



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

DATE: June 29, 2022

TO: The Honorable Members of the Delaware General Assembly

FROM: Ann C. Fisher, Chairperson
GACEC

RE: **House Bill No. 414 Expansion of Protection from Abuse Orders**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill (HB) No. 414, which expands the grounds upon which a survivor of domestic violence can seek a Protection from Abuse order in Delaware Family Court. It adds to the definition of abuse "coercive conduct" which restricts, controls, or interferes with an individual's finances or financial resources including their bank accounts, credit cards, employment, education, and personal identity. HB 414 would increase protections for individuals with disabilities who are experiencing financial abuse or exploitation by family members or intimate partners. Council **supports** the proposed legislation as it adds financial abuse and exploitation to the definition of abuse, therefore offering people with disabilities who are experiencing this type of abuse, a venue to obtain justice. However, we would like to make one request for clarity.

It is not clear how this legislation will address abusive legal guardians, agents under a Power of attorney or representative payees. The cross reference with 11 Del. Code § 791, which talks about the abuser pressuring a victim to act (or refrain from acting) in a way the victim would otherwise have the legal right to act, confuses the interpretation as in some cases the victim's legal right to act was removed by court order, such as with a legal guardianship, or incapacity, such as with a springing Power of Attorney. A representative payee has the right to restrict a person with a disability's access to money, because the Social Security Administration decided that the beneficiary was not capable of handling their benefits. However, a payee may restrict access in a punitive or abusive way. This issue could be clarified in the current bill. For example (underlining indicates changes from HB 414):

- h. Engaging in coercive conduct, as defined in §791 of Title 11, that interferes with, controls, or restricts an individual's ability to acquire, access, use, or maintain their finances or financial resources.
 - 1. Such conduct includes:

- a. Restricting or withholding access to money, bank accounts, debit or credit cards, or other assets.
 - b. Unauthorized use or misuse of an individual's personal identity.
 - c. Interfering with an individual's employment or education
 - d. Restricting or withholding access to food, clothing, medication, transportation or housing.
 - e. Financial exploitation.
2. If the individual engaging in such conduct has authority to make decisions on another's behalf, the conduct shall nonetheless be considered abuse when a reasonable person in the circumstances would find those actions to be harmful. Such individuals may include, but are not limited to, parents of minor children, legal guardians appointed by court order, agents under a Power of Attorney, and representative payees. These individuals must also have a relationship listed in 10 Del. Code § 901(12).

Thank you for your time and consideration of our support and request for clarity. Please feel free to contact me or Pam Weir at the GACEC office should you have any questions.