



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: December 23, 2013

TO: Delaware State Senate

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 154 [Medication Diversion & Drug Abuse Training]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 154 which addresses the increasing abuse and illegal use of controlled substances. The proposed legislation has multiple purposes, including the following: 1) facilitation of prosecution of perpetrators of abuse, neglect, and mistreatment of residents and patients in licensed long-term care facilities and hospitals; 2) explicit inclusion of "medication diversion" as a form of "abuse"; and 3) promotion of training by healthcare providers in controlled substances and recognition of dependency.

Specifically, prosecution of abuse, neglect and mistreatment will no longer require a showing that conduct was "knowing". It will be sufficient if the conduct is "reckless" (line 71). This is a lesser standard. See Title 11 Del.C. §231. In addition, "Medication diversion" is broadly defined (lines 15-19) and is now included in the definition of "abuse" (line 6). Finally, practitioners registered to prescribe or distribute controlled substances would generally be required to complete continuing professional education related to prescribing/delivering controlled substances or recognizing symptoms of dependency (H.A. No. 2, lines 8-14).

SCPD believes the legislation is well intentioned, but has two (2) significant concerns.

First, the scope of criminal liability for "medication diversion" is ostensibly too broad. Literally, if a guardian or person authorized to provide consent to medical treatment [Title 16 Del.C. §§1121(34), 1122, and 2507] withheld or refused to consent to a prescribed medication, they would be guilty of a class G felony (lines 15-19 and 76-77). They would be "interrupting" or "obstructing" the delivery or administration of a prescription drug. The "good faith" exception would be inapplicable since limited to healthcare providers (lines 22-23). Indeed, although the Long-term Care Bill of Rights explicitly authorizes a competent individual to refuse medication [Title 16 Del.C. §1121(4)], the legislation could literally expose a competent individual refusing

medication to prosecution since obstructing administration of a prescribed drug (lines 15-19 and 76-77). It would be preferable to exempt refusal to provide consent to prescribed medications from prosecution.

Second, the legislation provides conflicting “state of mind” standards. As defined at lines 15-16, “medication diversion” constitutes “abuse” only if “knowing” or “intentional.” However, another section authorizes prosecution for “abuse” based on “recklessness” (lines 71-72). A third section authorizes prosecution for medication diversion if “knowing” (omitting “intentional” and “reckless” states of mind). This lack of consistency may result in confusion.

SCPD endorses the concept of the bill subject to consideration of the above concerns.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: House of Representatives
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

hb 154 medication diversion 12-23-13