should be deleted.

2. The “plan of care” provisions (lines 45-50) should be amended as follows:

a. Ensure parental input and collaboration in development of the plan; and

b. Ensure that the plan includes support services rather than simply directives or benchmarks for parents to achieve on their own. For example, consider the following amendment:

The plan of care shall identify all material impediments to family preservation and the itemized, available resources specifically offered to the parent to overcome each impediment including, if relevant:

a. mental health treatment;

b. substance abuse treatment;

c. safe housing; and

d. any public assistance program operated or administered by a State agency.

3. The State should expand resources and programs available to expectant mothers with addictions and mothers of substance exposed infants.

The Councils may wish to share commentary with other disability advocacy agencies, the Attorney General, and the Public Defender.

which will create a Disabled Veteran School Tax Refund Fund. This fund will provide property tax refunds of up to \$500 to individuals who are disabled veterans of the United States Armed Forces with a disability rating as determined by the United States Department of Veterans Affairs. Council **endorses** the proposed legislation since it will benefit veterans with disabilities and prioritize a higher refund based on the extent of a service-connected disability. Council would however, like to share the following observations.

First, the reference to “disabled veteran” does not reflect “people-first” language and is disfavored under Title 29 Del.C. §608.

Second, if claims exceed the amount in the “Disabled Veteran School Tax Refund Fund”, the “shortfall” may be derived from “the general contingency appropriation in the Department of Education” (lines 8-9). Since the fiscal note only contemplates an annual cost of \$1.6 million of

the \$3.0 million fund, there may not be a shortfall in the near future. However, this feature of the legislation may be of some concern to public educational interests.

Third, New Castle County (NCC) already reduces the assessed value of homes owned by qualifying persons with disabilities. Consistent with the NCC summary, qualifying individuals are eligible for the following subsidy:

School Tax - They receive a reduction in their assessed value of up to \$32,000. For loss of limbs or loss of limbs requiring home to be equipped with special fixtures, an additional \$42,000 may be added to a maximum of \$74,000. ... If the disability is Armed Forces Related, the taxpayer may receive an additional reduction of \$5,000 off the assessed value of the residence for both County and School Taxes.

Thus, a veteran with a service-connected disability in New Castle County would apparently benefit from both a reduced "countable" assessment and the school tax refund authorized by this legislation.

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