



**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING
7:00PM May 19, 2026
VIRTUAL MEETING**

MEMBERS PRESENT: Mary Andrews, Al Cavalier, Nancy Cordrey, Bill Doolittle, Harley Doolittle, Karen Eller, Melinda Failing, Ann Fisher, Tika Hartsock, Kristina Horton, Jessica Mensack, Molly Merrill, Beth Mineo, Maria Olivere, Trenee Parker, Cassandra Pierce, Erika Powell, Jennifer Pulcinella, Stefanie Ramirez and Daniella Spitelli-Sarnecky

GUESTS PRESENT: Chris Budesheim, Craig Clizbe, Matt Clizbe, Dale Matusевич/Delaware Department of Education (DDOE), Lillian McCuen, Maricarmen Morales, Theresa Muschiatti/Interpreter, Adrian Reese, Brenda Rodriguez/Division of Vocational Rehabilitation (DVR), Lisa Savino, Dr. Amber Shelton, Kristen Steele, Steve Stegg, Peg Stewert/Interpreter, Jeri Turner/DDOE, Susan Veenema/DDOE, and Chantaé Vinson

STAFF PRESENT: Pam Weir/Executive Director, Kathie Cherry/Office Manager, Lacie Spence/Administrative Coordinator and Theresa Moore/Administrative Support Specialist.

MEMBERS ABSENT: Brenné Shepperson, Meedra Surratte and Renee Yarrington

MEMBERS ON LEAVE OF ABSENCE: Cory Gilden

ADMINISTRATIVE BUSINESS/MOTIONS:

1. Call to Order

Bill Doolittle called the April meeting of the Governor's Advisory Council for Exceptional Citizens (GACEC) to order at 7:03 PM.

Lacie Spence confirmed that a quorum was present.

2. Approval of Agenda

Bill Doolittle presented the agenda and asked for any comments or changes.

- Motion: To approve the agenda of May 19, 2026, Full Council meeting.
 - Moved by: Molly Merrill
 - Seconded by: Kristina Horton
 - Vote:
 - No objections.

Result: Motion carried. May 19, 2026, Agenda was approved.

3. Approval of Previous Meeting Minutes

a. April 21, 2026 – General Membership Meeting

- Motion: To approve the minutes of April 21, 2026, Full Council meeting with the clarifications Al Cavalier made.
 - Moved by: Molly Merrill
 - Seconded by: Tika Hartsock
 - Vote:
 - No objections.
 - Result: Motion carried. April 21, 2026, Full Council meeting minutes were approved.
-

4. Financial Report

Bill Doolittle introduced the March 2026 financial report.

- Motion: To approve the March 2026 financial report.
 - Moved by: Maria Olivere
 - Seconded by: Kristina Horton
 - Vote:
 - No objections
 - Result: Motion carried. The March 2026 financial report was approved
-
-

5. Leadership Committee Motions

The Leadership Committee motion brought to Council for affirmation tonight:

- Motion: All Council members shall have access to all GACEC Teams channels, with the exception of channels containing confidential or personal information. This access is intended to support transparency, collaboration and a comprehensive understanding of Council activities, not to edit or alter another individual's work without permission.

(The motion as stated during the meeting was not fully articulated in detail. The language included above reflects staff's best understanding of the intent of the motion based on the discussion and action taken by the body.)

- Moved by: Al Cavalier
- Seconded by: Cassandra Pierce
- Vote:
 - No objections
- Result: Motion carried.

PUBLIC COMMENTS: There were no public comments tonight.

COMMITTEE REPORTS:

POLICY AND LAW COMMITTEE:

The Committee reviewed one regulation and six bills related to education, disability services, behavioral health, school discipline, and public education funding. The Committee also reviewed recommendations contained in the Disability Rights Delaware (DRD) memorandum and subsequent addendum distributed prior to the meeting.

Regulations Review

DHSS Fair Hearing Practice and Procedures / Medicaid General Eligibility Requirements

The Committee reviewed proposed regulations related to DHSS Fair Hearing Practice and Procedures and Medicaid General Eligibility Requirements.

The Committee endorsed the recommendations contained in the DRD memorandum without modification.

Bill Reviews

Senate Substitute 1 for Senate Bill 161

Licensing and Oversight of Behavioral Health Treatment Services

The Committee discussed revisions made to the bill in response to concerns previously raised by GACEC.

The Committee supported:

- The overall goals of the legislation.
- Recommendations encouraging the Division of Substance Abuse and Mental Health (DSAMH) to continue working collaboratively with the Council regarding implementation and future related legislation.

House Bill 288

Annual Reporting by the Division of Developmental Disabilities Services

The bill requires the Division of Developmental Disabilities Services to submit an annual report regarding services and unmet needs.

The Committee noted that the bill had passed both chambers and was awaiting the Governor's signature. No further action was recommended at this time.

House Bill 378

Council on Correction

The bill removes the sunset provision related to the Council on Correction.

The Committee recommended no further action at this time.

House Substitute 1 for House Bill 379

Comprehensive School Discipline Improvement Program

The Committee engaged in extensive discussion regarding House Substitute 1 for House Bill 379 and the revised recommendations contained in the DRD addendum.

Discussion focused on:

- The bill's increased emphasis on prevention-oriented practices.
- Alignment with a Multi-Tiered System of Supports (MTSS) framework.
- A shift away from punitive approaches toward proactive school climate and behavioral supports.

The Committee acknowledged that the substitute bill addressed many concerns raised previously regarding student discipline practices and recognized the bill as progress toward a more comprehensive support framework.

However, the Committee also expressed concern regarding:

- Limited implementation detail.
- Lack of clearly defined metrics and accountability measures.
- Insufficient commitment to funding, staffing, training, and infrastructure necessary for effective implementation.
- Potential additional burdens placed on educators without adequate supports.

Discussion emphasized that successful MTSS implementation requires:

- System-wide cultural and organizational change.
- Ongoing professional development.
- Sustained funding and personnel support.
- Fidelity to prevention-based practices across all tiers.

The Committee recommended:

- Supporting the legislation and its stated goals.
- Strongly encouraging the Department of Education to develop clear metrics, implementation procedures, accountability structures, and adequate supports to ensure fidelity to the intent of the legislation.

Senate Bill 303

Public Education Funding Commission

The bill would codify the Public Education Funding Commission as a permanent body within the Department of Education.

The Committee endorsed the recommendations contained in the DRD memorandum with one modification:

- The Committee recommended that GACEC specifically be identified for representation on the Commission, recognizing its role as Delaware's formal advisory body for special education.

Senate Bill 302

Public Education Funding Model Implementation

The Committee reviewed legislation related to implementation of the Public Education Funding Commission's recommended funding model.

The Committee endorsed the recommendation in the DRD memorandum to continue monitoring the legislation as additional details become available.

Discussion emphasized:

- The importance of continued engagement by Council members in ongoing public discussions regarding the funding model.
- The significance of the legislation for students with disabilities and other impacted populations.
- The need for additional details regarding implementation, funding allocation, and operational impacts.

The Committee encouraged Council members to remain informed and engaged as the legislation and funding discussions continue to evolve.

The recommendations above were presented as a motion from the committee and were approved by the full Council with Trenee Parker abstaining.

You can find a copy of Council's letters in reference to this legal memo at the following links on the [GACEC website](#):

- Regulatory letters, visit <https://gacec.delaware.gov/regulatory-letters/>.
- Legislative letters, visit <https://gacec.delaware.gov/legislative-letters/>.

MEMEBERSHIP COMMITTEE:

Currently the Membership Committee is a Committee of the Whole (Full Council). The Chair reported that the Membership Committee has completed one interview of a prospective member.

In the near future, we will be calling for a Membership Committee meeting for consideration. And again, all Council members will receive an email asking for participation.

INFANT AND EARLY CHILDHOOD COMMITTEE:

Overview

The Committee received a presentation regarding the Ages & Stages Questionnaire (ASQ) developmental screening process and proposed legislative and policy changes related to developmental screening requirements in licensed childcare settings.

Background

The presentation reviewed the history and development of Delaware's developmental screening efforts, including:

- Alignment with the Birth to Five Watch Me Thrive initiative.
- Integration with Delaware Stars quality rating requirements.
- Implementation of House Bill 202 (2021), which required developmental screening for children enrolled in licensed childcare programs using ASQ-3 and ASQ:SE-2 tools.
- Ongoing support through the Department of Education's ASQ Online Enterprise system, available to providers at no cost.

The Department also reviewed prior implementation milestones, including the transition from recommended screening practices to required screening practices for higher-rated childcare programs and subsequent refinements to the data and referral systems.

Current Implementation

The Department reported that a dedicated Developmental Screening Team currently supports implementation efforts, including coordination, data review, and provider assistance.

The current process includes:

- Administration of developmental screenings by childcare providers.
- Communication of results to families.
- Referral pathways for additional evaluation or support services when needed.

Challenges Identified

Several implementation concerns were discussed, including:

- Compliance and licensing pressures are potentially creating barriers to childcare enrollment.

- Concerns regarding informed consent and family understanding of the screening process.
- Limited engagement between providers and families following referrals.
- A system focus centered primarily on children enrolled in childcare settings, leaving gaps for children not currently in care.

The Department noted anecdotal reports that some childcare providers may be linking enrollment to completion of developmental screenings due to concerns about licensing compliance.

Proposed Legislative and Policy Changes

Draft legislative updates to Title 14 were presented for feedback. The proposed changes would:

- Shift the compliance requirement from mandatory developmental screening for every enrolled child to an annual written notice provided to families regarding developmental screening.
- Require signed acknowledgment that families receive the information.
- Emphasize developmental monitoring by educators as an ongoing practice, with formal screening tools used as appropriate.
- Strengthen informed consent practices and family education.
- Expand provider training and coaching supports through the Office of Early Learning.
- Increase outreach to families whose children are not enrolled in childcare.
- Prioritize user experience, coordinated support systems, and equity over compliance-focused processes.
- Strengthen coordination with broader early childhood and family support systems, including home visiting and early intervention services.

The Department emphasized that the overall goal remains ensuring children and families have access to developmental screening, developmental milestone information, and coordinated supports, while reducing unintended barriers and improving equity and access.

CHILDREN AND YOUTH COMMITTEE:

Indicator 4 Suspension & Expulsions: Discipline and Disproportionality Data Presentation:

The Committee received a presentation and participated in a discussion regarding Indicator 4 Suspension and Expulsion presented by Susan Veenema from the Department of Education.

Presentation Highlights

The presentation focused on:

- Current discipline and disproportionality trends within Local Education Agencies (LEAs).
- Factors contributing to elevated suspension and expulsion disproportionality indicators in certain districts.
- Available resources and support opportunities for districts addressing disproportionality concerns.
- Professional development initiatives being implemented with targeted LEAs.

Discussion included information regarding ongoing professional development efforts designed to support districts in addressing disparities in discipline practices and improving equitable outcomes for students.

Resources and Supports

The Department shared information regarding:

- Professional development resources available to LEAs.
- A root cause analysis tool used to help districts examine contributing factors related to disproportionality and discipline outcomes.
- Additional guidance and technical assistance supports available to districts.

The Department also indicated that presentation materials and related resources would be distributed to Council members following the meeting.

Committee members expressed appreciation for the Department's continued collaboration and support in providing data, guidance, and training resources.

School Climate and Culture Survey Discussion

The presentation also included discussion regarding participation in the School Climate and Culture Survey. Committee members noted concern regarding participation rates and discussed the importance of the survey as a long-standing, research-based tool for collecting school climate data and supporting school improvement efforts.

Discussion included:

- Potential reasons some schools or LEAs may choose not to participate.
- The value of school climate data in identifying areas of need and supporting struggling schools.
- Opportunities to encourage increased participation in the survey process.

Committee members discussed the possibility of exploring strategies to improve participation rates and support broader engagement with the survey without pursuing legislative mandates.

Committee Discussion

Committee members engaged in discussion regarding:

- District implementation efforts.
- Use of data to identify patterns and areas for improvement.
- Strategies to support equitable disciplinary practices.
- Continued collaboration and professional learning opportunities for LEAs.

The discussion emphasized the importance of ongoing analysis, targeted supports, data-informed decision-making, and resource-sharing to address disproportionality within educational settings.

ADULT AND TRANSITION SERVICES COMMITTEE:

The Committee met to review due process and APR data related to the prison education work group and ongoing concerns regarding special education services.

Data Review and Discussion

The Committee reviewed:

- Due process case data.
- APR data previously requested in connection with the prison education work group.
- Draft findings and related documentation.

Based on the review and discussion, the Committee noted that the issues identified appeared to reflect systemic concerns similar to those commonly observed within K–12 special education systems.

Requests for Additional Information

The Committee discussed the need for additional information and data to support further analysis. Areas identified for follow-up included:

- Additional data related to identified concerns.
- Monitoring and oversight practices.
- Training provided in the relevant service areas.
- Information regarding special education services and implementation practices.

The Committee indicated that a draft letter requesting additional information should be updated and distributed accordingly.

Procedural Discussion

A brief procedural discussion occurred regarding whether a formal Council motion was required to authorize the request for additional information. It was clarified that the Committee had authority from the Chair to move forward with the request and that a full Council motion was not required unless members wished to elevate the matter for formal Council action.

The Committee concluded by confirming its intent to request additional information regarding special education services and related oversight practices.

INDIVIDUALS WITH COMPLEX MEDICAL CONDITIONS AND EDUCATION AD HOC COMMITTEE:

Proposal to Establish a Standing Committee for Individuals with Complex Medical Conditions

Meeting Discussion Summary

A proposal was presented requesting the establishment of a permanent standing committee focused on individuals with complex medical conditions through an amendment to the GACEC by-laws. The proposal originated from the Individuals with Complex Medical Conditions and Education Ad Hoc Committee, which began work in 2023.

The proposal outlined the purpose of the committee, including ensuring consistent representation, policy review, and advocacy for individuals whose disabilities intersect with significant medical, educational, behavioral, developmental, and healthcare needs. The proposal also identified gaps in current committee representation and emphasized the need for lifelong cross-system coordination and support.

The Chair stated that the proposal could not proceed to a vote during the current meeting because the amendment was not presented in the required form and had not been properly noticed according to bylaws procedures. Specifically, the amendment needed to be shown within the context of the existing by-laws to clearly indicate where the proposed language would be inserted.

Discussion followed regarding the procedural requirements for by-law amendments. Questions were raised concerning whether the proposal had sufficiently identified the relevant by-law section and whether additional formatting requirements existed beyond what was outlined in the by-laws. Clarification was provided that prior practice had been to present amendments directly within the text of the by-laws to avoid ambiguity.

Several members expressed confusion regarding the process and requested clearer written guidance for future by-law amendments. Concerns were also raised regarding reliance on historical practice without written procedural documentation.

Members discussed the value of seeing the proposed amendment in context within the by-laws prior to voting. One Council member stated that reviewing the amendment within the full by-law structure could influence their position on the proposal.

The Chair ruled that the motion was not in order due to both formatting and notice requirements. It was stated that the proposal could be revised into proper form and presented for consideration at the next meeting, provided notice requirements were met.

Additional discussion occurred regarding the organization's use of parliamentary procedure. Members referenced the prior removal of Robert's Rules of Order from the by-laws and discussed whether reinstating parliamentary authority would improve procedural clarity. A future motion to reintroduce Robert's Rules of Order as secondary authority to applicable law and by-laws was proposed for a subsequent meeting.

During the discussion, a council member verbally announced their resignation from the council, citing frustration with procedural uncertainty and challenges navigating the amendment process. The Chair responded that resignations must be submitted in writing and accepted by the Council according to existing procedures.

Outcome

- No vote was taken on the proposed standing committee.
- The proposal was ruled out of order for the current meeting due to procedural and notice concerns.
- The proposal may be revised and reconsidered at a future meeting.
- Future discussion regarding parliamentary procedures and potential reinstatement of Robert's Rules of Order was indicated.

DEPARTMENT OF EDUCATION REPORT:

Department of Education Updates and Discussion

Updates were provided regarding statewide implementation efforts related to Multi-Tiered System of Supports (MTSS), special education leadership development, IDEA grant submissions, LEA determinations, and dispute resolution processes.

It was reported that the Department of Education has been leading a coordinated MTSS implementation effort for approximately two years with participation from representatives across multiple departmental workgroups. Plans were shared to relaunch MTSS implementation efforts with local education agencies (LEAs) during August. Continued updates and technical assistance were anticipated, particularly regarding implementation at the secondary education level, where additional support and clarification have been requested by LEAs.

An update was also provided regarding the development of a Special Education Leadership Academy. The academy is expected to launch in July and is intended for special education directors, supervisors, and related district personnel. The initiative is designed to strengthen system-level support and provide technical assistance responsive to the needs identified by LEAs and charter schools. Feedback from special education directors is being collected to determine relevant topics and areas of focus.

The Department reported that the annual IDEA grant submission was pending final signature and scheduled for submission to the Office of Special Education Programs (OSEP). A determination from OSEP was expected later in June following release of the state education agency determination.

Additional updates were provided regarding LEA determinations, which were undergoing final review and expected to be released publicly the following week through the Department's website.

Acknowledgment was given for stakeholder feedback submitted regarding dispute resolution documents. It was noted that recommendations provided during the review process were being considered and incorporated where appropriate. Information regarding panel member and investigator application processes was expected to be placed separately on the Department website.

Questions were raised regarding the appointment and renewal process for panel members. It was clarified that panel members serve under annual contracts that may or may not be renewed each year.

Questions were also asked regarding participation in the proposed Special Education Leadership Academy. It was explained that the initial phase of the academy would remain limited to LEA personnel to support open dialogue and establish the program structure, though information shared through the academy could later be provided to council members.

Discussion followed regarding the value of standardized training for special education coordinators and leadership staff. Members expressed interest in understanding the academy's structure and topics in order to support professional development and identify potential gaps in training or services.

Further clarification was provided that the academy would likely remain flexible and responsive to emerging issues identified through parent concerns, LEA feedback, complaints, due process filings, and statewide trends, rather than functioning as a fixed curriculum.

It was shared that future academy sessions would include presentations on current national special education issues and trends. Topics for the upcoming academy were expected to be available for review at the next meeting.

Discussion also occurred regarding opportunities to increase awareness of the State Advisory Panel and its role within Delaware's special education system. Suggestions include providing informational materials or presentations during future leadership training opportunities.

Questions were raised regarding whether council members could attend future presentations related to current special education legal trends and statewide issues. It was stated that attendance possibilities would be reviewed with participating LEAs and presenters.

Clarification was also provided that organizations and agencies regularly involved in statewide special education coordination, including APER and DSCYF, would continue to be included in relevant leadership meetings and training activities.

Outcome

- Updates were received regarding MTSS implementation, leadership training initiatives, IDEA grant submission, LEA determinations, and dispute resolution processes.
- The Special Education Leadership Academy is expected to launch in July.
- LEA determinations are expected to be released publicly the following week.
- Continued updates and possible future collaboration opportunities will be provided to council members.

DIRECTOR'S REPORT:

The Director provided updates on several ongoing initiatives and requests.

SB198 Legislative Support

The Director reported that SB198, legislation introduced to codify ADA requirements into Delaware state code, has stalled in the Senate. The Director emphasized the importance of ensuring movement on the bill during the current legislative session and requested Council approval to draft a letter expressing continued support for SB198 and encouraging legislative action.

A motion was requested to authorize drafting the letter to the sponsors of SB198.

- Motion made by Ann.
- Seconded by the Bill Doolittle.
- No objections were raised.
- Motion approved with no abstentions.

Council members were reminded to submit their reports to Theresa by the end of the evening or the following day to assist with preparation of the meeting minutes.

Council Communication and Teams Updates

The Director noted that significant member feedback had been requested over the previous month, with most follow-up communications expected to be distributed by the end of the week.

The Director highlighted several updates related to Council operations and communication:

- An “A1 Priorities” channel was created in Microsoft Teams to organize and prioritize active Council initiatives and feedback requests.
- Newly appointed Council members are continuing to work with staff to gain access to Teams.
- The Legislation and Regulation Teams channel has been updated and maintained to provide access to draft legislation, regulations, and Council correspondence.

External Meetings and Resources

The Director reported attendance at the annual Kids Count meeting and noted that the organization provides valuable statewide data resources that will be shared with Council members when released.

The Director also attended the ACLU annual meeting and acknowledged ongoing state and national developments affecting disability advocacy and related issues. Staff will continue sharing relevant resources through Teams channels.

The Director reminded members that the full Chair Report had been distributed with the meeting package and invited members to ask questions as needed.

Discussion Regarding Federal Advocacy Meetings

A Council member referenced a previous Executive Director’s Report noting meetings with staff from U.S. Senator Chris Coons and U.S. Senator Lisa Blunt Rochester. He commended the outreach efforts and requested additional information regarding the purpose and significance of those meetings.

The Director clarified that the meetings occurred during the annual Disability Policy Seminar and associated Hill Day advocacy activities in Washington, D.C.

The Director explained:

- Delaware advocates, including representatives from GACEC, the Center for Disability Studies, the State Council for Persons with Disabilities, LEND trainees, and community

advocates, participated in advocacy meetings with members of Delaware's federal delegation and their staff.

- The delegation discussed disability-related issues affecting Delaware residents, including Medicaid funding, education reform, and supports and services for individuals with disabilities.
- Advocates shared personal stories and community experiences to illustrate the real-world impact of proposed federal funding cuts and policy changes.
- The Director emphasized that congressional staff reported hearing and recognizing constituent stories shared through advocacy efforts, public comments, and outreach campaigns.
- GACEC leadership hopes to establish more regular engagement opportunities with Delaware's congressional delegation, potentially through future in-state or virtual meetings.

The Council member thanked the Director and participating advocates for their efforts and expressed appreciation that the substance of the advocacy discussions would be reflected in the public meeting minutes.

CHAIR REPORT:

1. Discussion with Representative Williams, Lisa Lawson, and Sarah Celestin

The Council reviewed prior discussions with Representative Williams, Lisa Lawson, and Sarah Celestin regarding concerns initially centered on burden of proof, with additional focus on private placements.

It was noted that draft language has been developed, but additional input from members is still needed. Members are encouraged to provide comments and suggestions for inclusion. Contributions previously submitted are being compiled, and additional feedback remains welcome.

Office hours scheduled for May 26 (10:30–11:30 a.m.) will include time dedicated to discussion of private placement issues, though other topics may also be addressed. Members unable to attend may submit written input or request an alternative meeting time, including a possible evening session if needed.

All feedback is requested to be submitted for compilation, with a target deadline of June 2 for finalization and transmission of Council input. It was emphasized that the resulting language reflects member perspectives and does not constitute formal Council action.

Members were directed to consult shared materials on Teams and may resubmit input if confirmation of receipt is needed.

2. Clarification Regarding Prior Council Position on Burden of Proof

A clarification was provided regarding prior Council consideration of burden of proof. It was acknowledged that the Council previously addressed the issue and had taken a position. Current drafting efforts were confirmed to be consistent with that prior position and do not propose reinstating or supporting burden of proof changes.

3. By-laws and Robert's Rules of Order

Appreciation was expressed for work undertaken to reinstate Robert's Rules of Order within the Council by-laws.

It was noted that reference materials, including printed copies and/or electronic access to Robert's Rules of Order, will be made available to Council members to support understanding prior to any upcoming vote. Members were also informed of available online resources, including an official reference site with search functionality.

ADJOURNMENT: Ann Fisher made a motion that was seconded by Cassandra Pierce to adjourn the meeting. The motion passed and Bill Doolittle adjourned the meeting at 9:21 PM.

POLICY AND LAW MEMO:

Memo

Date: 5/18/2026

Re: DRD 2026 Policy and Law Memo

Please find below, per your request, analysis of pertinent proposed regulations and legislation identified by councils as being of interest.

I. Proposed Regulation

➔ **PROPOSED DHSS 5000 Fair Hearing Practice and Procedures, 29 Del. Reg. of Regulations 913 (May 1, 2026) and PROPOSED DHSS 14000 Medicaid General Eligibility Requirements, 29 Del. Reg. of Regulations 919 (May 1, 2026).**

These proposed rulemakings by the Department of Health and Social Services (DHSS) would amend existing Delaware regulations relating to the timeframe to request Medicaid Fair Hearings to appeal decisions about an individual's Medicaid benefits. The proposed rulemaking's background explanation says that the amendments are "a clarification for the latest date that an individual can request a fair hearing to align with the Code of Federal Regulations (CFR) to be 90 days from the date the notice is mailed to the client." It continues to explain that "[s]ince the postmarked date will not always be known, Delaware Medicaid and [Delaware Health Children Program] will procedurally allow a five-day grace period from the date of the notice to allow for mailing processes."

The Medicaid proposed rulemaking (29 Del. Reg. of Regulations 919) adds language providing this five-day grace period, as shown with underline as follows:

14100.7 Fair Hearings

42 CFR 431.221

A fair hearing is an administrative hearing held in accordance with the principles of due process. An opportunity for a fair hearing will be provided, subject to the provisions in policy at DSSM Fair Hearing Section 5000. Any individual who is dissatisfied with a decision of the Division of Social Services may request a fair hearing within 90 days from the date the notice of action is mailed. If a postmarked date is not available a 5-day grace period from the date of the notice will be provided, if needed to allow for mail processing.

See DSSM Fair Hearing Section for policies covering fair hearings.

However, the proposed Fair Hearing rulemaking (29 Del. Reg. of Regulations 913) text of the regulation does not actually contain language adding those five days, nor does it effectively cross reference to the Medicaid regulation that provides the grace period. It is confusing to have one regulation explicitly add this grace period, but not the other, and is likely to cause error.

For example, in the subsection instructing when Hearing Officers may consider a Fair Hearing appeal (5305 Limiting the Amount of Time to Request a Hearing), the proposed rulemaking specifies:

Hearing Office Staff Determine Timely Requests

....

Timely requests are determined based on ~~four~~4 time periods:

A. Within the timely notice period

Requests made during the timely notice period are timely. The timely notice period is the 10-day period between the dates a notice is mailed to the date a proposed action is to take effect. It is also called Advance Notice Period.

Staff will not reduce or terminate benefits pending a decision on the appeal if a request for a hearing is filed within the timely notice period.

<u>Exception: Benefits may be reduced or terminated if the conditions in DSSM 5308 are met.</u>

B. Within 90 days from the effective date of action

A hearing is granted if the request is received within 90 days from the effective date of action. If the request is not received during the timely notice period, the proposed action must take effect.

<u>Exception For Medicaid and Delaware Healthy Children (DHCP): Within 90 days from the date the notice of action is mailed.</u>
--

C. More than 90 days from the effective date of action

The hearing officer does not have authority to hear an appeal that is filed more than 90 days from the effective date of action. The hearing officer does not have authority to extend the time period beyond 90 days of the effective date of action.

Exception For Medicaid and Delaware Healthy Children
(DHCP): More than 90 days from the date the notice of
action is mailed.

There is nothing to indicate the existence of a 5-day grace period. In addition to the above, there is also no reference to the grace period in subsection 5307, which governs when Fair Hearing Officers can dismiss hearing requests (“The hearing officer will dismiss or deny a request for a fair hearing where...The request is not received within the specified 90 day time period.”).

The lack of information about the 5-day grace period may lead to mistakes by agency staff and hearing officers. It also could prevent beneficiaries from appealing, if they wrongly believe they missed their appeal deadline.

Recommendations:

- 1. Council may wish to support the addition of the 5-day grace period as it both brings Delaware into federal regulatory compliance and it offers more flexibility for instances in which there is no postmark date.***
- 2. To prevent error and misinformation, Council may wish to recommend that DHSS consider revising proposed rulemaking DHSS 5000 Fair Hearing Practice and Procedures, 29 Del. Reg. of Regulations 913, with language that is consistent with the proposed Medicaid language (DHSS 14000 Medicaid General Eligibility Requirements, 29 Del. Reg. of Regulations 919) which is as follows: “If a postmarked date is not available a 5-day grace period from the date of the notice will be provided, if needed to allow for mail processing.”***
- 3. Council may wish to suggest that the five-day grace period language be included in the notices sent to beneficiaries. Without notifying recipients of this grace period and putting that on the form, Council may wish to express concern that this rule change will be of limited utility for recipients and/or there may be issues with inconsistent implementation of this change by staff.***

II. Legislation

➔ Senate Substitute 1 for Senate Bill 161

DRD previously analyzed Senate Bill 161 (SB 161) which addresses the licensing and oversight for behavioral health treatment services. This substitute bill was introduced on April 30, 2026 and was reported out of committee in the Senate on May 13th. DRD’s original SB 161 analysis is included as attachment A; Council provided extensive comment consistent with that analysis.

The substitute bill makes a number of changes from the original bill, including to directly address concerns raised by Councils. According to the bill synopsis those changes includes that it:

- (1) Expands the definition of the protection and advocacy system to reference all applicable federal protection and advocacy statutes.

(2) Revises the client rights provisions by reorganizing and clarifying the rights framework, adding rights related to discharge planning and continuing care, clarifying the standard for permissible limitations on client rights, including a requirement that any limitation be for the shortest duration feasible, and revising the standard governing the use of restrictive intervention to align with existing Delaware law.

(3) Expands standing to enforce client rights to include clients and their authorized representatives in addition to the Attorney General and the protection and advocacy system.

(4) Adds a savings clause clarifying that nothing in this Act abrogates the rights and requirements applicable to long-term care facilities under Chapter 11 of Title 16.

(5) Adds elopement to the definition of incident for purposes of the incident reporting requirements.

(6) Modifies the provisions relating to the protection and advocacy system by expanding the system's access authority to reference all applicable federal and State law, adding a requirement that the Division notify the protection and advocacy system no more than 72 hours after receiving a report of a client death, authorizing staff to make discretionary reports to the protection and advocacy system, and extending anti-retaliation protections to staff who report to or cooperate with the protection and advocacy system.

(7) Adds a framework for the confidentiality of incident reports and investigation records while authorizing the Division to publish aggregate, de-identified information regarding incidents and trends across the behavioral health system.

(8) Adds an injunctive relief pathway allowing the Department to seek a temporary restraining order in the Court of Chancery when a provider organization's activities create an imminent risk of substantial harm to clients.

(9) Updates language throughout to reflect current person-centered terminology consistent with the preferences of the disability community.

(10) Makes technical and conforming changes for clarity and consistency. This Act requires a greater than majority vote for passage because § 28 of Article IV of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to create a new crime within the jurisdiction of any inferior court of this State.

(spacing added for readability). While not all changes Council suggested were made, the bill drafters did make a number of changes that were responsive to Council's concerns.¹

Recommendation: Council may wish to generally support the goal of the bill to create better oversight and make patient rights clearer, including access to the electoral process, and ask that DSAMH commit to working with Council on implementation of the bill and future companion bills to address any remaining concerns.

¹ DRD communicated directly with DSAMH staff to talk through the concerns highlighted in Council's comments, and DRD provided education and technical assistance on the same.

➔ **House Bill 288 Amending Title 29 Section 7909A Related to the Delaware Division of Developmental Disabilities Services**

This Act requires that DDDS submit an annual report relating to its services to increase the transparency of the services and highlight unmet needs for efficient service delivery by adding a new subsection 7909A(c)(2) as follows:

- (2) Submit an annual report relating to the Division's services to the Secretary, the Governor, the General Assembly, and the Director and Librarian of the Division of Legislative Services. The report must include information related to at least all of the following:
 - a. Service system size and growth to include both individuals receiving services and agencies providing services.
 - b. Service utilization.
 - c. Observed gaps in or challenges to the service system

Per DDDS², the legislation generated by the Joint Sunset Committee, that will allow DDDS to provide a comprehensive annual report regarding DDDS's activities, while providing the parameters to do so. The bill synopsis indicates that DDDS will provide data on census, new applications, demographics of those groups, and the size and diversity of the provider system' allows DDDS to demonstrate that its services, and how the services are accessed, change over time; and gives DDDS the flexibility to provide information on service requests that could not be met, why service requests could not be met, and observed gaps in service delivery, or other information related to challenges DDDS identifies related to the service system.

This bill has passed both houses and as of 5/7/2026 is awaiting the Governor's signature.

Recommendation: this bill promotes public transparency and data led decision-making; no action needed.

➔ **House Bill 378, An Act to Amend Chapter 186, Volume 83 of the Laws of Delaware relating to the Council on Correction**

House Bill 378 would remove the sunset provision from the statutory provision that tasked the Criminal Justice Council (CJC) with providing administrative support to the Council on Correction (COC). Because the partnership has been successful, the Act would remove the sunset provision and allow the partnership to continue. There is nothing substantive in the bill regarding continued existence of the Council on Correction.

Recommendation: this bill promotes public transparency and data-leading decision-making by continuing the administrative support by the CJC to the COC; no action needed.

➔ **House Bill 379, AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE COMPREHENSIVE SCHOOL DISCIPLINE IMPROVEMENT PROGRAM.**

House Bill 379 ("HB 379") was introduced on April 23rd, 2026, and assigned to the Education Committee in the House. HB 379 is primarily sponsored by Representative Alonna Berry with Senator Laura Sturgeon as an additional sponsor. Representatives Eric Morrison and Mara Gorman are co-sponsors. **On 5/14/26 a substitute bill was introduced. The analysis in this memo is of the original bill; DRD will issue an addendum to this memo once it has an opportunity to analyze this substitute bill.**

² Relayed by DDDS via communication with DRD staff.

If passed, HB 379 would amend Title 14 § 1605A of the Delaware code; it is part of the Comprehensive School Discipline Improvement Program. Specifically, it instructs the state to “administer a program to offer prevention-related student support services (prevention services) to students” to improve academic results and improve student behavior.³

Title 14 § 1605A was initially enacted in 1995⁴ and amended in 1997⁵. However, Delaware schools have since faced criticism for an overly punitive approach to discipline⁶ that disproportionately affects historically oppressed groups⁷. Disciplinary actions that are restorative and non-punitive have been found to be more effective than punitive out-of-school suspensions⁸, and preventative measures can “reduce the likelihood of incidents so that discipline isn’t necessary in the first place.”⁹

A. Purpose of the Bill

This bill has three purposes. First, it removes references to the Family Services Cabinet Council. Second, it makes “technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual”¹⁰ and makes some stylistic changes to the tone of the statute. Third, it adds clarifying language focused on “explicitly offer[ing] prevention related student support services.”¹¹

In conversation with Representative Larry Lambert of RD 7, Representative Berry was quoted as saying that HB 379 is meant to have a broader scope than technical modifications. Instead, it is meant to change how Delaware approaches school discipline “comprehensively.”¹² Representative Berry was also quoted as saying that the Department of Education (“DOE”) was currently working on an amendment to HB 379¹³; as noted above a substitute bill has now been introduced.

a. Removal of References to the Family Services Cabinet Council

HB 379 removes all references to the Family Services Cabinet Council and replaces them with references to the DOE and the Department of Services for Children, Youth and Their Families (“DSCYF”). The

³ 153rd General Assembly, HOUSE BILL NO. 379, Delaware General Assembly (Apr. 23rd, 2026) <https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=143165&legislationTypeId=1&docTypeId=2&legislationName=HB379>; 2025 Delaware House Bill No. 379, Delaware One Hundred Fifty-Third General Assembly - Second Regular Session, 2025 Delaware House Bill No. 379, Delaware One Hundred Fifty-Third General Assembly - Second Regular Session.

SCHOOLS—COMPREHENSIVE SCHOOL DISCIPLINE IMPROVEMENT PROGRAM—PREVENTION AND OVERSIGHT, 1995 Delaware Laws Ch. 215 (H.B. 284).

⁵ EDUCATION—RULES, REGULATIONS AND ORGANIZATION—DEPARTMENT TO REPLACE STATE BOARD—TERMS—APPROPRIATIONS, 1997 Delaware Laws Ch. 180 (H.B. 81).

⁶ Melva L. Ware, *New Report! Charter School of New Castle (CSNC): Model for Creating an Inclusive School Climate*, ACLU Delaware (Oct. 4, 2023) <https://www.aclu-de.org/news/csnc/> (finding that “69% of all out-of-school suspensions in Delaware for minor issues”).

⁷ Hannah Edelman, *Some Delaware students are suspended far more than others. How schools are addressing this*, Delaware Online (Jun. 7, 2023, 4:45 AM EDT), <https://www.delawareonline.com/story/news/education/2023/06/07/delaware-schools-suspension-rates-student-behavior-discipline-restorative-practices/70247312007/>.

⁸ Shannon Griffin & Melva L. Ware, Fair Discipline Online Toolkit, ACLU Delaware <https://www.aclu-de.org/campaigns/equity-education/fair-discipline-online-toolkit/> (last visited May 8th, 2026 11:32 AM EDT).

⁹ Edelman, *supra*.

¹⁰ 153rd General Assembly, House Bill 379, *supra*.

¹¹ *Id.*

¹² L. Lambert, personal communication, May 7th, 2026.

¹³ *Id.*

Family Services Cabinet Council was reestablished by Governor John Carney on February 28th, 2017, and was “tasked with implementing innovative tools and strategies for addressing a series of specific issues, including: breaking the school-to-prison pipeline; improving access to early childhood education; increasing the availability of affordable housing; improving access to substance abuse treatment; reducing recidivism in Delaware’s correctional system; expanding job training opportunities; and reducing violence in Delaware’s neighborhoods.”¹⁴

As of May 8th, 2026, the given URL for the Family Services Cabinet Council directs to an error page.¹⁵ Upon inquiry with Shay Frisby, a supervisor at the Delaware Division of Social Services, it appears that the functions of the Family Services Cabinet Council may have been absorbed by other departments within the state.¹⁶ The bill would reflect that change by removing and replacing the references to the Family Services Cabinet Council.

b. Technical and Stylistic Corrections

HB 379 makes various minor technical changes that reflect the current Delaware Legislative Drafting Manual. Additionally, HB 379 changes the modal auxiliary verb “shall” to “must” and directs that the DOE and DSCYF “*must* administer a program to offer prevention-related student support services (prevention services) to students” and “*must* issue prevention funding to local school districts proposing to establish an integrated plan to deliver prevention services.”

Finally, HB 379 changes the tone of the text to be less harsh in two instances. It replaces “to prevent them from becoming discipline problems and from failing academically” with “to promote positive student behavior and prevent them from failing academically,” and replaces “discipline problems” with “challenges to positive student behavior.” Representative Berry indicates that these tonal changes were intended to shift the language away from a “bad child” connotation.¹⁷

c. Additional Clarifying Language

The largest change that HB 379 makes to Title 14 § 1605A is this addition at the end of subsection 1: that the DOE and DSCYF must issue prevention funding to establish an integrated plan to deliver prevention services, including “removing barriers that prevent or limit the time available for school-based mental health professionals to proactively provide necessary direct or indirect services to students” and “compensating school employees to serve as school climate content experts.” It also adds examples of what assistance is available to help teachers manage student behavior, listing “including training in restorative practices, and support for district-level committees to revise discipline policies to reduce subjectivity and provide greater clarity regarding behavioral expectations and appropriate consequences.” These additions are intended to more explicitly indicate what preventative services are.

B. Assessment

Overly punitive disciplinary measures in schools have led directly to students experiencing “long-lasting” negative consequences, such as an increased “likelihood that a student drops out of school or becomes

¹⁴ Dawn K. Thompson, *Governor Carney Reestablishes Family Services Cabinet Council*, The Department of Services for Children, Youth and Their Families (Mar. 2017) <https://kidsfiles.delaware.gov/news/pr/2017.03.01-governor-carney-reestablishes-family-services-cabinet-council.pdf>.

¹⁵ State of Delaware <https://governor.delaware.gov/family-services-cabinet-council/> (last visited May 8th, 2026, 12:22 PM EDT).

¹⁶ S. Frisby, personal communication, May 8th, 2026.

¹⁷ L. Lambert, personal communication, May 7th, 2026.

involved in the juvenile justice system.”¹⁸ Already disadvantaged groups, such as Black students, students with disabilities, and low-income students, are disproportionately punished.¹⁹ As a result, they are most likely to find their problems compounded.

In its initial iteration, HB 379 does not do enough to improve or clarify the already existing statute for preventative disciplinary practices. For example, some of its language is vague and could benefit from being made more definite—for instance, instead of endeavoring to “reduce subjectivity” it should “remove subjectivity” in discipline policies. The bill’s only material additions to the statute are explicit acknowledgement that the state will provide funding to remove timing barriers for in-school mental health professionals and “compensat[e] school employees” acting as “climate context experts.”

It is difficult to assess the former point as it entirely depends on how exactly the state plans to reduce these barriers. That said, the simplest way to address time-based barriers would be to hire more mental health professionals for schools so that the individual workload is lessened.

Regarding the latter point, HB 379’s language is unclear as to whether the bill intends to compensate existing employees to serve as school climate context experts or if it is meant to give schools funding to hire additional employees in that role. Regardless, it is important to emphasize that the living wage in New Castle County for an adult with zero children is \$49,483.20, and for adults with one child it is \$82,971.20.²⁰ In addition, low pay has been cited as a primary factor for teachers to leave the profession, and three years of raises have led to Delaware teachers being “marginally” more satisfied with their jobs.²¹ Therefore, for this bill to have the impact it intends, compensation should reflect the current economic reality of living in Delaware and fairly pay faculty that act as climate context experts.

Representative Lambert stated that HB 379 was marked as “Not Worked in Committee” because its sponsor had it pulled with the intent of reintroducing an improved version.²² The substitute version has now been introduced and DRD intends to issue an addendum to this memorandum after reviewing that substitute bill.

Recommendation: Council may wish to wait for analysis of the substitute bill prior to determining if Council will provide comments on the substitute bill, or otherwise take a position on the bill.

➔ Senate Bill 303²³

This bill, sponsored by Sens. Sturgeon, Townsend, Lockman, and Rep. K. Williams, codifies into law the Public Education Funding Commission (PEFC), making it a permanent body within the Delaware Department of Education (DDOE). This bill has a fiscal note in the amount of \$300,000 annually with a

¹⁸ *Realizing the Full Vision of School Discipline Reform: A Framework for Statewide Change*, The Council of State Governments Justice Center (Sep. 2017) https://csgjusticecenter.org/wp-content/uploads/2020/01/JC_Realizing-the-Full-Vision-of-School-Discipline-Reform_A-Framework-for-Statewide-Change.pdf.

¹⁹ Edelman, *surpa*.

²⁰ Dr. Amy K. Glasmeier, *Living Wage Calculation for Delaware*, Living Wage Calculator <https://livingwage.mit.edu/states/10> (last visited May 8th, 2026 2:08 PM EDT).

²¹ DSEA, *Educator survey shows job satisfaction progress after three years of state-funded pay increases*, Delaware State Education Association (Oct. 28th, 2025) <https://www.dsea.org/about-dsea/media-center/press-releases/educator-survey-shows-job-satisfaction-progress-after-three>.

²² L. Lambert, personal communication, May 8th, 2026.

²³ <https://legis.delaware.gov/BillDetail?LegislationId=143194>.

one-time cost of \$100,000.²⁴ The bill was voted out of the Senate Education Committee on May 5, 2026 with 5 favorable votes and is now awaiting consideration in the Senate Finance Committee.

The stated purpose of the bill is to implement the PEFC's recommendation that it be established as a permanent body to implement and maintain the benefits of the recommended hybrid model, reviewing the model and its implementation within schools, and make recommendations for improvement. The PEFC will have an annual reporting requirement. The bill directs DDOE to provide reasonable and necessary technical support for the PEFC, including staff.

Under the bill, the PEFC would be comprised of 33 members. The makeup of the PEFC would be identical to its current membership under House Concurrent Resolution 2.²⁵ Neither HCR2 nor SB303 include as a member of the PEFC, any member of Council.

Recommendation: Council may wish to support this legislation as it codifies the PEFC as a permanent body and will aid in the continual review and updating of education funding in Delaware. Council may wish to engage with the bill sponsors to gauge the possibility of representation on the PEFC by Council (whether through appointment or as an amendment to the existing bill).

➔ SB 302²⁶

This bill, sponsored by Sens. Sturgeon, Townsend, and Lockman, and Rep. K. Williams, provides authority to the Delaware Department of Education (DDOE) to begin making changes necessary to implement the hybrid model as recommended by the Public Education Funding Commission (PEFC). This bill has a fiscal note in the amount of \$2,598,560 for FY 2027, \$1,536,710 for FY 2028, and \$1,389,939 in FY 2029.²⁷ The bill was voted out of the Senate Education Committee on May 5, 2026 with 5 favorable votes and is now awaiting consideration in the Senate Finance Committee.

This bill does not modify or change Delaware code and is more of a directive to DDOE to begin necessary technological and other changes to ensure full implementation of the hybrid funding model by FY 2029. Delaying DDOE's preparations until after legislation has been introduced and passed formally adopting the hybrid model would push back full implementation by at least a year.

What we know is that Delaware's education funding is wholly inadequate and has been in place since approximately 1940.²⁸ The largest driver of inadequacy and segregation continues to be revenue generated through property taxes – meaning the families in wealthier areas tend to have schools with higher revenue which result in more spending on students and, generally, better outcomes. The opposite is then true for families in lower income areas. As a result of a settlement agreement in *Delawareans for Educ. Opportunity*

²⁴ The fiscal note attached to the bill notes that the Governor's Recommended FY 2027 Appropriations Act includes a one-time appropriation of \$225,000 to support implementation of this Act. Expenditure of those funds is contingent upon the passage of SB 303.

²⁵ <https://legis.delaware.gov/BillDetail?LegislationId=141789>.

²⁶ <https://legis.delaware.gov/BillDetail?LegislationId=143195>.

²⁷ The fiscal note attached to the bill notes that the Governor's Recommended FY 2027 Appropriations Act includes a one-time appropriation of \$2,598,560 to support implementation of this Act. Expenditure of those funds is contingent upon the passage of SB 302.

²⁸ <https://spotlightdelaware.org/2026/05/06/bills-to-implement-new-school-funding-model-pass-out-of-committee/>.

v. *Carney*, 199 A.3d 109 (Del. Ch. 2018), the state agreed to commission an independent report by the American Institutes for Research (AIR) to evaluate Delaware’s public education funding system and identify possible remedies to funding deficits. The report, issued in December 2023, identified a need to increase investment into public education of between \$600 million and \$1 billion.²⁹ The hybrid model recommended by the PEFC may not go far enough in ensuring all students, regardless of need, are provided with the adequate education to which they are constitutionally entitled.³⁰

Recommendation: Council may wish to wait until legislation is introduced formally adopting the model to either support or oppose the measure. However, in the meantime, Council may wish to attend ongoing PEFC meetings to provide public comment in the ongoing discussions around public education funding in Delaware.

DRD May 2026 P&L Memo

ATTACHMENT A: Excerpt from June 2025 P&L Memo

➤ SB 161 – Oversight of Behavioral Health Providers

SB 161 was introduced on May 21, 2025 and assigned to the Senate Health & Human Services Committee. As of June 15, 2025 it remains in committee. SB 161 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.

The bill appears intended to target 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. **The exceptions are mental health group homes, which are considered long-term care facilities under Delaware law (see 16 Del. C. § 1102(5)) and are already licensed by the Division of Health Care Quality (DCHQ), as well as some substance abuse providers, which are currently governed by the Substance Abuse Treatment Act and accompanying regulations.**

The bill would require behavioral health providers serving adults to be licensed and would give DSAMH the authority to issue such licenses (although this authority is already contemplated

²⁹ https://education.delaware.gov/wp-content/uploads/2023/12/23-22933_1_Delaware_Full_Report-FMT-ed103023-Version-2.pdf.

³⁰ See May 5, 2026 Letter from ACLU-DE to the Delaware General Assembly (<https://www.aclu-de.org/press-releases/ml-l-letter-to-ga/>).

under existing law at 29 Del. C. § 7908(c)). The bill also states DSAMH can issue regulations to further implement these requirements. The licensing requirements would not apply to providers only serving children. Providers in private practice or “a licensed professional providing treatment services incidental to the professional’s regular practice” would also be exempt from licensing requirements. DSAMH would also have the discretion to waive the requirements in other circumstances, including but not limited to when a provider organization is otherwise licensed by the State or when an entity is providing support services but not clinical services such as peer support or recovery housing. **The bill would impose criminal penalties for providing services covered by these provisions without appropriate licensure. The bill contemplates a fee structure being imposed for license issuance and renewal.**

The bill would also give DSAMH the authority to conduct audits. DSAMH would also have the authority to impose various penalties in response to noncompliance, including civil money penalties, monitoring to be conducted at the expense of the provider agency, suspension of admission of new clients, or suspension or revocation of a license. These penalties are comparable to those that may be imposed by DCHQ on entities licensed by that agency. Additionally, the Department of Health & Social Services would have the authority to issue an emergency order to transfer management of a program to another entity in circumstances where “the Department reasonably believes that a provider organization is acting in a manner that creates an imminent risk of substantial harm to the organization’s clients.” **The bill also requires providers to notify DSAMH about any anticipated disruptions in services or if the organization anticipates becoming insolvent. The bill establishes procedures for the imposition of disciplinary actions including the right of a provider agency to receive written notice and a process through which providers can request a hearing to appeal disciplinary action.**

SB 161 also enumerates specific rights of clients receiving behavioral health services and contemplates that clients would be informed of these rights in writing when services are initiated. It is not entirely clear whether or how these provisions apply to providers that would not be required to be licensed by DSAMH (i.e. those providing “support” services but not clinical services). Notably 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 obliquely referenced in the resident rights provisions of the long-term care statute. **As people with disabilities frequently encounter obstacles in accessing the electoral process the Council may specifically wish to state their support for this language.**

However, there are some 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; although this may be implied from some of the other language about treatment decisions, it is not explicitly stated.** While in some circumstances choice may be limited from a practical standpoint due to the small number of State-contracted providers, choice is an important element of client autonomy. Additionally, **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 (although there are references to discharge plans as part of treatment planning). While to some extent these rights would be governed by applicable federal Medicaid law and regulations, or by other provisions in the Code for residents of mental health group homes, **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. While some of this could be further detailed in regulation or DSAMH policy, 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.**

Additionally, 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.

The bill also enumerates specific duties of providers, though most of the listed duties appear to be essentially restatements of the enumerated client rights. **The listed provider duties include but are communicating in a client's preferred language, providing written information about client rights to individuals upon admission, establishing a procedure for clients to assert grievances, and providing clients with assistance in exercising their right to vote. The bill contains additional provisions related to the maintenance and disclosure of records by licensed providers,** including under what circumstances disclosure of records could be limited to prevent anticipated harm that may be caused by disclosure. Additionally, the bill states that the Attorney General or protection and advocacy (P&A) system can seek to enforce the client rights, provider duties and records disclosure provisions in Chancery Court. **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. The Council may wish to suggest that this section be expanded so that impacted individuals have more options to enforce their rights.

The bill would also codify procedures for incident reporting by providers and investigations conducted by DSAMH. DSAMH would have the authority to promulgate regulations to implement these requirements. DSAMH would also be required to develop an online system for “submitting, collecting, and retaining” incident reports. While creation of such a system would likely require significant resources, it would greatly assist DSAMH in monitoring reports and analyzing trends in data and would be in line with systems already used by some other similarly situated State agencies such as DDDS. The bill would also create penalties for failure to report certain kinds of incidents and protections for individuals reporting concerns to DSAMH in good faith. It would also require DSAMH to report substantiated reports of abuse or neglect to outside entities as applicable, potentially including law enforcement, other professional licensing bodies or agencies, and the Adult Abuse Registry.

The bill also would modify the descriptions of DSAMH’s role that are currently found at 29 Del. C. § 7908. While the new language for the most part appears substantially similar to the existing statutory language, although the new language would include specific references to issuing licenses as well as receiving and investigating complaints, grievances and incident reports. The bill would also add language to 16 Del. C. § 1212 making clear that providers may be required to disclose otherwise protected health information to DSAMH without individual consent when DSAMH is conducting certain oversight activities.

Meaningful oversight and accountability for providers are essential to protecting the rights and safety of individuals with mental illness and substance use disorders receiving state-funded services. The quality of services provided to people with behavioral health conditions in Delaware has been an ongoing concern for many years. The crisis created by the myriad legal troubles confronting Connections CSP a few years ago is perhaps the most notable example highlighting why increased oversight of these providers by the State is necessary. The Council should support the broader effort to ensure the safety and quality of these services, **however there are a few more general areas of concern about the bill as written in addition to the specific concerns noted above.**

First, 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 schemes 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 contains 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 flip side, 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.**

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). Along these lines, the long-term care statute specifically states that records maintained of investigations conducted by the DHCQ of reported abuse, neglect, mistreatment, financial exploitation or medication diversion are not public records, however there is no clear indication that records of incidents or possible abuse or neglect reported to DCHQ would not be considered public records. The concerns about these provisions in SB 161 might be mitigated if DSAMH were to make clearer how transparency to clients and the general public about provider performance would be assured. It is reasonable to expect that to the extent clients or their representatives are given a choice as to which provider the client receives services from, information about the assessed quality of services or noted safety concerns might influence that choice. Additionally, it is important to note that there are provisions in the Code that create an Adult Mental Health Peer Review Commission (see 16 Del. C. § 5194) to review this type of quality assurance data and make recommendations, however that Commission was never actually formed and has never been active, so **additional external oversight has been lacking since the conclusion of the State's settlement U.S. Department of Justice related to the State's mental health system in 2016.**

While it clear that the impetus for this bill was DSAMH's desire to impose more oversight on the services it has the authority to provide and contract for, the fact that **this bill only applies to providers of adult services also 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 DSAMH's licensing requirements are perceived by the provider community to be too onerous.

Finally, 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 acknowledge the P&A's 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. Additionally, the Council may wish 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 the P&A's 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. Additionally, 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).

Recommendations: Council may wish to generally support the goal of the bill to create better oversight and make patient rights clearer, such as access to the electoral process, but recommend the bill sponsor amend the bill, or introduce a companion bill to address the below concerns.

- 1) Clarify if the bill of rights provisions apply to providers that would not be required to be licensed by DSAMH (i.e. those providing "support" services but not clinical services).
- 2) Recommend an explicit acknowledgement of a client having a choice in which level of care they receive and which provider they receive services from.
- 3) The bill should address 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.

- 4) The bill should provide more specificity about the type of response the individual is entitled to receive when they file complaints and grievances. 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.
- 5) 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 and Council may wish to recommend they be more narrowly tailored.
- 6) **Line 412-3, where it says “Make reasonable accommodations for a client with a communication impairment or who primarily speaks a language other than English” should be expanded to include reasonable accommodations for sensory disabilities.**
- 7) 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. The Council may wish to suggest that this section be expanded so that impacted individuals have more options to enforce their rights.
- 8) 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 schemes 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. 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.
- 9) 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). 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 may wish to recommend that the bill be amended to be consistent with DHCQ's practice, and allow such survey reports and corrective plans to be public.

- 10) This bill only applies to providers of adult services also 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. Council may wish to recommend a similar bill of rights be developed for children.
- 11) 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, it only explicitly acknowledge the P&A's 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.
- 12) Council may wish 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 the P&A's 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.
- 13) Additionally, 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).