



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

DATE: May 24, 2017

TO: The Honorable Members of the Delaware General Assembly

FROM: Dafne A. Carnright, Chairperson
GACEC

RE: **House Bill No. 140 (Infants with Prenatal Substance Exposure)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 140 which is intended to implement the federal Child Abuse Prevention and Treatment Act (CAPTA) requirements. Under the CAPTA, states are required to adopt standards to address the needs of infants born with and identified as being affected by substance abuse, withdrawal symptoms, or Fetal Alcohol Spectrum Disorder. Council **endorses** the proposed legislation subject to suggested amendments and 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. 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. 140 would require health care providers to report substance exposed infants to DFS (lines 39-40). Upon receipt of a report, DFS would determine if the case requires an investigation or family assessment, develop a plan of safe care, provide copies of the plan of safe care to providers and the family or caretaker, and implement and monitor the plan of safe care (lines 55-62).

DFS is authorized to contract for remedial services (lines 63 and 67). This is an important

feature since, historically, the lack of substance abuse resources has posed a significant barrier to expectant and new mothers. This was highlighted in the article, “More treatment key for addicted moms”, Delaware News Journal (March 4, 2016):

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 her 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 it closed in September due to budget cuts and staffing shortages. ... (I) was extremely successful. Nearly 100 percent of women were able to give birth to babies free of drugs.

The lack of ready access to substance abuse services is also highlighted in pending legislation, H.B. No. 100.

As mentioned, Council endorses the proposed legislation; however, we would like to share the following recommendations.

First, Council feels that the bill could be improved by supplementing the “plan of safe care” provisions (lines 24-28, 59, and 71) as follows:

- A. Ensure parental input and collaboration in development of the plan;
- B. Ensure that the plan specifically identifies appropriate support services. For example, consider the following amendment:

The plan 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.

Second, the bill could be improved by explicitly requiring referrals to the Department of Health and Social Services (DHSS) early intervention program for infants who may qualify as eligible

under 16 Del.C. §212(3) (which includes being diagnosed with a condition which has a high probability of resulting in developmental delay). The Infants and Toddlers Early Intervention program implements Part C of the Individuals with Disabilities Education Act (IDEA) and is federally subsidized. This free program is the most comprehensive resource for infants with disabilities in the State. See 16 Del.C. §§210-218. This is the approach adopted by similar health screening laws. See, e.g., 16 Del.C. §806A.

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