



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>

April 30, 2020

Corinna Getchell
Office of Health Facilities Licensing and Certification
Division of Health Care Quality
261 Chapman Road, Suite 200
Newark, Delaware 19702

**RE: DHSS/DHCQ Proposed Regulations Governing Free Standing Emergency Departments
Regulation [23 DE Reg. 817 (April 1, 2020)]**

Dear Ms. Getchell:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) proposed regulations governing Free Standing Emergency Departments. Council endorses the proposed regulation; however we would like to share one observation.

The proposed regulation by the Department of Health and Social Services (DHSS), Division of Health Care Quality (DHCQ), abrogates the existing one (4404) and re-numbers it 3340. The proposed regulation changes the name of the facility from Free Standing Emergency Center to Free Standing Emergency Department (FSED). DHSS originally published proposed regulations for FSEDs in the July 1 2019 issue of the Delaware register of Regulations. The regulations are being republished as the Department made significant substantive changes to the previous proposed regulations.

One of the comments on the earlier regulation was that it did not specifically mention the Americans with Disabilities Act of 1990 (ADA) or Section 504 of the Rehabilitation Act of 1973 (Section 504). The ADA requires access to medical care services and the facilities where the services are provided. Private FSEDs are covered by Title III of the ADA. Section 504 covers any FSED that received federal financial assistance (including Medicare and Medicaid reimbursements). Earlier commentary stated that it would be better if the regulation specifically mentioned that the FSED must comply with the ADA and Section 504, so that its application to persons with disabilities would be readily apparent (and not by inference).

Section 4.23 of the proposed regulation now requires FSEDs to comply with the ADA and incorporates the act into the regulation. Likewise, section 4.24 requires FSEDs to comply with Section 504 and incorporates the act into the regulation.

Other recommendations were similarly accepted and changes have been made to the current proposed regulations. This regulation is a major effort to protect the citizens of Delaware and ensure they receive proper care from Free Standing Emergency Departments. The regulation is comprehensive and applies equally to all patients, including those with disabilities. The regulation specifically incorporates the ADA and Section 504. The regulation also requires a disability inclusive written disaster preparedness plan. Council appreciates the attempt by DHSS to ensure the quality of care and to regulate the provision of services patients receive from FSEDs. However, there is one area that would benefit from a change. Council would suggest that language be added to the fire safety section to more adequately address the needs of individuals with disabilities.

Thank you for your consideration of our endorsement and comment. Please contact me or Wendy Strauss at the GACEC office if you have any questions on our observations.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc