

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING**

7:00P.M., June 18, 2019

**George V. Massey Station, Second Floor Conference Room
516 West Loockerman Street, Dover, DE**

MINUTES

MEMBERS PRESENT: Susan Campbell, Nancy Cordrey, Cathy Cowin, Ann Fisher, Terri Hancharick, Tika Hartsock, Thomas Keeton, Mary Ann Mieczkowski, Beth Mineo, Robert Overmiller, Jennifer Pulcinella, Brenn  Shepperson, Kimberly Warren, Laura Waterland.

OTHERS PRESENT: Guests: Kristine Wilburn/Delaware Tech; Pam Bauman/DOE; Zach Davis/CDS

Staff present: Kathie Cherry/Office Manager, Sybil Baker/Administrative Coordinator.

MEMBERS ABSENT: Dafne Carnright, Al Cavalier, Bill Doolittle, Karen Eller, Emmanuel Jenkins, Danna Levy, Carrie Melchisky.

Chair Ann Fisher called the meeting to order. She then asked everyone to refrain from sidebar conversations so that the recording is not affected. Ann asked for and received a motion to approve the agenda. The motion carried.

PUBLIC COMMENT

Zach Davis from the Center for Disabilities Studies (CDS) at the University of Delaware is hosting four screenings of the documentary "*Intelligent Lives*". The documentary follows three young adults with intellectual disabilities and looks at our assumptions about what is possible for young adults with intellectual disabilities. Zach asked everyone to share widely. He also left flyers for the free event. Zach shared that the CDS oral health project that looked into consumer and provider experiences with oral health has been completed. Zach shared an information graphic with everyone who wanted a copy. Terri shared that this information was helpful in getting funding for oral health care for adults on Medicaid.

Ann asked for and received a **motion to approve** the May meeting minutes. The **motion carried**. Ann asked for and received a **motion to approve** the May financial report. The **motion carried**.

Pam Bauman from the Exceptional Children's Resources workgroup presented to the Council on the Multi-tiered System of Supports (MTSS) Monitoring and Accountability for FY 2017. A copy of the PowerPoint is attached for your reference.

DOE REPORT

MaryAnn presented jointly with Pam on the Multi-tiered System of Supports Monitoring and Accountability for FY2017 (referenced above).

CHAIR/DIRECTORS REPORT

In the Absence of Wendy Strauss, Ann shared that there is an executive board meeting to take place on June 26, 11:30 a.m. at the Smyrna Diner. There will be no GACEC meetings in July and August. Committees will meet in September to work on their goals for next year. Ann shared that Wendy left a note about the funding for the Delaware Network for Excellence in Autism (DNEA) and asked Beth to expand. Beth shared that the budget for the DNEA has a significant shortfall. The only rationale that Beth has been told about is the fact that they do not have a Director. Beth shared that there is an active offer out for the director's position, but since the funding has been cut, they will not be able to pay the person if they accept. A **motion was made** to write a letter to the Office of Management and Budget (OMB) inquiring why the DNEA was not fully funded as promised and ask that they restore the funding. The **motion carried** with one abstention.

COMMITTEE REPORTS

ADULT TRANSITION SERVICES

Chair Cathy Cowin reported that the committee spoke with Kristine Wilborn from Delaware Technical and Community College financial aid office. The group discussed the Student Excellence Equals Degree (SEED) scholarship. They also discussed options for individuals with disabilities. To receive support, students must contact the Office of Disability Support and speak to the Americans with Disabilities Act (ADA) Coordinator to get accommodations, such as waiving the need to attend classes full time to be eligible for SEED. Cathy inquired about the lack of response from the Division of Developmental Disabilities Services (DDDS) to the letter sent from GACEC on the Lifespan Waiver. The letter asked that they make sure individuals are aware of what the new policies are and how it will affect students and families. Cathy asked if choosing to not respond to the letter is an option for DDDS. After some discussion, the letter written on May 9 was pulled from the Letters binder and Kathie Cherry shared that the letter ended with the statement "we look forward to hearing from you on this issue." Kathie also shared that it typically does take DHSS (DDDS) about two months to respond to issues. Additional conversation took place around the response time and Kathie shared that they do typically respond to our letters. Discussion ensued about the timeframe for responding and the concern that they are going to respond after the changeover has taken place.

CHILDREN AND YOUTH

No report

INFANT AND EARLY CHILDHOOD

Chair Jennifer Pulcinella reported that the group heard from Council member Sue Campbell, Birth to 3 Coordinator for DHSS, regarding the federal grant for Part C. The grant that was submitted has been approved with two of the five assurances needing work. The two that need work are a) reaching traditionally underserved populations and b) culturally appropriate information. They are working with Jamie Walko on reaching the traditionally underserved populations.

POLICY AND LAW

Chair Beth Mineo reported that the committee voted to approve comments as submitted in the Disabilities Law Program legal memo with the following additional comments.

- 1) House Substitute 1 for House Bill 92 should be updated to state specifically that the needs of students with disabilities must be considered in the development of the regulations.
- 2) Senate Bill 121, in the last full paragraph on page 13 and the amendment suggested on the top of page 14, reiterate Help America Vote Act (HAVA) requirements. Clarify if printout will be accessible, i.e. read aloud.

Commentary from the legal memorandum was as follows:

1. House Substitute 1 for House Bill 92 Extended Learning Opportunities Subcommittee

The proposed amendment creates a new subcommittee called the Extended Learning Opportunities Subcommittee (ELOS) within the Interagency Resource Management Committee (IRMC). ELOS will be tasked with researching and developing recommendations to improve and coordinate before-and-after school care and summer programs (“extended learning programs”) for school-age children. The proposed amendment will also add the chairperson of ELOS to the IRMC as a nonvoting member.

Quality extended learning programs can boost academic performance and improve outcomes for children. Children with disabilities have unique needs, and these should be considered and addressed in the ELOS’ research and recommendations so that extended learning programs are accessible and improve outcomes for all children. The proposed amendment sets aside a seat on the subcommittee for a representative of the GACEC, which will allow advocacy for persons with disabilities. Council may wish to strongly support this amendment.

2. House Bill 164 Developmental Disabilities Council

This legislation was recently introduced and relates to the organization and operation of the Developmental Disabilities Council (DDC). First, the bill might more comfortably fit in a different place in the Delaware Code. The Department of Safety and Homeland Security (DSHS) is the current “designated state agency” for the DDC. In the past, other agencies have been the designated state agency, and there is a process that extends to the Secretary of United States Department of Health and Human Services for changing the designated agency that could lead to a re-designation. DDC is at DSHS because DSHS does not provide services to individuals with ID/DD. There is no substantive

overlap. Therefore, it may make more sense to codify the DDC in Title 16 as a new Chapter 55A, or in Title 29, Chapter 79, as §7910A.

HB 164 Proposed §8239(a)(1) does not fully state the role and scope of DDC, per the DD Act, and drops an entire clause from 42 USC §15021(2), the source of the proposed language. Therefore, language should be added at the end of this section: “and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.”

Section 8239(b) recites the various duties and responsibilities of the DDC, but one wonders whether this is necessary given the cross citation to the DD Act. Please note that this section cites to the wrong section of the U.S. Code. Section 15002 is the definitions section for the entire DD Act and does not really outline DDC duties and responsibilities. The correct citation should be either “§15001 et seq” or “§ 15021 et seq.”

The subsequent list of activities in §8239(b) is found for the most part in §15025(c)(5) (A-L) of the DD Act. Creating a list of duties and responsibilities in the statute is not necessary because the DD Act is controlling; however, if one remains, it is important to state in (b)(1) that the list is non-exhaustive, and to ensure that the lists match verbatim. Some of the listed items in §8239(b)(3) have been altered and some combined. For example, “Supporting and educating communities” from the DD Act is “Community Education” in HB 164. The DD Act provision has broader scope. Subsections F and G are combined but should not be, as G relates to specific collaborations with Centers for Independent Living and Parent Information Center, for example. Section H, “Barrier Elimination, systems design and redesign” has been re-designated as “Activities to eliminate barriers to access and use of community services,” which substantially understates the scope of this section in the DD Act.

Section (b)(3)(h) drops the corresponding heading in the DD Act (Informing Policymakers) and uses specific language instead. It is unclear why this was done, as all the other subsections use the headings from the DD Act or a version of them. Finally, HB 164 completely drops the DD Act language of “Other Activities” found in Subsection L. This language is important as it allows the DDC to engage in activities not otherwise listed in this subsection but that fall within the mission of the DDC. To reiterate, because this is a federal program governed by federal law, it would be much simpler to cross-reference the DD Act rather than try to paraphrase the DD Act in HB 164. However, if this section remains, it should reflect, verbatim, what the DD Act says.

Section 8239(b)(4) does not reflect what the DD Act requires in §15025(6), which is that the DDC is to periodically review the designated state agency, not agencies as a whole. This is an important aspect of federal oversight to ensure that the designated state agency is providing the appropriate support functions under the DD Act and that the DDC inform the Governor if changes should be made.

The composition requirements for the DDC are found in §15025(b) of the DD Act. Again, it is unnecessary to codify this in state law and inappropriate to deviate from the statutory requirements. It is also worth noting that the DD Act does not impose a size limit but rather a requirement that 60% of membership be either a person with a developmental disability or parents or guardians of a child with a developmental disability, or immediate relatives or guardians of an adult with a developmental disability who is unable to self-advocate. Within these categories, one shall be either an immediate

relative or guardian of an individual with a developmental disability who resides or did reside in an institution or an individual with a developmental disability who resides or did reside in an institution.

All members of the DDC are appointed by the Governor, upon the solicited recommendations from interested individuals, including non-state agency members of the DDC. The DDC is responsible for notifying the Governor of its membership requirements. Certain entities are specifically listed as having required seats. These are the state Protection and Advocacy agency, the University Centers for Excellence in Developmental Disabilities (UCEDD), and then specific state agencies based on their administration of federal funding streams. There is a classification for representatives of local and nongovernmental agencies and private nonprofit groups concerned with services for individuals with developmental disabilities.

Regarding, Section 8239(c), many of these provisions are already in existing bylaws and do not need to be codified. It would be extremely difficult to modify these operational policies if they are in code, and it is not necessary that they be so.

Subsection 8239(i) inappropriately names a specific private nonprofit to the DDC and then by omission excludes other representatives. The DD Act clearly indicates that more than one representative from local and nongovernmental agencies must serve. The DD Act also requires members be appointed by the Governor after consultation and solicitation of input from a broad range of individuals with developmental disabilities and other individuals interested in developmental disabilities including non-public agency members of the DDC. Naming a specific non-profit and limiting this category to one participant, and bypassing the consultation process that is required, is not in conformity with the DD Act.

HB 164 §8239(d) lays out a number of requirements that are either already listed in the DD Act or which are already governed by existing DDC bylaws, and doesn't include some important duties, such as creating a budget. First, §8239(d) places the DDC within DSHS "for administrative purposes." Historically, the Governor has named the designated state agency. If the legislature is now going to take this duty on, it should be stated clearly that DSHS is being named as the "designated state agency" by the legislature; also, that such designation is subject to the provisions of the DD Act, including the processes that allow another agency to be so designated in the future. Getting back to the first point, it would be advisable and much simpler to place the DDC under Title 16 or under Title 29, Chapter 79. It would be cleaner to state that DDC will be housed administratively with whatever agency is the designated state agency under the DD Act and leave the designation of the agency to the Governor.

Provisions related to number of meetings or attendance policy are more appropriately addressed by the bylaws and DDC policy (which already exists). Finally, allowing participation by telephone notwithstanding state public meeting law should be allowed as a reasonable accommodation, but should be subject to DDC parameters set by bylaw, as it could easily become unworkable and undesirable for a large number of members to call in rather than attend in person.

To reiterate, it is not necessarily an issue to have a state statute setting up the DDC, but the only language needed regarding its duties, parameters and membership should be a cross reference to the DD Act. If a statute were to contain these terms, they must be wholly consistent with the DD Act. Finally, it would be needlessly complex for the legislature to be the entity that chooses the designated

state agency (especially considering any potential re-designations in the future), and that task should be left, as it has been, to the Governor in consultation with the DDC.

3. House Bill 166, Lead Poisoning

This bill would amend the Childhood Lead Poisoning Prevention Act and the Insurance Code as it pertains to reimbursement for lead poisoning screening.

The bill recognizes that children are at risk of lead poisoning from numerous sources. Sources include residing in houses built before 1978; residing near a lead paint removal, renovation, or demolition project; using playground equipment coated with lead paint; wearing jewelry and playing with toys that contain lead; eating food containing lead, drinking water contaminated with lead, exposure from employment or recreational activities that is spread to a family member, or wearing cosmetics containing lead. However, despite these risks, not all children are being screened or tested when they are 12 and 24 months of age. Early identification of elevated blood lead levels in a child is vital so that the source of exposure can be eliminated and that some of the developmental challenges caused by lead poisoning can be treated through diet and education.

This bill requires screening at 12 and 24 months of age. The primary health care provider of a child must order screening of the child for lead poisoning pursuant to the standards prescribed by the Division of Public Health “at or around 12 and 24 months of age. The bill defines screening as a capillary blood lead test (where a blood sample is taken from a puncture on a finger or heel). If screening reveals an elevated blood lead level, the health care provider must order a blood lead test. Testing under the bill means a blood lead test where blood is drawn from a vein. Health care providers and labs involved in blood lead level analysis, which includes screening and testing, have to participate in a reporting system as established by both the Division of Public Health and State Board of Health. Despite these requirements, §2602 (e) allows a parent or guardian to decline a screening or test for their child if it conflicts with their religious beliefs.

The bill also requires that proof of screening for lead poisoning for children 12 months old be provided for admission or continued enrollment in childcare facilities, nursery schools, and preschools. Screening is also required for kindergartens, but screening can be done within 60 days of the date of enrollment. The proof required must consist of a statement from the child’s primary health care provider that the child was screened for lead poisoning. In the alternative, a parent or guardian can provide a statement that the screening contravenes the parents or guardian’s religious beliefs.

This bill also amends the Insurance Code to require that all individual health insurance policies (§3337) and group and blanket insurance policies (§3554) provide a covered benefit for a baseline lead poisoning screening. For children who are at a high risk for lead poisoning pursuant to the Division of Public Health guidelines, lead poisoning screening, testing, and diagnostic evaluation, and screening and testing supplies and home-visits shall be provided. However, deductibles, co-pays, and coordination of benefits can apply to the screening and testing benefits.

Finally, the bill requires the Division of Public Health to publish regulations to implement and enforce the Act, which would include establishing the universal reporting system announced in §2602 (d). In addition, the Division of Public Health has to report annually on the elevated blood lead levels to the General Assembly.

This bill is a commendable effort by the General Assembly to deal with lead poisoning in children. This bill affects every child in the State and attempts to identify those children with elevated blood lead levels so that early intervention can be provided. This bill had broad support when introduced and should be enacted into law. That being said, the bill does not address reducing the sources of lead exposure. Once an elevated blood lead level is identified, there should be some effort aimed at identifying the source of the problem and sufficient resources available to eliminate the problem. Consideration should be given to these issues once there is an elevated blood lead level and bills should be introduced to adequately deal with identification of and elimination of the sources of lead contamination.

In §2602 (a), health-care has a hyphen between health and care, but in (b), (c), (d), and (f), healthcare is one word. The language in the bill should be consistent, and either spelling is acceptable. Also, §3554 of the Insurance Code should read Lead poisoning screening reimbursement rather than Lead poison screening reimbursement

4. House Bill 170 School Attendance

This proposed amendment increases the age that children are required to remain enrolled in school from 16 years old to 18 years old. The increase in age would be phased in over a two-year period; the compulsory school attendance age would rise to 17 years old, beginning in September 2022, and would increase to age 18, beginning in September 2023. The compulsory school attendance requirements would also apply to students with disabilities. The proposed amendment also adjusts truancy statutes to align with the increase in compulsory attendance age.

H.B. 170's sponsor supports increasing the compulsory attendance age to improve economic outcomes for individuals by increasing their job prospects and earning potential. There is opposition to H.B. 170. Superintendent of Cape Henlopen School District, Bob Fulton, told the Cape Gazette that he, the Delaware Chief School Officers Association, and the Delaware Association of School Administrators oppose H.B. 170 -- not because they do not believe students should remain in school until they graduate -- but because of the proposed alternative learning plan. According to Fulton, districts are unsure of how alternative learning plans would be "developed, monitored, and funded." The author could not find formal statements made by either the Delaware Chief School Officers Association or the Delaware Association of School Administrators. A bill to increase mandatory school attendance age to 17 years old was introduced during the 149th General Assembly; however it did not make it out of Committee. Del. H.B. 17, 149th Gen. Assem. (2016). As of 2017, 26 other states, including the District of Columbia, require school attendance until age 18 or older.

There may be economic advantages to requiring students, including students with disabilities, to remain in school longer in hopes that they will earn their high school diploma. High school graduates earn approximately \$200 more per week than individuals with no high school diploma. Additionally, the unemployment rate for individuals without a high school diploma is approximately 5.6 percent versus 4.1 percent for individuals who earned a high school diploma. On average, individuals with disabilities experience higher unemployment rates and earn less money than their non-disabled peers. *See Those with disabilities earn 37 percent less on average; gap is even in wider in some states.* However, increasing educational attainment for individuals with disabilities may improve employment

outcomes. Individuals with disabilities who earned a high school diploma were more likely to be employed than individuals with disabilities who did not graduate from high school.

As mentioned above, opposition is focused on the proposed alternative learning plan. If a child under age 18 seeks to leave school and does not have a health problem or already have a diploma, H.B. 170 will require that he or she obtain a waiver from the school district superintendent or their charter school's president of the board [hereinafter superintendent]. The superintendent may not grant the waiver until an alternative learning plan is in place for the student to obtain either a high school diploma or a secondary credential. According to the proposed amendment, "an alternative learning plan must include age-appropriate academic rigor and flexibility to incorporate the child's interests and manner of learning. A plan may include such components or combination of components of extended learning opportunities such as independent study, private instruction, performing groups, internships, community service, apprenticeships, and on-line courses."

H.B. 170 does not address funding, nor does it explain who will be charged with determining whether a child completes an alternative learning plan or how certain activities in a learning plan may translate into a diploma or secondary credential.

Council may wish to support H.B. 170, as increased educational attainment may buoy employment opportunities and earnings, including for students with disabilities, but recommend clarification on how the alternative learning plan will work and, importantly, how it will be funded. An alternative learning plan seems similar to an IEP in that it appears to call for the creation of an individualized program. The school districts may need additional resources to create a meaningful individualized program for each child, and to monitor that child's progress after that child has stopped attending school.

Analysis will turn now to the text of H.B. 170.

14 *Del. C.* § 2702 contains the compulsory attendance mandate. The proposed amendment would require those with custody or control of a minor between 5 and 18 years old to "except as otherwise provided...enroll the child in a public school in the school district of the person's residence, in another school district under the school district choice program under Chapter 4 of this title, or in a charter school established under Chapter 5 of this title."

Students enrolled in private schools or who are homeschooled are not subject 14 *Del. C.* § 2702. 14 *Del. C.* §§ 2703, 2703A. First, Council may wish to recommend rephrasing the proposed § 2702 to take into account students, aside from those enrolled in the school choice program, charter or private or home schools, who do not have to enroll in their schools of residence. For instance, homeless children, as defined by the McKinney Vento Homeless Education Assistance Improvement Act, 42 U.S.C § 11431 et seq., (McKinney Act) are not required to enroll in their school of residence. There are also special rules for children in the custody of the Department of Service for Children, Youth and Their Families (DSCYF). *See* 14 *Del. C.* § 202A. There may be other exceptions or categories of children now or in the future who are not required to enroll in their school of residence, but do not fit into one of the identified exceptions. It might be easier to change that clause to say something like "enroll the child in a public school in the school district of the person's residence, in another school district under

the school district choice program under Chapter 4 of this title, in a charter school established under Chapter 5 of this title *or any other school as required or allowed by law.*”

H.B. 170 preserves and creates some exceptions to the compulsory education requirement. First, it preserves the exception that a parent/guardian may request an exemption on account of the child’s health. *See* proposed Sections 2705. In the event this exemption is being used for a student with a disability, the student’s IEP team must be involved in the determination and must see if changes in programming or placement can be made to better accommodate the student. If a dispute arises between the school and family of the student with disabilities, Individuals with Disabilities Education Act (“IDEA”) procedural due process protections apply. H.B. 170 amends § 2705 to exempt students under 18 who have already obtained a diploma, or students who obtain a waiver from the superintendent. Proposed 2705(a)(1), (2). A superintendent may only grant the waiver upon proof the child is 16 years or older (until September 1, 2022, at which time the age will increase to 17 years or older) and has an alternative learning plan.

First, there will functionally be no superintendent waiver available to students seeking to leave school from September 1, 2022 through August 31, 2023. The proposed § 2705 would allow a superintendent waiver upon proof a child is 16 years or older until September 1, 2022, after which point the superintendent must have proof the student is at least 17 years old. Between September 1, 2022 and August 31, 2023, the compulsory attendance age will be increased to age 17. In other words, during that time period, a student who is 17 years old or older may make the decision to drop out, no exemption necessary. It seems more valuable to leave the age in the superintendent exemption at 16 years old until the compulsory age is increased to 18 years old. This could be accomplished by changing the effective date on line 31 to “[Effective until Sept. 1, 2023]” and the effective date on line 76 to “[Effective Sept. 1, 2023].”

Finally, there is an additional method available for students to leave school prior to age 18 that may not be intended by the General Assembly. H.B. 170 does not alter subsection (h) of 14 *Del. C.* § 2702. According to subsection (h), “a child over the age of 16 may withdraw from public school prior to graduation” if, in the case of a minor, the parent or guardian gives written consent, and the school holds an exit interview with the student and student’s parent or guardian. If subsection (h) remains in its current form, it is not clear that H.B. 170 will functionally change much; a minor could leave school with written parental consent after an exit meeting instead of pursuing a superintendent waiver or one of the other exemptions available in § 2705.

Council may wish to support the amendment, while offering the following recommendations and requests for clarification:

- (1) Clarification on how alternative learning plans will work and how they will be funded
- (2) Amend the proposed Sections 2702 to contemplate additional categories of students who are not required to enroll in their schools of residence
- (3) Amend to make a superintendent waiver available to students during the interim year when the compulsory education age is increased to 17 years old
- (4) Clarification on how 14 *Del. C.* § 2702(h) will work in the context of H.B. 170.

5. **Senate Bill 101 Fentanyl**

This senate bill is remedial in nature and its laudable goal is to stop or reduce the unlawful manufacture and distribution of Fentanyl and its analogues (which are compounds with a molecular structure closely similar to that of another compound) in the state. This bill does not affect the medical manufacture and use of Fentanyl.

Illicit manufacturers constantly change or modify the composition of the drug to skirt the law. Although several of the analogues are being distributed here, some are not presently covered by the current law. Section (b)(46) specifically deals with these analogues and makes them controlled substances.

This bill is congruous with federal law and is an attempt to address the constantly changing molecular variations being made by the illegal manufacturers of Fentanyl. This bill is an estimable effort by the General Assembly to keep the opioid epidemic from expanding in the state. This bill affects every citizen of the state. This bill had broad support when introduced and should be enacted into law.

6. Senate Bill 111 - Amending Enabling Statute for the Advisory Council to the Division of Developmental Disabilities

SB 111 proposes some revisions to 29 Del. C. § 7910, the enabling statute for the Advisory Council to the Division of Developmental Disabilities Services. According to the bill's summary, this statute had been identified by the Joint Legislative Oversight & Sunset Committee to be in need of updating.

The proposed changes to the statute are largely minor changes in wording to make the language a bit more direct and straightforward. The bill also amends language regarding membership terms on the Council; instead of all terms being three years by default, the amended statute would allow the Governor to appoint members for terms of "up to 3 years to ensure that no more than 3 members' terms expire in a year."

The major change proposed by the bill would be to eliminate the party membership quotas for appointed members to the Advisory Council. The existing statute requires that "[a]t least 3, but no more than 4, of the members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3, of the members shall be affiliated with the other major political party; provided, however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party." Anecdotally, many similarly situated groups have found the party membership requirements to create obstacles to recruiting, appointing and retaining members. Earlier this session a bill was introduced proposing to eliminate the party membership requirements for the Delaware Nursing Home Residents Quality Assurance Commission (see HB 62, passed with HA 1 on 5/16/19). The Governor's Advisory Council to the Division of Substance Abuse and Mental Health has also discussed at recent meetings whether similar changes may be necessary to its enabling statute.

The Council should consider endorsing this bill as it cleans up the statute and would allow for greater efficiency in the appointment of members to the DDDS Advisory Council as well as greater continuity if fewer council members' terms are ending in the same year.

7. Senate Bill 121 Elections

SB 121 makes a number of changes to the Elections law to reflect the upgrades to election technology- both the polling machines and the poll books. Many of the changes are housekeeping edits- for example changing references to the Department of Elections to reflect the consolidation that took place several years ago. The phrase “voting machine” is changed to “voting devices” and “print” is changed to “create” to reflect the new digital technologies being used by the Department of Elections.

Some of the more significant changes relate to the inclusion of a verifiable “paper ballot” that is created under glass next to the screen on the voting device where ballot choices are made. The bill adds the requirement that posters required to be posted on Election Day by the Department of Elections have language informing voters of the “importance of verifying that the markings on the voting device-printed paper ballot reflect the voter’s intended choices and instructions on what steps to take if the paper ballot does not reflect the voter’s actual choices.” (lines 279-281). The paper ballot under glass is the “legal ballot of record.” (lines 336-337). These ballots are kept securely for 22 months in case of audit. There is both an electronic record and a paper ballot that is stored. There is no mention of how a person with a disability could seek assistance in verifying his paper ballot, should that be needed. Council should consider requesting additional language addressing this concern.

The bill simplifies the statute related to polling place procedures on Election Day, including security procedures for handling the paper ballots and electronic media containing results. Council should consider asking for an amendment to §3125 requiring the Department to furnish supplies to each polling place to provide adequate signage to the accessible entrance and signage and cones to demarcate accessible parking.

The bill deletes existing Chapter 50, Voting Machines, in its entirety and amends Chapter 50A, which relates to the use of electronic polling devices. Chapter 50, §2001(a)(13) required that voters be allowed to vote “independently and privately.” This language has been dropped in Chapter 50A. The language comes from the Help America Vote Act (HAVA), which requires that all voters be afforded the opportunity to vote independently and privately. The current statute does reference secrecy, but that is not the same thing. Council should consider requesting an amendment that adds the requirement that voters be afforded the opportunity to vote both privately and independently.

The bill adds 5001A(c) which reiterates the requirement in 5001(d) that all voting devices selected by the Department of Elections be certified by the EAC as meeting or exceeding voluntary voting systems standards or guidelines. Council should consider asking for an amendment that indicates that the machines or devices comply with the most current guidelines at the time and that voting devices be fully accessible to individuals with disabilities.

Section 5004A covers how many devices must be provided at each polling place. HAVA requires that each polling place have at least one accessible polling device. This requirement should be stated in this section, even if the current devices are all accessible (as we do not know what might happen in the future).

8. House Concurrent Resolution 47 Special Education Task Force

HCR 47 is similar to a continuing resolution introduced last year to create a task force to investigate the cost of special education with the goal of making recommendations related to cost efficiency by

April 1, 2020. The precatory language makes clear that the Individuals with Disabilities Education Act (IDEA) requires districts and charter schools to ensure the appropriate identification of students and access to a Free Appropriate Public Education (FAPE). The focus seems to be on developing strategies to improve efficiencies and outcomes so that those savings can be redirected to providing more and better special education services for students with disabilities. Part of the charge for the task force is to examine the “dramatic recent rise” in special education and funding. Council expressed some concerns last year that the tenor of the resolution appeared to be focused on finding ways to spend less money on special education services. The language in the current proposed resolution indicates that any savings would be redirected to special education.

The Task Force is to be comprised of 32 individuals: 13 are DOE or education-related positions; eight are parents or representatives of advocacy groups; six are state agency positions other than DOE; and five are Government-appointed at large positions. Council may wish to endorse the proposal if comfortable with the balance of positions within the Task Force as the balance currently allows the DOE and related groups (40%) to have control over the agenda for the Task Force.

Other Matters:

1. **DOE Regulations 545,609 and 917.** These regulations are being reviewed as part of the normal four-year cycle of review. There are no proposed changes to any of these regulations.
 2. **House Bill 198,** Increasing maximum weekly benefits for unemployment compensation. This change will assist individuals who are low income and in between jobs to avoid economic disruption; consider endorsement
 3. **House Bill 194,** Increased oversight of Pharmacy Benefit Managers (PBMs) by Insurance Commissioner. This bill will allow more transparency and regulation of PBMs. Consider endorsement as regulation can lead to fairer pricing of pharmaceuticals for all Delawareans.
 4. **House Bill 182,** Dropping foreign language requirement for high school diploma or certificate. Je ne sais pas ce que s'en pense.
 5. **House Bill 175,** Permitting voting by mail. This bill would allow the Commissioner of Elections to create drop boxes so that individuals can vote by mail rather at polling place; should allow more access to electoral process for those who find it difficult to vote in person. Consider endorsement.
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1. **DHSS Regulation Free Standing Emergency Centers 4404, 23 Del. Register of Regulations 9 (July 1, 2019).**

The proposed regulation repeals the existing one (4404) and re-numbers it 3340. The former regulation referred to the facility as a Free-Standing Emergency Center and defined same. The proposed regulation adds a host of new definitions, including abuse, adverse incident, and emergency care. It also changes the name of the facility to Free Standing Emergency Department (FSED).

If an FSED is owned and operated by a hospital and is accredited by an organization approved by the Centers for Medicare and Medicaid Services, it is exempt from this regulation.

The regulation sets up a comprehensive licensing procedure and confers the Department of Health and Social Services with the authority to impose disciplinary action, including immediately suspending a license where there is an “immediate jeopardy or imminent danger to the public health, welfare and safety requiring emergency action.”

The Disabilities Law Program (DLP) was asked to address the regulation for accessibility issues for individuals with disabilities. The regulation applies to new construction and renovations to an existing building. While the regulation does not specifically mention the Americans with Disabilities Act of 1990 (ADA) or Section 504 of the Rehabilitation Act of 1973 (Section 504), it does require the FSED to comply with federal, state, and local laws and codes in §§4.15 and 4.17.5. 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 receives federal financial assistance (including Medicare and Medicaid reimbursements). 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).

Nevertheless, the regulation (§4.17) incorporates the 2018 Facility Guidelines Institute (FGI) Guidelines for Design and Construction of Health Care Facilities, and these guidelines provide the minimum design standards for a variety of medical services facilities, including FSEDs. These guidelines apply to all patients, including those with disabilities. In particular, there is a section dealing with accommodations for care of patients of size (changed from the previous term bariatric patient) and include expanded clearances and the number of rooms required to accommodate these patients. There are also guidelines for clinical service rooms that include standards for minimum clear floor area. These standards are different for examination rooms, procedure rooms, and operating rooms. Ventilation of outpatient facilities, energy efficiency, and water conservation are also covered.

While the FGI provides guidance for an emergency preparedness assessment if required, the regulation makes preparation of a written disaster preparedness plan for dealing with medical and non-medical emergencies mandatory (§15.0). The plan must take into account the patient population served, including persons with disabilities. However, there is no specific language setting forth any requirements for dealing with patients with disabilities during an emergency.

Although the regulation requires the FSED to comply with the rules and regulations of the Fire Prevention Commission and be inspected annually by the fire marshal, there is no specific language dealing with how patients with disabilities would be evacuated. Further, the regulation does not require that employees receive training in procedures to be followed for patients with disabilities. It would be better if the regulation had requirements that specified an evacuation route for patients with disabilities, including the width of any route and removal or any obstructions.

This regulation is a major effort to protect the citizens of the State and ensure they receive proper care from Free Standing Emergency Centers. The regulation is comprehensive and applies equally to all patients, including those with disabilities. That being said, the regulation could be made more effective by specifically including the ADA and Section 504 in terms of application. Further, language

could be added to the disaster preparedness and fire safety sections to more adequately address the needs of individuals with disabilities.

2. DMMA State Plan Amendment OTC Medications, 23 Del. Register of Regulations 10 (July 1, 2019)

The Division of Medicaid and Medicare Assistance (DMMA) proposes to amend the Medicaid State Plan to allow Medicaid members to request coverage of over the counter (OTC) Food and Drug Administration (FDA) approved medications without a prescription when required by law. This state plan amendment is a change to reflect the requirements of Senate Bill 151 passed last year that requires coverage without a prescription of OTC emergency contraception. The medication must be procured at a “CMS rebate participating labeler.”

SB 151 codified into state law language from the Affordable Care Act related to mandatory coverage for birth control methods with no out of pocket cost. The bill also mandates coverage of OTC emergency contraception without a prescription. The proposed state plan amendment allows Medicaid recipients to access any drug that is required by any state or federal law to be available OTC without a prescription. This would of course include SB 151 but would also include any other law that may be passed in the future related to access to OTC medication without prescription. The Medicaid and MCO Preferred Drug Lists offer coverage of other OTC medications with a prescription and are subject to applicable co-pays.

The only concern is whether DMMA and or the Division of Public Health (DPH) will publicize this benefit and provide resources so that individuals wishing to obtain OTC emergency contraception through Medicaid will know how to do so (e.g., where does one find a list of “CMS rebate participating labelers?”)

Council should consider endorsement with a query regarding how outreach and information will be provided.

PERSONNEL COMMITTEE

The committee had nothing to report.

MEMBERSHIP COMMITTEE

No report

AD HOC/OUTSIDE COMMITTEES

No outside committee reports were given.

A **motion** was made **to adjourn** the meeting.

The meeting adjourned at **8:20 p.m.**