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MEMORANDUM

DATE: **June 25, 2025**

TO: **The Honorable Members of the Delaware General Assembly**

FROM: **Ann C. Fisher, Chairperson**
GACEC

RE: **Senate Bill (SB) No. 161 Oversight of Behavioral Health Providers**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill No. 161, which seeks to create a licensing scheme for behavioral health providers. The bill also contains additional provisions relating to client rights, provider duties and the role of the Division of Substance Abuse & Mental Health (DSAMH). The provisions of the bill would replace existing statutes at 16 Del. C. §§ 2201-2232 (Substance Abuse Treatment Act) and 16 Del. C. §§ 5181-5186 (Community Mental Health Treatment Act) and strike those statutes from the Code. Council **supports** the goal of this bill to create better oversight and make patient rights clearer. However we would like to recommend that the sponsors of the bill amend the current bill or introduce a companion bill to address the concerns noted below.

This legislation appears to focus primarily on entities providing mental health or substance abuse treatment services through contracts with DSAMH. Currently many of these providers are not required to be licensed by the State, though many have private accreditation from entities such as the Commission of Accredited Rehabilitation Facilities (CARF) or the Joint Commission. Council would like clarification on whether the bill of rights provisions apply to providers that would not be required to be licensed by DSAMH, for example providers that provide support services but not clinical support services. Council notes that the enumerated rights specifically include the right to participate in elections if eligible, which does not appear in the existing statutes this bill seeks to replace, and is only indirectly referenced in the resident rights provisions of the long-term care statute. Council would like to state our support for language that would clarify this right since people with disabilities frequently encounter obstacles in accessing the electoral process.

Council would like to point out that there are other omissions in this list of enumerated rights.

First, there is no mention or acknowledgement of a client having a choice in which level of care they receive and which provider they receive services from. Choice is an important element of client autonomy. Therefore, Council recommends a clear acknowledgement of a client having a choice in which level of care they receive and which provider provides the care.

Second, there is no discussion about circumstances in which services can be terminated or transferred to a different provider against a client's wishes or what rights a client has in the discharge process. It would be beneficial for clients to be informed about these rights and procedures on the front end. SB 161 clearly acknowledges the right of clients to present complaints or grievances and states that grievances or complaints should be responded to in a "fair, timely, and impartial manner," but it does not provide a lot of specificity about the type of response the individual is entitled to receive. Council recommends that "fair, timely, and impartial manner"…be clearly defined. This is very vague and subject to interpretation as it is currently written. It is important that clients receive a substantive response to a grievance, preferably in writing, that clearly details whether the entity reviewing the grievance was able to substantiate the concern or agrees that an established right has been violated, as well as any corrective action that will be instituted to address an identified violation. Ideally there would also be the opportunity to request further review if the client does not agree with the initial outcome of the grievance. DSAMH may wish to look at the Rights Complaint process utilized by the Division of Developmental Disability Services (DDDS) as one example of a more formalized process for addressing complaints raised by clients or their representatives at the Division level.

Third, the bill contains broad provisions about the circumstances in which the enumerated rights can be subject to limitation so long as the reasons are documented; these include but are not limited to "during an emergency" and "whenever a client is in the custody of a peace officer and the officer determines the limitation is necessary to protect the client's or another person's health, well-being, or safety." Given the array of rights contemplated here, including communication-related rights, the right to assert grievances, assistance in understanding rights, and access to appropriate physical health care, these provisions seem overly broad and potentially problematic. It is also worth noting that a peace officer may not have any clinical training or specific knowledge of the client's behavioral or other health conditions that may be necessary to assess whether such a limitation is necessary or safe. Council recommends that the provisions be more specific and narrow.

Fourth, the bill does not give a client or any other interested individual the right to seek enforcement by legal action; they would only have the option to report these concerns to one of the entities given standing to enforce the statute in Court. Council would suggest that this section be expanded so that impacted individuals have more options to enforce their rights.

Fifth, this bill does not acknowledge that mental health group homes are separately licensed as long-term care facilities by the Division of Health Care Quality (DHCQ) and subject to both statutory provisions under Title 16, Chapter 11 of the Delaware Code as well as regulations issued by DHCQ. The bill does not provide any further guidance as to how these licensing systems differ or potentially overlap, although it contemplates existing State licensure as one circumstance in which DSAMH would have the discretion to waive its licensing requirements. The Code also already contains a list of enumerated rights of residents of long-term care facilities, including mental health group homes, found at 16 Del. C. § 1121. Compared with the

rights that would be established by SB 161, there are more specific provisions in the long-term care statute related to individual privacy and a client's rights with respect to their assigned room (including notice of room or roommate changes) as well as limitations on transfer and discharge. The long-term statute also explicitly states that a resident has the right to request an organizational chart that includes the chain of command for the purpose of asserting grievances (SB 161 says people have the right to know the names of individuals involved in treatment but doesn't go beyond that). On the other hand, SB 161 has stronger language than what is contained in 16 Del. C. § 1121 about providers potentially helping clients with accessing the electoral process. While SB 161 would not change the rights already codified at 16 Del C. §1121, it may create confusion for clients residing in mental health group homes as well as provider agencies serving clients in these group homes to have two separate lists of enumerated rights with different schemes for enforcement.

Sixth, another concern is that the bill specifies in numerous places that records relating to many of the proposed statutory requirements, including provider audits, incident reports, and investigations, would not be considered "public records" under the Delaware Freedom of Information Act (29 Del. C. § 100, et seq). Notably there is no indication that written notice of disciplinary actions or records from disciplinary hearings would not be considered public records, meaning more information might be available to the public about these actions, especially if a provider chooses to appeal the imposition of discipline (although that could perhaps discourage a provider from appealing). While internal investigations of abuse or neglect would likely be considered peer review processes and therefore privileged, it is concerning that the public, including clients receiving services in this system or their representatives, might be prevented from accessing other information about known problems with provider agencies, especially given the potential vulnerability of the client population served by these agencies. By contrast, many records pertaining to the oversight of healthcare facilities licensed by DCHQ, including survey reports and corrective action plans, are available to the public and are in some cases even published on DCHQ's website (references to specific resident medical records are de-identified by DHCQ and sensitive or non-public information may redacted). Council would therefore recommend that the bill be amended to be consistent with the practices of DCHQ and allow such survey reports and corrective plans to be public.

Seventh, this bill appears to apply to providers of adult services only. This creates some questions about the oversight of child mental health services and why children receiving state-funded services and their parents or guardians should not have the same or comparable rights and options for enforcement of those rights. There could also be unintended consequences to this legislation in that provider organizations may be encouraged to start providing services solely to children if the DSAMH licensing requirements are perceived by the provider community to be too difficult. Council would therefore recommend a similar bill of rights be developed for children.

Eighth, the bill acknowledges the role of the protection and advocacy (P&A) system (Community Legal Aid Society, Inc. as presently designated by the Governor), however at §5667 of the proposed statutory language, it only explicitly acknowledges P&A access authority under the Protection and Advocacy for Individuals with Mental Illness (PAIMI) statute (codified at 42 U.S.C. 10801, et seq). References to the other P&A statutes should also be included in this section to address circumstances in which an individual with a substance abuse disorder

diagnosis might otherwise be eligible for assistance from the P&A but does not have a diagnosis that meets eligibility requirements under the PAIMI statute.

Ninth, the GACEC would like to suggest that the bill incorporate additional provisions related to the P&A to provide more consistency with other chapters of the Delaware Code. For example, 16 Del. C. § 1134(g) establishes certain protections for individuals making a report to the P&A or otherwise cooperating with P&A investigation of a report in the long-term care facility context. It would be beneficial for such protections to be in place across settings to encourage anyone who is aware of potential abuse or neglect of a person with a disability to report this information to the P&A.

Finally, inpatient mental health facilities are required to report certain types of critical incidents to the P&A in addition to DHSS. See 16 Del. C. § 5162, et seq. A similar requirement for community services would encourage more oversight, particularly as external review of these services has been lacking (see discussion above about the Adult Mental Health Peer Review Commission).

Thank you for your time and consideration of our support of the proposed legislation and suggestions to address concerns. Please feel free to contact me or Pam Weir at the GACEC office in order to discuss the concerns noted.