



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

**DATE: January 26, 2016**

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

**FROM: Robert D. Overmiller, Chairperson  
GACEC**

**RE: House Bill No. 158 (Adult Protective Services Reporting)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 158 which would create penalties for failure to report a reasonable cause to believe that an adult person who is impaired or incapacitated is in need of protective services. Council maintains that the bill is well-intended but would like to share our reservations with this initiative.

First, the penalty for the omission of reporting is distinctly excessive. The proposed penalty is up to \$10,000 for a first offense, \$50,000 for a subsequent offense, and costs and attorney's fees:

(g) Any person or entity that knows or in good faith suspects that an adult person is impaired or incapacitated as defined in §3902 of this title and in need of protective services as defined in §3904 of this title and does not report such information to the Department of Health and Social Services in the manner and format published by the Department shall be liable for a civil penalty not to exceed \$10,000 for the first violation, and not to exceed \$50,000 for any subsequent violation. In any action brought under paragraph (a) of this section, if the court finds a violation, the court may award costs and attorney's fees.

Consider the following:

A. The penalty for failing to report will generally far exceed the penalty applied to the actual convicted perpetrator of the abuse/neglect. The APS statute [31 Del.C. §3903(a)] generally treats convicted perpetrators as guilty of a class A misdemeanor:

(a) Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an adult who is impaired shall be guilty of a class A misdemeanor.

The maximum monetary fine for a class A misdemeanor is \$2,300. See Title 11 Del.C. §4206(a). Thus, this bill would authorize a financial penalty (\$10,000) on the person omitting the report which is more than **quadruple** the penalty for the actual abuser. For a subsequent offense, the person omitting the report would be subject to a criminal penalty (\$50,000) approximately **22 times** the penalty for the actual abuser.

B. The Department of Health and Social Services (DHSS) Long-term Care Ombudsman has overlapping authority with APS to investigate abuse and neglect of individuals in long-term care facilities. See Title 16 Del.C. §1152(5). If a person affirmatively interferes with an Ombudsman investigation, the maximum penalty is \$100 for a first offense and \$1,000 for a subsequent offense. See Title 16 Del.C. 1155. Logically, the financial penalty for a person omitting a report should be less than the penalty for persons affirmatively interfering with an investigation.

C. There is a comparable employee duty to report abuse and neglect in long-term care facilities under long-term care law in Delaware. The penalty for omitting a report is not \$10,000-\$50,000 as contemplated by this bill. It is \$1,000. See Title 16 Del.C. §1132 (b).

D. There is a comparable employee/contractor duty to report abuse and neglect in mental health treatment facilities. The penalty for omitting a report is not \$10,000-\$50,000 as contemplated by this bill. It is \$1,000. See Title 16 Del.C. §5184.

Second, the bill reinforces a conflict in the Code since an employee of a long-term care facility must report abuse/neglect pursuant to the protocol and timetable in Title 16 Del.C. §1132(a) in contrast to the “manner and format published by the Department” for APS reports [31 Del.C. §3910(a)].

Third, if the purpose of the bill is to encourage more reports, query whether the bill should include a fiscal note to process the increased volume of reports coupled with provision of victim support services.

Fourth, given the potential liability for a \$10,000 - \$50,000 penalty, information about how and when to report to APS should be readily available. The bill requires the report to be made “in the manner and format published by the Department”. Unfortunately, the protocol for reporting to

APS is well hidden. Council could locate no DHSS regulation on reporting under the APS statute. Moreover, the DHSS APS website has no published procedure for reporting abuse/neglect and, for contact information, refers the public to a resource center operated by another division. In contrast, the Department of Services for Children, Youth & Their Families is required by statute to “maintain a 24-hour statewide toll-free telephone report line” [16 Del.C. §905] and its website prominently displays information about reporting procedures and contains a website link to easily report abuse/neglect. See attachment. If DHSS expects the public to report adult abuse/neglect or face \$10,000-\$50,000 penalties, it should mirror the approach adopted by the DSCY&F.

As mentioned earlier, Council believes that the legislation is well-intended and would protect a vulnerable population but we have significant reservations with the penalty amounts. Council would, however, be receptive to adoption of a more reasonable penalty for failure to report.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Enclosures