



Governor's Advisory Council for Exceptional Citizens (GACEC)
516 West Loockerman St., Dover, DE 19904
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

MEMORANDUM

DATE: June 8, 2016

TO: The Honorable Members of the Delaware General Assembly

FROM: Robert D. Overmiller, Chairperson
GACEC

RE: **Senate Bill No. 52 (Lay Caregivers)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **Senate Bill No. 52** which would require the Delaware Health Information Network (DHIN) to provide a process for designating and interacting with a lay caregiver on behalf of a patient being discharged from the hospital. Hospitals would also be required to provide patients or their agents an opportunity to designate and document a lay caregiver in the patient's records prior to discharge. Council **endorses** the proposed legislation and would like to share the following observations.

First, Council notes that the legislation would benefit patients and families by providing a simple way to designate a lay caregiver and the sharing of aftercare treatment guidance with the lay caregiver. This should enhance the provision of aftercare supports conforming to the discharge plan. Consistent with the synopsis, an estimated 123,000 Delawareans provide varying degrees of unreimbursed care to adults with limitations in daily activities. In some cases, they may be expected to perform tasks for which training would be helpful (e.g. administering medications; providing wound care; operating medical equipment). According to a May 19 article, the Delaware Healthcare Association may have some technical concerns with the legislation.

Second, the legislation could be improved by clarification that it covers psychiatric hospitals also. The bill defines "hospital" as a facility covered by 16 Del.C. §1001 (line 22). That section includes some archaic language, including an exclusion for "sanatoriums". One dictionary definition of a "sanatorium" is "an institution for treatment of sick persons, especially a private hospital for convalescents or patients with chronic diseases or mental disorders." The quality and scope of discharge planning from psychiatric hospitals has been a matter of concern for many years. In fact,

the Attorney General's Office was instrumental in prompting the inclusion of prescriptive discharge planning provisions in the Mental Health Patients' Bill of Rights. See 16 Del.C. §5161(b)(4). Providing patients in psychiatric hospitals the option of designating a lay caregiver could enhance the viability of discharge plan implementation. Therefore, Council recommends amending line 22 as follows: "(4) 'Hospital' means ~~as defined in~~ a hospital as defined in either §1001 or §5101 of this title."

Third, private health insurers and Medicaid MCOs often attempt to justify denial of limitation of services (e.g. home health aide; private duty nurse) by suggesting that a relative or friend should provide the requested health supports. As an illustration, see attached In re J.B. (DHSS October 1, 2001)[MCO unsuccessfully argued that physical therapy should be reduced with unskilled parent expected to provide exercises]. Given the financial incentive for insurers to justify denials of service, it is important to clarify that statutes allowing lay person health care assistance are not invitations to deny services covered by insurers and MCOs. For that reason, a lay caregiver authorization in the Nurse Practice Act [24 Del.C. §1921(a)(15)] includes the following underlined caveat:

- (15) A competent individual who does not reside in a medical facility or a facility regulated pursuant to Chapter 11 of Title 16, may delegate to unlicensed persons performance of health-care acts, unless of a nature excluded by the Board through regulations, provided:
 - a. The acts are those individuals could normally perform themselves but for functional limitations; and
 - b. the delegation decision is entirely voluntary.
 - c. Nothing contained herein shall diminish any legal or contractual entitlement to receive health-care services from licensed or certified personnel;...

Senate Bill No. 52 contains a similar caveat (lines 75 and 82-83):

Nothing in this chapter shall be construed to do any of the following:

- ...(4) Remove the obligation of a third-party payer to cover any health care item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, certificate of coverage, or managed care organization contract.

Council considers this to be well written but suggests it may be improved as follows if the bill is otherwise being amended:

- (4) ~~Remove~~ Diminish the obligation of a third-party payer to cover any health care item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, certificate of coverage, or managed care organization contract.

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

Attachments