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# Joint Legislative Oversight and Sunset Committee 2019 Final Report



*A Report to the Governor and the  
150th General Assembly of the State of Delaware*

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June 2019

## 2019 Joint Legislative Oversight and Sunset Committee Members

Senator S. Elizabeth Lockman,  
Chair

Representative David Bentz,  
Vice-Chair

Representative Andria L. Bennett

Representative Sherry Dorsey Walker

Representative Jeffrey N. Spiegelman

Representative Lyndon D. Yearick

Senator Anthony Delcollo

Senator Stephanie L. Hansen

Senator Ernesto Lopez

Senator John Walsh

### ***Final Report Prepared By:***

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The Joint Sunset Committee approves and submits the 2019 Final Report to the Governor and members of the 150<sup>th</sup> General Assembly.



**Sen. S. Elizabeth Lockman, Chair**



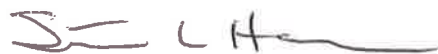
**Rep. David Bentz, Vice-Chair**



**Sen. Anthony DeCello**



**Rep. Andria L. Bennett**



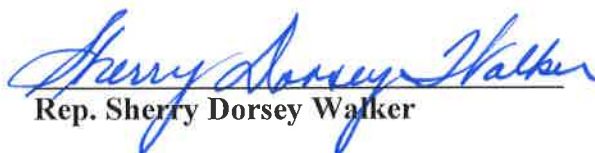
**Sen. Stephanie L. Hansen**



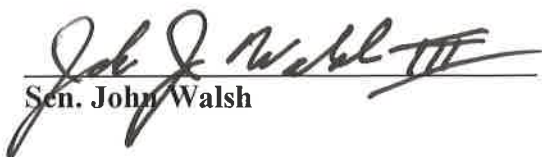
**Rep. Jeffrey N. Spiegelman**



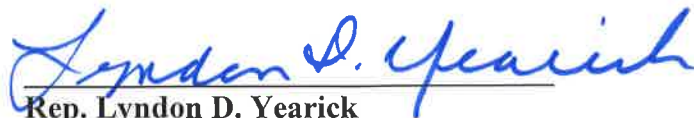
**Sen. Ernesto Lopez**



**Rep. Sherry Dorsey Walker**



**Sen. John Walsh**



**Rep. Lyndon D. Yearick**



# **Executive Summary**

## **Background**

Delaware's Legislative Oversight and Sunset Law, enacted in 1979 in Chapter 102 of Title 29, provides for the periodic legislative review of state agencies, boards, and commissions ("entity" or, collectively, "entities"). The purpose of review is to determine if there is a public need for an entity and, if so, to determine if it is effectively performing to meet that need. Generally, an entity is not reviewed more than once every six years.

The Joint Legislative Oversight and Sunset Committee ("JLOSC" or "Committee") is responsible for guiding the review process. The Committee is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore appoints five senators and the Speaker of the House appoints five representatives to serve on the Committee.

In general, the conduction of reviews span a ten to twelve month time period commencing in July. The Committee's Analysts compile a comprehensive review of each entity, based on the responses each entity provides on a questionnaire designed to meet statutory criteria, and then prepares a preliminary report for the use of Committee members during public hearings held each year. Public hearings serve as a critical component of the review process because they provide the best opportunity for JLOSC to determine if there is a genuine public need for the entity, and if the entity is beneficial to the public's health, safety, and welfare.

At the conclusion of a review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an entity. Although the Committee has "sunset" a small number of entities since its first reviews in 1980, the more common approach has been for the Committee to work with an entity under review to formalize specific statutory and non-statutory recommendations with an end goal of improving the entity's overall performance and accountability.

## **2019 Sunset Reviews**

This report details the work of the Committee from July 2018 through June 2019. Specifically, it focuses on the following entities:

- Council on Correction (held over from 2018).
- Division of Waste and Hazardous Substance's management of the Hazardous Substance Cleanup Act ("HSCA") Fund (held over from 2018).
- Adult Protective Services.
- Delaware Advisory Council on Career and Technical Education.
- Delaware Health Information Network.
- Division for the Visually Impaired.

## Guide to this Report

The following pages detail the work of the Committee during the first session of the 150<sup>th</sup> General Assembly, including the Committee's Final Recommendations and Final Reports developed by the Committee's Analysts. The Final Reports serve as references for the Committee during public hearings and facilitate the development of the Final Recommendations.

## Summary of 2019 Joint Legislative Oversight and Sunset Committee Actions

The Committee held public hearings regarding the two 2018 hold-over entities (Council on Correction and Division of Waste and Hazardous Substance's management of the Hazardous Substance Cleanup Act Fund), as well as the four new reviews for 2019 (Adult Protective Services, Delaware Advisory Council on Career and Technical Education, Delaware Health Information Network, and the Division for the Visually Impaired). As a result of the public hearings and subsequent Committee meetings and deliberations, the Committee recommended the continuation and release of one entity, and hold over of five entities.

### *Council on Correction – Held Over to 2020*

In 2018, the Committee made several recommendations for the **Council on Correction**, an advisory council to the Department of Correction. The Committee's recommendations included amending the Council's governing statute, including how the Council will advise the Department; providing an annual report to the Commissioner, Deputy Commissioners of the Department, the Governor and General Assembly; meeting rotation; and board training. The Committee recommended to hold over the Council with instructions to report back in 2019. Upon receiving additional information at the 2019 holdover meeting, the Committee recommended the Council provide a progress report in January 2020. At that time, the Committee will review the Council's progress in implementing recommendations and will consider its release from review.

### *Division of Waste and Hazardous Substance's management of the Hazardous Substance Cleanup Act Fund – Released upon Enactment of Recommended Legislation.*

In 2018, the Committee made several Recommendations for the **Division of Waste and Hazardous Substance's** management of the **HSCA Fund ("HSCA")**, a fund which supports the Division's cleanup of facilities with a release, or imminent threat of release, of hazardous substances, as well as Delaware's Brownfield program. Legislation regarding the HSCA Fund, HB 451, was enacted on September 13, 2018. The Committee recommended to hold over the entity, which reported back to the Committee in 2019. In April 2019, the Committee recommended continuing HSCA and releasing it from review with approved legislation (SB 113) clarifying the HSCA Fund's 15% cap on administrative cost expenditures. As of the writing of this report, SB 113 has not yet been enacted. HSCA will be released from review when SB113 is enacted.

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*Adult Protective Services – Held Over to 2020*

The Committee made several recommendations for **Adult Protective Services (“APS”)**, a unit under the Division of Services of Aging and Adults with Physical Disabilities (“DSAAPD”) within the Department of Health and Social Services (“DHSS”), that manages a system of services for impaired adults in order to protect their safety, health, and welfare. The Committee’s recommendations include staff development and training, updating interagency MOUs, website modifications, reviewing staffing structures, recruitment initiatives, modifying operational hours, and making statutory modifications in order to define self-neglect, modify the APS Advisory Council, and to implement an Elder Justice Multidisciplinary Team. The Committee recommended to hold over APS, which must report back to the Committee in January 2020. At that time, the Committee will review the Agency’s progress in implementing recommendations and will consider its release from review.

*Delaware Advisory Council on Career and Technical Education – Held Over to 2020*

The Committee made several recommendations for the **Delaware Advisory Council on Career and Technical Education (“DACCTE”)**, an advisory council on career and technical education programming statewide. The Committee’s recommendations include creating and submitting an annual report, modifying the website, updating membership, and modifying the Council’s governing statute. SB 138 is the result of the Committee’s recommendations. As of the writing of this report, SB 138 has not yet been enacted. The Committee recommended to hold over DACCTE, which must report back to the Committee in January 2020. At that time, the Committee will review the Council’s progress in implementing recommendations and will consider its release from review.

*Delaware Health Information Network – Held Over to 2020*

The Committee made several recommendations for the **Delaware Health Information Network (“DHIN”)**, a statutory not-for-profit instrumentality of the State of Delaware responsible for the design, implementation, operation, and maintenance of facilities for public and private use of health care information in the State. The Committee’s recommendations include creating and submitting an annual status report regarding the Health Care Claims Database (“HCCD”) (first report issued no later than January 1, 2020), updating DHIN’s governing statute to strengthen the HCCD and overall DHIN operations, reducing overlap and duplicated efforts, updating current regulations and HCCD internal procedures, and updating the website. Due to the many recommended statutory changes, the Committee recommended to create a task force in order to adequately review, discuss, and finalize draft legislation for the Committee to review in January 2020. The Committee recommended to hold over DHIN, which must report back to the Committee in January 2020. At that time, the Committee will review the agency’s progress in implementing recommendations, the proposed draft legislation from the task force, and will consider its release from review.

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### *Division for the Visually Impaired – Held Over to 2020*

The Committee made several recommendations for the **Division for the Visually Impaired (“DVI”)**, an agency within DHSS, which provides a variety of services in order to improve the safety, education, and employment of blind and visually impaired Delawareans. DVI is a complex agency that offers many services, as a result the Committee considered 31 recommendations in total. The Committee’s recommendations covered the following topics; education, Council of the Blind (advisory council for DVI), Delaware Industries for the Blind (“DIB”), Business Enterprise Program (“BEP”), vocational rehabilitation, and Orientation and Mobility (“O&M”) services. The Committee motioned to table 27 of the recommendations and established a task force to gather interested agencies, experts in the field, and citizens to adequately research and review the recommendations. The Committee recommended to hold over DVI. The task force will assist the Committee in considering recommendations and will submit a report in January 2020. At that time, the Committee will review the task force report, consider adopting proposed recommendations, and will consider its release from review.

### *JLOSC Improvement – Legislation to Clarify the Committee’s Governing Statute*

The Committee voted to amend § 10201, Title 29, to revise the Committee’s language regarding the “highest administrative officer.” The Committee approved legislation (SB 115) clarifying the definition of the “highest administrative officer.” As of the writing of this report, SB 115 has not yet been enacted.

### *Board of Clinical Social Work Examiners – Applies Technical Correction to the Grandfathering Period*

In 2018, the Committee reviewed and released the Board of Clinical Social Work Examiners (“Board”). As a result of review, the Committee had worked with the Division of Professional Regulation to revise the Board’s governing statute, which resulted in HB 311 of the 149<sup>th</sup> General Assembly. In 2019, the Committee approved legislation that corrects a technical error in HB 311. HB 311 intended to allow the grandfathering of licenses under Chapter 39, Title 24 to occur up to 2 years after the enactment of HB 311. In fact, however, HB 311’s effective date allowed for only 1 year. Additionally, the grandfathering period will be for the intended period of 2 years. The Committee approved legislation (SB 114) clarifying the technical correction. As of the writing of this report, SB 114 has not yet been enacted.

### *2019 Clean-Up Project with the Governor’s Office – Legislation to Provide Simple Statutory Clean Up or Adjustments*

In 2018, the Committee voted to task Committee staff to work with the Governor’s office to review boards and commissions for those that need simple statutory clean up or adjustments. Staff reported back to the Committee in March 2019 with a list of the identified boards and commissions and a proposed plan for achieving the clean-up. As a result, the Committee approved legislation for the following entities for the purpose of applying simple statutory clean up or adjustments: Delaware Health Resources Board, Common Interest Community Advisory Council, Governor’s Council on Agriculture, Architectural Accessibility Board, Advisory Council to the Division of Developmental Disabilities Services, and the Council on Development Finance. Committee staff will continue to work with the Governor’s office on this project throughout 2019 and will provide an update to the Committee in January 2020.



*Delaware Health Resources Board – 2019 Clean-Up Project with the Governor’s Office*

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. Three major changes were identified: reducing the number of members to make it easier to make quorum and fill vacancies, updating language to provide for 3-year terms, and authorizing the Board to elect a vice chair. This Act also makes technical corrections to conform the existing governing statute to the standards of the Delaware Legislative Drafting Manual. The Committee approved legislation (SB 108) modifying the entity’s statute and making technical corrections. As of the writing of this report, SB 108 has not yet been enacted.

*Common Interest Community Advisory Council – 2019 Clean-Up Project with the Governor’s Office*

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. The project identified the need for a modification to provide that the Governor’s Council appointments are Delaware residents, rather than members of the executive board to make it easier to fill Council vacancies and to apply technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. The Committee approved legislation (SB 109) modifying the entity’s statute and making technical corrections. As of the writing of this report, SB 109 has not yet been enacted.

*Governor's Council on Agriculture – 2019 Clean-Up Project with the Governor’s Office*

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. The project identified the need to require 7 members rather than “up to” 7 members, to remove the party balance requirement to make it easier to fill Council vacancies, and to apply technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. The Committee approved legislation (SB 135) modifying the entity’s statute and making technical corrections. As of the writing of this report, SB 135 has not yet been enacted.

*Architectural Accessibility Board – 2019 Clean-Up Project with the Governor’s Office*

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. The project identified the need to update the statute in order to alleviate difficulties in filling Board vacancies and to apply technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. The Committee approved legislation (SB 110) modifying the entity’s statute and making technical corrections. As of the writing of this report, SB 110 has not yet been enacted.

*Advisory Council to the Division of Developmental Disabilities Services – 2019 Clean-Up Project with the Governor’s Office*

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. The project identified the need to update the statute by changing Council member terms to “up to” 3 years and removing political party balance in order to make it easier to fill Council vacancies and to apply technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. The Committee approved legislation (SB 111) modifying the entity’s statute and making technical corrections. As of the writing of this report, SB 111 has not yet been enacted.

*Council on Development Finance – 2019 Clean-Up Project with the Governor’s Office*

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. The project identified the need to simplify the party balance requirement to make it easier to fill Council vacancies, update language regarding appointments and quorum, and to apply technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. The Committee approved legislation (SB 112) modifying the entity’s statute and making technical corrections. As of the writing of this report, SB 112 has not yet been enacted.

## **Entities under Review in 2020**

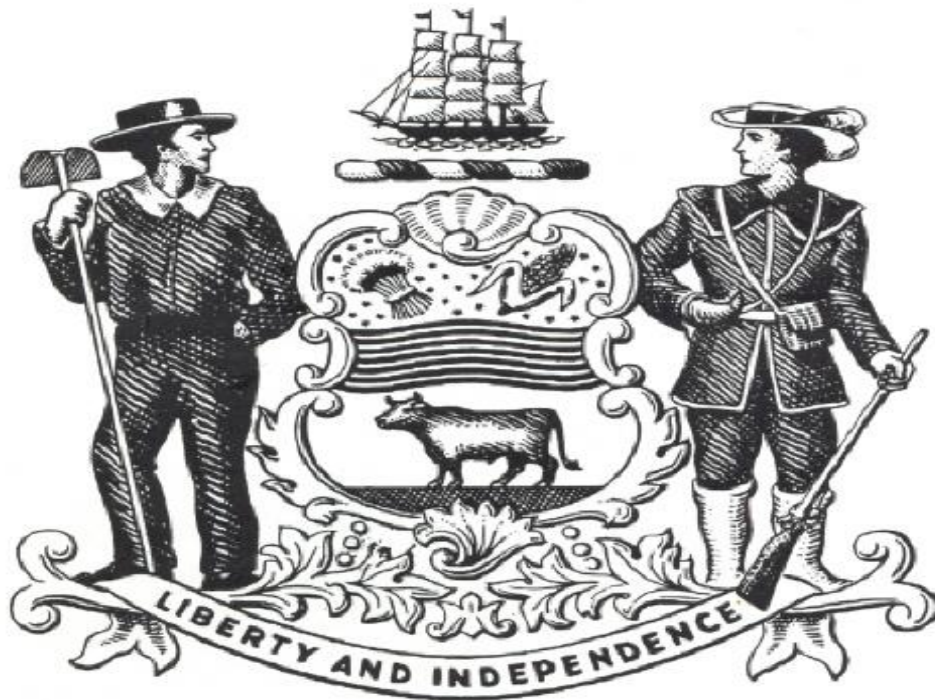
The Committee selected the following entities for review in 2020:

- **Delaware Interscholastic Athletic Association (DIAA)**
- **Delaware Health Resources Board**
- **Conservation District Operations Program: DNREC Division of Watershed Stewardship**
- **Delaware Nursing Home Resident Quality Assurance Commission**



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# Joint Legislative Oversight & Sunset Committee 2019 Final Report



## Council on Correction

*A Report to the Governor and the  
150<sup>th</sup> General Assembly of the State of Delaware.*

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June 2019

Final Report for the Council on Correction completed by:  
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302-744-4114

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## ***Final Report Prepared By:***

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions (“entity”). The purpose of review is to determine if there is a public need for an entity and, if so, to determine if it is effectively performing to meet that need. Generally, an entity is not reviewed more than once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) guides the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten to twelve month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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## **2019 Final Recommendations: Council on Correction**

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that the Council on Correction (“Council”) be held over, and report before the Committee in January 2020.

**RECOMMENDATION 1:** The Council on Correction shall continue, subject to any further recommendations that the Committee adopts.

**Status:** Passed

**RECOMMENDATION 2:** Terminate the Council on Correction as it exists under the Department of Correction (“DOC”) in Chapter 89, Title 29, and re-assign its duties to the Criminal Justice Council (“CJC”) in Chapter 87, Title 11 through a new CJC subcommittee to advise the DOC.

**Status:** Tabled at the 5/6 meeting.

**RECOMMENDATION 3:** Add to the Council’s governing statute in Chapter 89, Title 29 that the Council shall submit an annual report, no later than December 1 of each calendar year, to the Commissioner and Deputy Commissioners of the Department of Correction, the Governor, and the General Assembly. The report shall include:

- Meeting agendas and minutes.
- Training and development completed.
- All legislative priorities and activities.
- All correspondence with the Department of Correction.
- Goals and priorities for the coming year.

**Status:** Passed

**RECOMMENDATION 4:** The Committee will sponsor a bill, drafted by the Committee’s Legislative Attorney, to make technical corrections to the Council’s governing statute, including standard removal and quorum provisions, codifying the Council’s updated by-laws, and adding language requiring the Council to hold at least 1 meeting per year in each county and any other meeting called at the discretion of the Chair.

**Status:** Passed

**RECOMMENDATION 5:** Add to the Council's governing statute that the Council will update its website and keep it updated to include current information on each of the following: Council members, statute, by-laws, meeting agendas, meeting minutes, and contact information for the public. The Council will post its meeting agendas, locations, and minutes on the State's public meeting calendar.

**Status:** Passed

**RECOMMENDATION 6:** The Commissioner of the Department of Correction shall provide the Council with 3 direct updates per year, at a scheduled Council meeting, of the Department's current priorities.

**Status:** Passed

**RECOMMENDATION 7:** The Council shall seek and attend the following training within 1 year: Maintaining FOIA compliance and Board leadership and cohesion training.

**Status:** Passed.

**RECOMMENDATION 8:** The Council shall meet with willing families of the Delaware inmates who were moved to Pennsylvania and provide a written report to the Commissioner of the Department of Correction, the Governor, and the General Assembly. The report shall not contain personal and identifying information of the inmates.

**Status:** Passed.

**RECOMMENDATION 9:** The Council on Correction is held over and shall report to the Committee in January 2020.

**Status:** Passed

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**MEMORANDUM**

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**TO:** Senator S. Elizabeth Lockman, Chair  
Representative David Bentz, Vice Chair  
Members of the Joint Legislative Oversight and Sunset Committee

**FROM:** Mark Brainard Jr., JLOSC Analyst

**SUBJECT:** Council on Correction Holdover Status Update

**DATE:** April 9, 2019

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**Background**

In 1975, an 11 member advisory Council on Corrections (“Council”) was created in conjunction with the establishment of the Department of Correction (“Department”). The Council was charged with serving in an advisory capacity to the Commissioner of the Department of Correction and to consider matters relating to the development and progress of the correctional system of Delaware.

In 2014, the Council was re-established with Senate Bill 256, reducing the size from 11 to 7 members with the requirement to meet no less than 6 times per year. The Council may study, research, plan, and advise on matters it deems appropriate.<sup>1</sup>

The 7 members of the Council are appointed by the Governor for terms up to 3 years to allow that no more than 3 members’ terms expire in any year. The Council members elect a Chair and Vice Chair of the Council on an annual basis. Three new members were appointed in October 2017, and 4 members are serving on expired terms.<sup>2</sup> Delaware Code does not require the Department to provide staff. In practice, the Department provides the Council with 1 merit employee, who assists in scheduling meetings, taking minutes, and contacting Council members when needed. The Deputy Commissioner of Corrections represents the Department at Council meetings, and responds on the Department’s behalf.<sup>3</sup>

The Council receives complaints from members of the public regarding inmate medical issues, inmate treatment, delay of inmate release, and the inmate grievance process. No specific data, such as a number of complaints reviewed, investigated, or forwarded to the Department’s Deputy Attorney General are available.

The Council has had problems achieving quorum. Recent changes to membership have addressed this issue, and the Council has made quorum at most meetings held since June 2018. The Council is not assigned a Deputy Attorney General.

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<sup>1</sup> See 29 *Del. C.* §8905.

<sup>2</sup> See Appendix A for the Council’s updated member roster.

<sup>3</sup> Analyst’s Note: As outlined in the 2018 Final Report, each Department of Corrections staff member devotes less than 5% of their time to the Council.

During the 2018 JLOSC review process, the Committee explored a number of issues and opportunities for improvement including the clarification of the Department of Correction's role with the Council, additional documentation of Council activity through meeting minutes, and the role the Council has with the general public.

### **Reason for the Hold Over**

The Council of Correction was held over following the adoption of several recommendations requiring further action from the Council:

**Recommendation:** The Council shall draft and submit to the Committee amendments to Title 29, §8905 – to remove a Council member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

**Update:** No language to update the statute has been submitted. However, the Council adopted the language in its by-laws to address removal of a member.<sup>4</sup>

**Recommendation:** The Council will provide an annual report to the Commissioner and Deputy Commissioners of the Department of Correction, as well as the Governor, and General Assembly

**Update:** No annual report has been submitted.

**Recommendation:** To allow members of the public opportunities to attend Council meetings, the Council shall rotate meeting locations in all three counties.

**Update:** According to the state public meeting calendar, 3 of the 5 scheduled Council meetings since June 2018 were held in Kent County with 1 being held in New Castle County. The scheduled meeting in Sussex County did not have a quorum.

- July 11, 2018: First State Action Agency: Georgetown, DE
  - Note: On the state's public meeting calendar, this meeting's location is listed as the Correction Central Administration Building in Dover. However, the agenda posted reflects the Georgetown location. Additionally, this meeting did not have a quorum.
- September 25, 2018: Hilltop Lutheran Neighborhood Center: Wilmington, DE
- November 27, 2018: Correction Central Administration Building: Dover, DE
- February 26, 2019: Correction Central Administration Building: Dover, DE
- April 24, 2019: Correction Central Administration Building: Dover, DE

**Recommendation:** The Council shall undergo training to support development and leadership as a unit.

**Update:** Since June of 2018, the Council has completed tours of Department facilities: James T. Vaughn Correctional Center, Baylor Women's Correctional Institution, and

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<sup>4</sup> See letter D of Section 3.2 of the Council's by-laws in Appendix B.

Sussex Correctional Institution. At the Council's April 24, 2019 meeting, the Council discussed advocating for funding of further development and leadership training opportunities.

**Recommendation:** Finalize Council by-laws.

**Update:** The Council has created and adopted by-laws included in the 2018 JLOSC Final Report.<sup>5</sup>

### **Other Recommendations Proposed by the JLOSC in 2018**

By way of further background information, JLOSC tabled the following recommendations:

**Recommendation:** The Council shall be terminated and applicable sections of the Code shall be amended to remove the Council.

**Recommendation:** To avoid lack of clarity, and mission vagueness, the Department of Correction should provide guidance to the Council to craft a clearly defined mission and goals. The mission and goals may include how the Council, as a citizen advisory council can contribute to the achievement of common goals.

**Update:** The by-laws, adopted by the Council, did create a mission.

**Recommendation:** Remove the Council on Correction from Title 29, Chapter 89. Duties of the Council will be assumed by the Criminal Justice Council, who will add a sub-committee to advise the Department of Correction. Legislation will be drafted by the Criminal Justice Council to include these duties under Title 11, Chapter 87

**Update:** The Criminal Justice Council remains receptive of the idea to assume the duties of the Council on Correction as a sub-committee to advise the Department of Corrections. This is contingent on the FY 20 state budget process in which the Criminal Justice Council is hoping to attain a state-supported staff position. Currently, much of their staff is paid through federal dollars tied to specific policy initiatives. With a state-supported staff position, the Criminal Justice Council would be able to assume the duties of the Council on Correction and offer training and development opportunities to its members.

### **Additional Comment from the Committee Analyst**

The Council's website can be found at <http://www.doc.delaware.gov/views/coc.blade.shtml>. The single webpage contains the governing statute and a list of members that does not reflect the current makeup.

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<sup>5</sup> See Appendix B for the complete by-laws.

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## **APPENDIX A**

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### **Council on Correction Members**

**Darryl Chambers, Chair  
Researcher**

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**Appointed 9/29/2017**

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**Appointed 9/29/2017**

**Jane Hovington, Director**

Shechinah Empowerment Center

**Jehovahrohi@aol.com**

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**Appointment EXPIRED 12/23/2016**

**Joseph Paesani**

Retired DOC

Adjunct Wilmington University

IRB Member for University of Delaware

**Joseph.p.paesani@wilmu.edu**

(302) 824.2408

**Appointment EXPIRED 12/23/2016**

**Edwin C. Perez**

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## **APPENDIX B**

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### **Operating By-laws Delaware Council on Corrections**

#### **ARTICLE I MISSION**

##### **Section 1.1 Mission:**

The Delaware Council on Corrections (hereinafter “Council”) is dedicated to furthering the goal of the Delaware Department of Correction: to protect the public in its supervision of adult offenders through the provision of safe, humane services, programs, and facilities. More specifically and in furtherance of that mission, the Council shall collect and evaluate the best available data and rely upon that when making its recommendations to the Department of Correction. At the forefront of the Council’s goals are: (1) enhancing the safe and orderly operation of the Department of Correction’s facilities to include both offender and employee alike, (2) enhancing the effectiveness of corrections policies, (3) ensuring system and offender accountability and (4) fostering a constructive and respectful relationship between the Department of Correction and the public it serves.

#### **ARTICLE II DUTIES**

**Section 2.1 Duties of the Council:** The Duties of the Council are prescribed in Title 29, DE Code, §8905:

- A. The Council shall serve in an advisory capacity to the Commissioner of Correction and shall consider matters relating to the development and progress of the correctional system of this State.
- B. The Council shall consider such other matters as may be referred to it by the Governor, the Commissioner and the Chief of the Bureau of Adult Correction.
- C. The Council may study, research, plan and advise the several chiefs, the Commissioner and the Governor on matters it deems appropriate to enable the Department to function in the best manner.
- D. The Council shall consider matters relating to the development and progress of the adult correctional system of this State, including correctional facilities and services provided to adult offenders.

#### **ARTICLE III MEMBERSHIP**

##### **Section 3.1 Council Voting Members:**

- A. The Council shall be composed of 7 members.
- B. There shall be a Chair and a Vice Chair.
- C. Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

##### **Section 3.2 Appointments, Term, Vacancy, Removal:**

- A. Appointments and Term:
  - a. Members shall be appointed by the Governor for terms up to three years to allow that no more than three members' terms expire in any year.
  - b. The Council members shall elect a Chair and Vice Chair of the Council annually.
- B. Vacancies:
  - a. Vacancies shall be filled by appointment and at the pleasure of the Governor
  - b. As vacancies occur for any reason, the Council Chair shall inform the Office of the Governor
  - c. As vacancies occur:
    - i. the Council may recruit qualified candidates for the Governor's consideration and;
    - ii. the Council may vote to recommend qualified applicants to the Governor for his/her consideration of appointment, and;
    - iii. the Council Chair shall submit the recommendation, application, and explanation as to why this applicant is a qualified candidate for the vacancy and;
    - iv. the Governor will review the recommendation along with all other applicants
- C. All applicants must submit a State of Delaware Governor's application form to the Office of the Governor prior to any Governor appointment
- D. Removal:
  - a. The failure by a member to attend 2 consecutive or 3 regular meetings of the Council per year without cause shall be construed as a request by that member to resign from the Council. In order to have just cause considered, the member:
    - i. must contact the Chair or Vice-Chair prior to the day of the second scheduled meeting to be missed and;
    - ii. must inform the Chair or Vice-Chair that they are unable to attend the second scheduled meeting and;
    - iii. ask for consideration to be excused
  - b. The Chair or Vice-Chair shall inform the Governor when a member has resigned for lack of attendance. They may also request that the Governor accept the resignation, and appoint a new member.
  - c. Active participation in Council meetings, sub-committees and Commission activities is a requirement for continued membership and, in implementation of this standard, each member must serve on at least one sub-committee with full participation
  - d. All Governor appointments are at the pleasure of the Governor and at any time can be removed or replaced.

## **ARTICLE IV OFFICERS**

### **Section 4.1 Council Officers, Powers and Duties:**

- A. Council officers shall consist of the following:
  - a. Council Chair

- b. Council Vice-Chair
- c. Secretary
- B. The Council Chair:
  - a. shall have general charge of the business of the Council;
  - b. may delegate any of his/ her powers to the Vice-Chair or, in their absence, a Council member;
  - c. shall designate the Vice-Chair to preside over a meeting in the event of his/ her absence;
  - d. shall be an ex-officio member of all other assigned sub-committees
  - e. shall designate a Council member to Chair each active sub-committee
- C. In the event of a vacancy in the Chair position, the Governor shall designate the Vice-Chair to become Acting Chair. The Acting Chair shall have all of the powers of and be subject to all of the restrictions upon the Chairperson until the Council elects a replacement Chair.
- D. The Council Vice-Chair:
  - a. shall be a member of the Executive Committee
  - b. shall, upon designation by the Chair, perform the duties of the Chair and when so acting, he/ she shall have all of the powers of and be subject to all the restrictions of the Chairperson;
  - c. shall upon designation by the Governor, become the Acting Chair and when so acting, shall have all of the powers of and be subject to all the restrictions upon the chairperson;
  - d. when a Vice-Chair vacancy occurs, the Council shall elect a replacement;
- E. The Secretary:
  - a. shall ensure that all scheduled Council or sub-committee meetings are posted in advance and approved minutes are recorded and posted in accordance with legal requirements as described in 20 Del. C. §10001-10006;
  - b. shall ensure that all Council meetings have documentation for minutes;
  - c. shall perform such other duties as the Council may from time to time prescribe

#### **Section 4.2 Officer Terms:**

- A. The Chair and Vice-Chair shall be elected annually by the Council members and shall serve at the pleasure of the Governor
- B. The Secretary shall be elected annually by the Council. If a vacancy occurs in the position of Secretary prior to the election, the Council shall elect a new Secretary at the next scheduled full Council meeting

### **ARTICLE V COUNCIL BUSINESS**

#### **Section 5.1 Meetings:**

- A. The business of the Council shall be conducted by Council members at regularly scheduled meetings.
- B. The Council shall meet a minimum of six times per year.

C. Sub-Committee meetings shall be scheduled by the designated Chair of each sub-committee, as often as needed in order to accomplish deadlines for completion of assigned projects or to continue all work in progress.

**Section 5.2 Quorum:**

- A. A quorum shall consist of a majority of current members.
- B. A video conference appearance is acceptable for a quorum, when there is a meeting place posted and available for the public.
- C. A member may participate in a meeting by phone, but may not vote via phone nor be counted as a quorum member.
- D. For quorum purposes all public meeting will be noticed and conducted in accordance with 29 Del. C. §10001-10006, except that the subcommittees may conduct interim telephonic meetings to determine agendas, strategies, or conduct other business in preparation for a public meeting.

**ARTICLE VI COMMITTEES**

**Section 5.1 Executive Committee:**

- A. The Executive Committee shall be a continuing Committee and:
  - a. shall consist of all Council officers;
  - b. shall have general supervision of the affairs of the Council between meetings;
  - c. may as emergencies arise and immediate action is required, act on behalf of the Council, and shall report any such interim actions at the next scheduled Council meeting, such action may be ratified by the full Council;
  - d. shall be subject to the orders of the Council and none of its acts shall conflict with action taken by the Council;
  - e. may recommend to the Council additions and deletions to the Council roster, and monitor Council members' performance and attendance at meetings;
  - f. may recommend to the Council changes for policies and procedures;
- B. The Council Chair shall preside over the Executive Committee

**Section 5.2 Sub-Committees:**

- A. The Council &/or the Executive Committee may establish sub-committees as necessary to carry out business, responsibilities or assigned projects.
- B. The Council &/or Executive Committee shall review and decide when a sub-committee is essential and vote to establish such sub-committee.
- C. The Council Chair shall designate a Council member to Chair the assigned sub-committee.
- D. The sub-committee Chair shall:
  - a. assign all sub-committee meeting dates;
  - b. ensure the meetings are posted, followed by posted minutes, according to statutory requirements;
  - c. ensure that the progress of all sub-committee is presented to the Council members, at each scheduled Council meeting through the duration of a project

E. Non-Council members may participate in sub-committee meetings and work. The sub-committee members may reach out for assistance as needed to accomplish the assigned project.

F. All established sub-committee members shall be responsible for accomplishing assigned projects in a timely manner.

G. Sub-committee critical decisions should be addressed at scheduled Council meetings for a vote, prior to the sub-committee taking action. If the sub-committee is working with a deadline and needs sudden action and there is not a scheduled Council meeting to address the need in a timely manner, the Chair of the sub-committee shall address the Executive Committee for a decision.

## **ARTICLE VI AMENDMENTS**

### **Section 6.1 By-Law Amendments:**

These by-laws may be amended at any public meeting that has been posted 14 days in advance with the agenda and has 2/3 of all active members as described in Section 5.2A.

## **ARTICLE VII CONFLICT OF INTEREST**

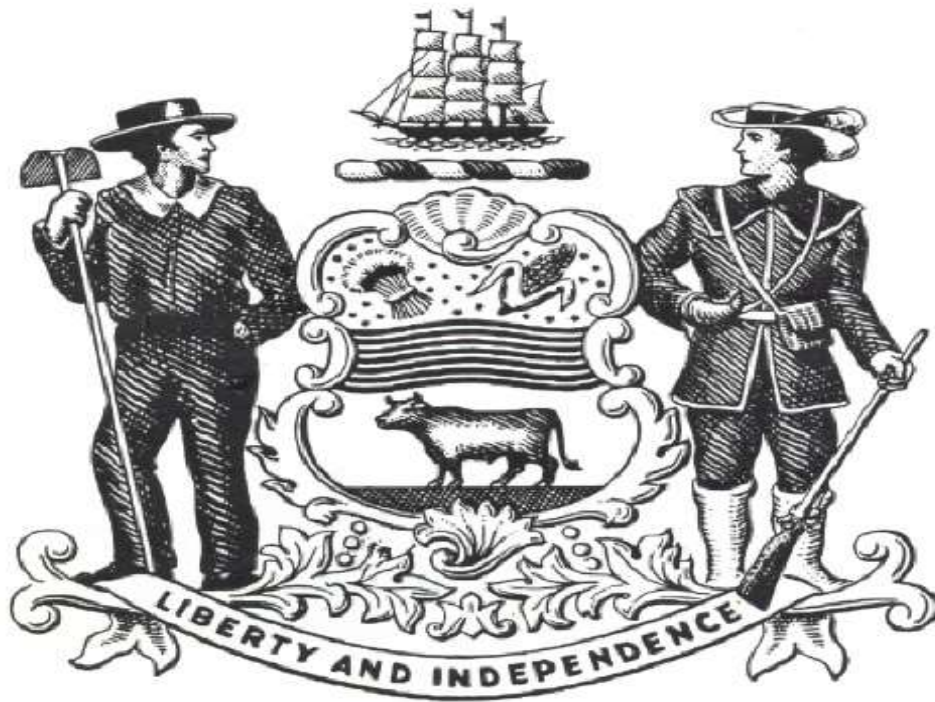
### **Section 7.1 Conflict of Interest**

No member of the Council may cast a vote on any matter that is likely to provide a direct benefit to that member, or to an organization or business in which that member has an interest, or with which that member has a relationship. No member shall otherwise give the appearance of a conflict of interest as defined more specifically under 29 Delaware Code Chapter 58, the "State Employees', Officers' and Officials' Code of Conduct," which is incorporated herein by reference thereto.



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# Joint Legislative Oversight & Sunset Committee 2019 Final Report



## Adult Protective Services

*A Report to the Governor and the  
150<sup>th</sup> General Assembly of the State of Delaware.*

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June 2019



Final Report for Adult Protective Services completed by:  
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Representative Andria L. Bennett

Representative Sherry Dorsey Walker

Representative Jeffrey N. Spiegelman

Representative Lyndon D. Yearick

Senator Anthony Delcollo

Senator Stephanie L. Hansen

Senator Ernesto Lopez

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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## **2019 Final Recommendations: Adult Protective Services**

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that Adult Protective Services (“APS”) be held over, and report before the Committee in January 2020.

**RECOMMENDATION 1:** APS shall continue, subject to any further recommendations that JLOSC adopts.

**Status:** Approved

**RECOMMENDATION 2:** The Committee will sponsor a bill to make technical corrections to APS’s entire governing statute, including Chapter 39, Title 31.

**Status:** Approved

**RECOMMENDATION 3:** The DSAAPD staff development and training department shall require at least 1 training position to specialize in APS training topics, offer all DSAAPD staff training in APS topics, and facilitate group registration for the National Adult Protective Services Association (NAPSA) Certificate Program and track progress of completion.

**Status:** Approved

**RECOMMENDATION 4:** The DSAAPD Staff Development and Training Department shall develop an electronic survey to assess staff knowledge of APS topics, practices, and procedures in order to identify key training priorities.

**Status:** Approved

**RECOMMENDATION 5:** All staff members, including nurses, who handle APS cases, must complete APS specific training offered by organizations such as Multi-Disciplinary Adult Services Training and Evaluation for Results (MASTER), the University of Illinois at Chicago (UIC), and National Adult Protective Services Association (NAPSA). Additionally, staff shall enroll in the NAPSA Certificate Program.

**Status:** Approved

**RECOMMENDATION 6:** The DSAAPD Staff Development and Training Department shall network with local and state law enforcement to provide field staff and supervisors with self-defense training and techniques for defusing dangerous situations.

**Status:** Approved

**RECOMMENDATION 7:** All staff members who specifically handle financial exploitation cases shall complete financial abuse training from providers such as MASTER and the Association of Certified Financial Crime Specialists.

**Status:** Approved

**RECOMMENDATION 8:** DSAAPD shall create internal training and written procedures for handling cases of self-neglect and assessing capacity in the setting of self-neglect using resources and scholarly articles available from sources such as NAPSA, the National Institute of Health, Adult Protective Services Technical Assistance Resource Center (APR TARC), and other subject matter experts on the topics.

Option: DSAAPD suggested codifying training requirements under the APS statute for the purpose of advancing the section.

**Status:** Approved with option.

**RECOMMENDATION 9:** The MOUs on file with the Attorney General’s Office and the Division of Developmental Disabilities Services were signed more than 5 years ago and should be reviewed and updated.

Option 1: DSAAPD shall review current practices and create additional MOUs with agencies needed to facilitate proper handling of APS cases. Example: Form a MOU with the State Police to provide consult for APS cases.

Option 2: DSAAPD shall review and define interagency roles, response times, and processes for reported cases of abuse, neglect, or financial exploitation cases and include agreed upon roles, response times, and processes in MOU documents.

**Status:** Approved with both options.

**RECOMMENDATION 10:** DSAAPD shall review and implement any needed revisions to policy and procedures regarding investigative time frames.

Option: DSAAPD suggested codifying investigative time frames under the APS statute to establish a time frame for State responses to reports of abuse, neglect, or financial exploitation.

**Status:** Approved with option.

**RECOMMENDATION 11:** DSAAPD shall make the following modifications to their website:

- a. Provide easy to locate APS topics to educate the public and provide clear information on what the agency can and cannot do in APS cases.
- b. Provide APS program criteria.
- c. Provide information on APS topics in the “information” section of the website.
- d. Make the link to APS more prominent on DSAAPD’s website; the link is currently hidden in the “all services” section.
- e. Provide information for family members and caregivers on how to prevent, identify, and provide help in cases of abuse and neglect, including self-neglect.
- f. Make 24-hour report line prominent on website.

**Status:** Approved

**RECOMMENDATION 12:** DSAAPD shall review its current staffing structures department-wide to determine whether appropriate numbers of personnel and resources are dedicated to handle APS cases, or if personnel or resources in other areas would be better dedicated to APS casework. DSAAPD will follow State procedures to request any necessary reclassifications.

**Status:** Approved

**RECOMMENDATION 13:** DSAAPD shall partner with high schools and colleges and participate in recruitment events in order to highlight careers available within DSAAPD and the need for professionals in the field of APS. The aging population will continue to grow and outreach is essential to acquire talented individuals interested in the subjects of social work, elder care, and APS.

**Status:** Approved

**RECOMMENDATION 14:** DSAAPD shall review its current operating hours and made modifications as necessary. DSAAPD has suggested extending APS operations hours to 8:00 a.m. through 8:00 p.m.

**Status:** Approved

**RECOMMENDATION 15:** Based on DSAAPD’s request, JLOSC will sponsor a bill define “self-neglect” in Chapter 39, Title 31, using the federal Elder Justice Act’s definition as a guide:

The term “self-neglect” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including—

- a. obtaining essential food, clothing, shelter, and medical care.
- b. obtaining goods and services necessary to maintain physical health, mental health, or general safety; or
- c. managing one’s own financial affairs.

Note: If this recommendation is approved, the Committee’s legislative attorney will include in the draft bill any additional language that may be required to ensure the definition does not conflict with current Delaware law regarding the determination of an individual’s capacity.

Option: This recommendation shall be drafted as a bill separate from other legislation resulting from these recommendations.

**Status:** Approved with option.

**RECOMMENDATION 16:** JLOSC will sponsor a bill to modify § 3910(a), Title 31, APS’s “duty to report” statute, to require medical practitioners to file a report.

Option: This recommendation shall be drafted as a bill separate from other legislation resulting from these recommendations.

**Status:** Approved with option.



**RECOMMENDATION 17:** According to DSAAPD, the APS Advisory Council is not providing meaningful input or oversight to APS activities. DSAAPD suggested that APS oversight should be incorporated into the already established Council on Services for Aging and Adults with Physical Disabilities. DSAAPD also suggested developing an Elder Justice Multidisciplinary Team. The following are options to implement these suggestions.

Option 1: JLOSC will sponsor a bill to remove the APS Advisory Council from § 3903, Title 31 and incorporate APS advisory duties and add Council members representing elder justice partners into the Council on Services for Aging and Adults with Physical Disabilities under § 7915, Title 29.

Option 2: JLOSC will sponsor a bill to modify the APS Advisory Council under § 3903(a), Title 31 to create an Elder Justice Multidisciplinary Team. Members will be appointed by the Governor rather than the DHSS Secretary, serve no more than 2, 3-year terms, and include:

- APS.
- Aging services network personnel.
- Geriatricians/physicians.
- Law enforcement.
- Prosecutors.
- Psychologists/neuropsychologists.
- Victim-witness advocates/victim service providers.

Option 3: If Option 2 is adopted, some of the professional members listed in Option 2 may serve as consultants-as-needed rather than as council members.

**Status:** Approved with all three options.

**RECOMMENDATION 18:** APS is held over and shall report to the Committee in January 2020.

**Status:** Approved

**A NOTE ABOUT THIS FINAL REPORT**

Much of the information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled “Additional Comment from the Committee Analyst.” It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the Joint Legislative Oversight and Sunset review processes.

## **AGENCY HISTORY**

The Delaware General Assembly created Adult Protective Services (“APS”) in July 1982.<sup>1</sup> The legislative intent of APS’s enabling statute states:

The General Assembly recognizes that many adult citizens of this State are subject to psychological or physical injury or exploitation because of physical or mental disability, impairment, illness or condition or other causes which render them incapable of providing for their basic daily living needs. The General Assembly, therefore, intends through this chapter to establish a system of services for impaired adults designed to protect their health, safety and welfare. The intent is to authorize only the least possible restrictions on the exercise of personal and civil rights and such restrictions may be permitted only when consistent with proven need for services.<sup>2</sup>

The enabling legislation places APS within the Department of Health and Social Services (“DHSS”), where was a unit of the Office of the Secretary. In October 2017, APS was moved under DHSS’ Division of Services of Aging and Adults with Physical Disabilities (“DSAAPD”), to promote better coordination of services between APS and DSAAPD’s Community Services Program.

## **JUSTIFICATION AND NEED FOR EXISTENCE**

Delaware has one of the country’s fastest growing senior populations. Since APS was established in the 1980s, the state’s older population has grown at an astounding rate, just as it has all over the country. This correlates into a growing number of vulnerable adults.

Nationally, elder abuse is one of the most underreported social problems. Nearly 84% of incidents go unreported. Impaired adults are often unable to protect themselves against incidents of abuse, neglect, or exploitation. Many do not know where to turn for assistance. Others are incapable of seeking help because they are physically dependent on their abuser, unable to leave their home, or unable to use a telephone. Many are simply too embarrassed or frightened to ask for help. They may be reluctant to press charges against the abuser, especially if the abuser is a family member.

Today, Delaware’s older population is growing at a much faster rate than it was in the 1980s. The state’s older population is projected to be 16% higher by 2020 than the current population of 210,368. According to U.S. Census figures, 7% of older Delawareans speak a language other than English, and 15.4% of men and 29.2% of women aged 65 years and older live alone. Almost 28% of those aged 60 and older living in Delaware report having a disability, and 7.3% are below the poverty level.

Vulnerable populations are at risk for abuse, neglect, and financial exploitation. Higher rates of abuse occur when an older adult is in poor physical health, has dementia, is isolated, or has a lower income. Those living with a spouse or child are at increased vulnerability. In Delaware, family members perpetrated 82% of the 350 elderly abuse cases, including physical, verbal, and sexual abuse in 2015. In 2015, APS received nearly 1,700 complaints of abuse, neglect, and exploitation, and conducted 1,226 investigations. At 453, financial exploitation was the second largest category of complaints made, an increase in complaints of 240% since 2005. APS is addressing the issue of financial exploitation through employing trained advocates, grant money funding, and collaborating with the Department of Justice and the Delaware Division of Health Care Quality.

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<sup>1</sup> See 31 *Del. C.* §§ 3901-3913.

<sup>2</sup> See *id.* at § 3901.

APS recently found an additional area of vulnerability within the opioid epidemic. Investigations and services provided regarding opioid abuse are becoming more complex. Based on national trends, APS expects this area of vulnerability to increase in the oncoming years.

APS acknowledges that it has not fully alleviated abuse, neglect, and exploitation despite the actions taken to ensure the well-being and independence of Delaware’s vulnerable adults. However, more investigations occur every year, alleged victims and their families receive much-needed services, and the public are being educated on the issues of vulnerable adult abuse, neglect, and exploitation.<sup>3</sup> APS provides needed social service interventions for vulnerable adults, and APS staff is specifically trained in serving this population.

## **JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY**

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) has never reviewed APS.

## **MISSION, GOALS, OBJECTIVES, AND AUTHORITY**

APS was established as a comprehensive and coordinated services delivery system to protect vulnerable adults who, due to their disabilities, are unable to provide for their daily living needs and are consequently subject to psychological or physical injury or exploitation. Its mission is to ensure the safety and well-being of elderly and adults with physical disabilities who are in danger of being mistreated and unable to protect themselves. APS believes that their enabling legislation does accurately reflect their mission.

APS provides social services intervention for those who are living in the community, 18 years or older, physically or mentally impaired, and subject to abuse, neglect, or exploitation. APS’s ultimate goal is achieved when an adult with an infirmity or incapacity is living in an environment that has been made safer after a potential or actual danger has been removed.

The following objectives are in place to aid APS in reaching its ultimate goal:

- To mobilize the individual's own strengths and to utilize whatever resources are available in the community in order to improve the adult's
- Ability to function and to live their life in safety and dignity, with as much satisfaction, enjoyment and comfort, as possible.
- To prevent unnecessary or inappropriate institutionalization.
- To safeguard the rights and resources and maintain the physical and psychological health of the adult.
- To prevent injury to the infirm or incapacitated adult or to others.
- To recognize and preserve the right of self-determination of the adult.
- To seek appropriate legal alternatives (such as guardianship) only after all other remedies are exhausted, unless an emergency arises which requires a legal alternative.
- To establish a coordinated system of services to protect the health, safety and welfare of infirm or incapacitated adults by utilizing both the informal and formal support network.

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<sup>3</sup> Analyst’s Note: The statute uses the term “alleged victim,” so that will be used throughout this report. See 31 *Del. C.* § 3902(3).

To meet its objectives and goals, APS has in place the following policies relating to the referral and investigating process:

- Policy #600 Referrals and Screening: Referral Process – It is the policy of Adult Protective Services that the program will receive initial reports of abuse, neglect and/or exploitation of infirm adults through the Harmony for APS system, or if a financial institution, through a fax using appropriate forms. Any person having reasonable cause to believe that an adult person is infirm or incapacitated and is in need of protective services shall report such information to the Aging and Disability Resource Center (ADRC) hotline.
- Policy #601 Referrals and Screening: Intake and Screening Process – It is the policy of Adult Protective Services that the program will screen all referred suspected reports of abuse, neglect and/or exploitation for possible investigation by APS. If the report is appropriate for APS investigation, the report will be assigned to an APS investigator. If the report is not appropriate, it will be referred to another service provider so that additional supports may be arranged for the alleged victim.
- Policy #700 Investigation: Home Visits and Assessments – It is the policy of Adult Protective Services that the program will investigate all reports of abuse, neglect and/or exploitation of infirm adults that have been determined to meet APS criteria. Investigations consist of in person visits with an alleged victim and the completion of several assessments, all done in the Harmony for APS system.
- Policy #701 Investigation: Service Delivery – It is the policy of Adult Protective Services that the program will adequately provide service planning for alleged victims of abuse, neglect and/or exploitation in need of protective services.
- Policy #702 and #703 Investigation: Voluntary and Involuntary Services – It is the policy of Adult Protective Services that the program will provide services in a voluntary manner only, unless involuntary services are needed for the safety of the alleged victim.<sup>4</sup>
- Policy #704 Investigation: Consult Services – It is the policy of Adult Protective Services that the program may seek assistance from medical professionals for evaluation of alleged victims. These evaluations may assist the investigator in the identification of specific problems, identification of the impact of those problems as well as identification of possible modes of treatment.
- Policy #705 Investigation: Health Treatment Guidelines Emergency – It is the policy of Adult Protective Services that, in the event of an emergency, the program will seek necessary health treatment services in a voluntary manner only, unless involuntary services are needed for the safety of the alleged victim.
- Policy #706 Investigation: Health Treatment Guidelines Non-Emergency – It is the policy of Adult Protective Services that the program will seek necessary health treatment services in a voluntary manner only, unless involuntary services are needed for the safety of the alleged victim.

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<sup>4</sup> Involuntary services are only available to alleged victims who lack capacity, by order of the Court of Chancery.

- Policy #707 Investigation: Death of an Alleged Victim – It is the policy of Adult Protective Services that the program may need to seek support from the police and medical examiner in the event of the death of an alleged victim.
- Policy #708 Investigation: Family Responsibility – It is the policy of Adult Protective Services that the program may need to seek assistance from the alleged victim's family during the investigation.

Since October 2017, APS has been housed within DSAAPD. To ensure alleged victims are receiving necessary services, APS and DSAAPD coordinate with the following state entities:

- Division of Child Support Services.
- Division of Developmental Disabilities Services.
- Division of Health Care Quality.
- Division of Medicaid & Medical Assistance.
- Division of Public Health.
- Division of Social Services.
- Division of Substance Abuse and Mental Health.
- Division for the Visually Impaired.
- Department of Justice.
- Criminal Justice Council.
- Office of the Public Guardian.
- Various law enforcement departments.

Four APS policies address the coordination of services:

- Policy #900 Coordination with Other Agencies: Memorandum of Understanding – It is the policy of Adult Protective Services that services within the State of Delaware should be viewed as service and consultation resources.
- Policy #901 Coordination with Other Agencies: Interagency Coordination – It is the policy of Adult Protective Services that the program may need to coordinate with other agencies within the State in order to provide appropriate services to the alleged victim.
- Policy #902 Coordination with Other Agencies: Interstate Coordination – It is the policy of Adult Protective Services that the program may need to coordinate with other agencies outside of the State in order to provide appropriate services to the alleged victim.
- Policy #903 Coordination with Other Agencies: After-Hours – It is the policy of Adult Protective Services that the program will not investigate reports of abuse, neglect, or exploitation during after-hours, but will provide emergency services until 8:30pm Monday through Friday.

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APS has Memorandums of Understanding (“MOUs”) with the following agencies, to further coordinate services:<sup>5</sup>

- Department of Justice – The purpose of this agreement is to delineate APS and Department of Justice’s responsibility in serving victims of crime, through the Elder Abuse and Exploitation project.
- Division of Developmental Disabilities Services – The purpose of this agreement is to provide appropriate services in a timely and efficient manner to individuals who may have developmental disabilities and may require protective services.
- Division of Health Care Quality (formerly the Division of Long Term Care Residents Protection) – The purpose of this agreement is to clarify roles within DSAAPD and Division of Health Care Quality Investigation Section, to fully investigate financial exploitation reports.

APS’s policies and procedures are reviewed with support from DSAAPD’s Planning Unit. As of the date APS submitted its questionnaire, the APS Administrator was reviewing the policies and procedures.<sup>6</sup> Once review is completed, the administrator will suggest any changes to the DSAAPD Planning Unit, who will work with APS to draft revisions to the policies and procedures. DSAAPD’s Leadership Team will review and approve proposed changes, and forward proposed changes to DSAAPD’s two Deputy Attorneys General (“DAGs”), Valerie Farnan and Karin Volker. After the DAGs’ review, APS will implement the changes.

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<sup>5</sup> APS supplied MOUs. Sections referenced in this report are found in their entirety in Appendix B.

<sup>6</sup> APS provided an update in March 2019 and indicated that its administrator reviews APS policies and procedures. The Planning Unit also reviews them annually.

## COMPOSITION AND STAFFING

### Agency Organization and Staffing:

DSAAPD, the DHSS division under which APS is organized, is divided into several units:<sup>7</sup>

Office of the Director	Service Delivery & Program Unit	Adult Day Services Unit	Administrative Services Unit	Planning Unit	Long Term Care Unit
Oversight for all agency services & operations; signing contracts; strategic planning, program development, & quality assurance initiatives; provides leadership for advocacy & coordination efforts; oversees emergency planning activities.	Provides info & assistance, options counseling, case management, nursing support, & caregiver support; operates DE Aging & Disability Resource Center, <b>Adult Protective Services</b> , & Nursing Home Transition Program.	Operates Smyrna Adult Day Services.	Develops requests for proposals, selects service providers, & oversees the functioning of agency contracts; handles the budgeting, accounting, clerical, & computer-related functions within the agency.	Strategic planning, emergency planning, program dvpmt, housing policy dvpmt, grant oversight, & public relations; oversees the agency's health & wellness programs, Alzheimer's Disease Initiative, DE Senior Medicare Patrol Program, & Lifespan Respite Program.	Operates DE Hospital for the Chronically Ill and Governor Bacon Health Center.

Twenty-five of the 648 employees who work for the various DSAAPD units are dedicated to APS:

- 16 full-time, Merit; 2 are currently vacant.
- 5 casual seasonal; 2 are currently vacant.
- 4 temporary staff; 1 is currently vacant.

DSAAPD has 586 merit employees and 7 appointed employees. None of the appointments are within APS. APS was organized under DSAAPD in October 2017; temporary or contractual employees have been provided to APS since the end of fiscal year 2018.

APS's effectiveness is hindered by insufficient staffing and growing demands caused by an increase in Delaware's older population. Each year APS receives more complaints of abuse, neglect, or exploitation. Investigations are becoming more complex as problems such as financial exploitation have become increasing issues. Frequent staff turnover and the length of time it takes to recruit, hire, and train new staff, has made addressing the influx of complaints difficult. APS consistently shifts workloads to cover staffing shortages and prioritize investigations based on need. In addition, APS currently contracts 4 positions through federal sub-grant funding which is expected to end in 2019. These 4 positions have provided much-needed services to alleged victims served by APS. APS is looking for ways to keep these positions sustainable, but future funding is not guaranteed.

<sup>7</sup> Analyst's Note: This information was taken from <https://www.dhss.delaware.gov/dhss/dsaapd/sections.html> on March 29, 2019.



Most APS staff positions are hired through the competitive State of Delaware merit system, with recruitment completed through the Department of Human Resources. Contract positions funded with grant funding are hired through a staffing agency.

APS staff orientation can take anywhere from 3 to 9 months before a new hire has the competency to start working independently under peer and supervisory guidance. In addition to the APS orientation, all new hires must complete DSAAPD's general orientation, which is 2 days.

APS staff also attends several training opportunities throughout the year. Each staff member has the opportunity to attend local conferences related to APS's work. Several APS staff members attend the National Adult Protective Services Association ("NAPSA") conference annually. NAPSA has also developed, in conjunction with the Academy for Professional Excellence, an online certification program that offers a core curriculum around APS practice issues. No APS staff member has completed the NAPSA online certificate program, but all APS staff have taken NAPSA courses. DSAAPD would use training funds to support any APS staff member who wishes to complete the NAPSA online certificate program.

APS offered the following training opportunities in 2016, 2017, and 2018:

<b>Name of Training</b>	<b>Year of Training</b>	<b>Number Completed</b>	<b>Training Hours</b>	<b>Approved ?</b>	<b>Certificate</b>	<b>Evaluation</b>
APS Orientation – <i>See Policy 501: Orientation</i>	Ongoing	25	80	Yes	Yes	On File
Financial Exploitation	2017	40	1	Yes	Yes	On File

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APS also staff participated in trainings on skill building and best practices in the field of elder justice:<sup>8</sup>

Name of Training	Year of Training	Number of APS Staff Completed	Training Hours	Approved?	Certificate	Evaluation
Forensic Injury ID and Documentation	2016/2017	4	8	Yes	Yes	on file with vendor
Aging and Addictions	2017	5	8	Yes	Yes	on file
Aging and Mental Illness	2017	5	8	Yes	Yes	on file
Investigative Interviewing for Abuse	2017	3	8	Yes	Yes	on file
Hoarding and Community Interventions	2017	4	8	Yes	Yes	on file with vendor
Life Conference	2017	1	8	Yes	Yes	on file with vendor
NAPSA National Conference	2017/2018	7	25	Yes	Yes	on file
Fight Against Domestic Violence	2018	4	8	Yes	Yes	on file
Self Determination	2018	6	8	Yes	Yes	on file with vendor

APS staff publishes information about its public activities in a variety of ways. The following is not an exhaustive list, but shows the diversity and frequency of information shared:

- DSAAPD and DHSS social media.
- *Guide to Service for Older Delawareans and Persons with Disabilities* – distributed statewide every 2 years.
- Hope Prevention Support Safety Advocate Brochure.
- APS General Brochure.
- APS Financial Exploitation Brochure.
- Informational flyers – Topics include signs of elder abuse, how to stop elder abuse, signs of identity theft, and how to spot frauds and scams.
- Money Smart for Older Adults Resource Guide.
- *Your Disaster* Checklist.
- World Elder Abuse Awareness Day activities – celebrated every year in June.

<sup>8</sup> Analyst's Note: Information supplied indicates that the sources of these training courses are through local partners, including the Office of the Public Guardian and the Department of Justice. APS supervisors conduct APS orientation.

APS distributes or makes available the above resources at all public events and conferences that APS or DSAAPD representatives attend. APS reaches out to alleged victims, professionals, and the general community with these resources. In addition, case managers provide information during home visits depending on the needs of the alleged victims. APS provides information to the community and other agencies upon request and provides presentations throughout the year. Some of the presentations given in the past three years include:

- APS General – provided to Christiana Care, Delaware Hospice, Delaware Hospital for the Chronically Ill, Delaware Long Term Care Ombudsman Program, Delaware Quality Assurance Commission, Delaware State Constables, Justice of the Peace Court, Kent General Hospital, and Speech Language Pathology Program at University of Delaware.
- Financial Exploitation – provided to Christiana Care, DHSS, Department of Justice, Delaware Victims’ Rights Taskforce JEVS Human Services, Lewes Senior Center, Modern Maturity Center, New Castle County Police Department, and Windsor Apartments.

#### **APS Advisory Council Composition and Purpose:**

APS’s governing statute required the creation of an advisory council, now known as the Adult Protective Services Advisory Council (“Advisory Council”), “to provide oversight by promulgating rules and regulations for the establishment of the adult protective services system program.”<sup>9</sup>

The Advisory Council further governed by by-laws.<sup>10</sup> Article II of the by-laws states the purpose of the Advisory Council is to assist DHSS “in the development of [and] continuance of a comprehensive and coordinated system of protective services for infirm and incapacitated adults in the state.” Under its by-laws, the Advisory Council is to meet quarterly; a quorum of 5 is needed to hold a meeting and a simple majority vote is needed to pass a motion.<sup>11</sup>

The Advisory Council currently has 12 members and 4 vacancies.<sup>12</sup> The APS statute requires representatives from the following:<sup>13</sup>

- Office of the Public Guardian.
- Division of Social Services.
- DSAAPD.
- Division of Developmental Disabilities Services.
- Division of Substance Abuse and Mental Health.
- Division of Public Health.
- Elder Law Program.
- Delaware Emergency Medical Services Oversight Council.
- 3 members from either the medical profession or the general public.

The Advisory Council’s by-laws further define that membership is by appointment of the DHSS Secretary, composed of a minimum of 15 members, and terms are a minimum of 2 years with the

<sup>9</sup> See 31 *Del. C.* § 3903(a). Analyst’s Note: APS regulations could not be found in the Register of Regulations.

<sup>10</sup> Analyst’s Note: § 3903(a) requires only the creation of an advisory council; other than establishing who must be represented on the council, however, the council itself is not codified. The by-laws are in Appendix A.

<sup>11</sup> Analyst’s Note: Public meeting dates have not been located for the 2019 calendar year.

<sup>12</sup> Analyst’s Note: Supplemental materials supplied to the JLOSC provided information for only 11 current Council members.

<sup>13</sup> See 31 *Del. C.* § 3903(a).

option of an open-ended appointment. If a council member is absent on 2 consecutive occasions without an excuse or designee, the council will warn the member of possible suspension.

Current Advisory Council members are:<sup>14</sup>

	<b>NAME</b>	<b>Title</b>	<b>Date/Year of Appointment <sup>15</sup></b>
1.	Katie McMillan - Chair	Public Member	02/1988
2.	Linda Brittingham	Corporate Director of Social Work, Christiana Care Health Services	09/1994
3.	Walter Donaldson, CFE	Managing Director, Freeh Group International Solutions	02/09/2009
4.	Anthony Frabizzio, Esq.	Attorney, Heckler & Frabizzio	08/1991
5.	Linda Lawrence	New Castle County APS Supervisor, Division of Services for Aging and Adults with Physical Disabilities	2017
6.	Carrie Magathan	Kent/Sussex APS Supervisor, Division of Services for Aging and Adults with Physical Disabilities	2017
7.	Staci Marvel	Chief of Operations, Division of Medicaid and Medical Assistance	2015
8.	Barbara McCaffery	Social Service Chief Administrator, Division of Services for Aging and Adults with Physical Disabilities	2014
9.	Lexie McFassel, Esq.	Public Guardian, Office of the Public Guardian	2013
10.	Marki Mosley	Victim Service Officer, New Castle County Department of Public Safety	1991
11.	Stacy Watkins	Social Service Senior Administrator, Division of Development Disabilities Services	2017

The Advisory Council currently has 4 vacancies. Reasons for the vacancies are unknown. The DHSS Secretary has been advised of and authorized to fill the vacancies. The vacancies are:

- A representative of the Department of Justice, since 2008.
- A representative of medical community, since 2010.
- A representative of the legal community, since 2012.
- A representative of the Division of Substance Abuse and Mental Health, since 2016.

#### **Advisory Council Compensation:**

Under the council's by-laws, members serve without compensation.

#### **Advisory Council Member Trainings:**

Training is not required, though training opportunities are shared at meetings.

<sup>14</sup> Listed as provided in supplemental materials provided to the JLOSC.

<sup>15</sup> Not all members listed had exact dates of appointments; most were provided with only year of appointment.

**Conflicts of Interest:**

If a conflict of interest arises, the member is asked to leave the Council. This has happened only one time since the council's inception.<sup>16</sup>

**Groups Served or Affected by APS Actions:**

<b>Interest Groups (Groups affected by APS actions or represent others served by or affected by APS actions)</b>		
<b>Group or Association Name/Contact Person</b>	<b>Address</b>	<b>Phone Number Fax Number Internet Address</b>
Bayhealth	640 S. State St. Dover, DE 19901	P: (302) 674-4700 <a href="https://www.bayhealth.org/">https://www.bayhealth.org/</a>
Beebe Healthcare	424 Savannah Rd. Lewes, DE 19958	P: (302) 645-3300 <a href="https://www.beebehealthcare.org/">https://www.beebehealthcare.org/</a>
Central Delaware Speech-Language Pathology, Inc.	541 S. Red Haven Ln. Dover, DE 19901	P: (302) 674-3350 F: (928) 752-3350 <a href="https://www.centraldelawareslp.com">https://www.centraldelawareslp.com</a>
CHEER Delaware	546 South Bedford St. Georgetown, DE. 19947	P: (302) 515-3040 F: (302) 515-3071 <a href="https://www.cheerde.com/">https://www.cheerde.com/</a>
Christiana Care Health System	4755 Ogletown Stanton Rd, Newark, DE 19718	P: (302) 733-1000 <a href="https://christianacare.org/">https://christianacare.org/</a>
Delaware Association of Bank Security	N/A	Email: <a href="mailto:MLawson@artisansbank.com">MLawson@artisansbank.com</a> <a href="http://www.dabs.org/index.html">http://www.dabs.org/index.html</a>
Delaware Center for Justice, Inc.	100 W. 10th St., Suite 905 Wilmington, DE 19801	P: (302) 658-7174 <a href="http://www.dcjustice.org/">http://www.dcjustice.org/</a>
Delaware Department of Justice	Carvel State Building 820 N. French St. Wilmington, DE 19801	P: (302) 577-8400 <a href="https://attorneygeneral.delaware.gov/">https://attorneygeneral.delaware.gov/</a>
Delaware Division of Developmental Disabilities Services	1056 South Governor's Avenue, Suite 101 Dover, DE 19904	P: (302) 744-9700 F: (302) 744-9632 <a href="https://dhss.delaware.gov/dhss/ddds/">https://dhss.delaware.gov/dhss/ddds/</a>
Delaware Division of Medicaid & Medical Assistance	DHSS Herman Holloway Campus, Lewis Building 1901 N. DuPont Highway New Castle, DE 19720	P: (302) 255-9500 <a href="https://dhss.delaware.gov/dhss/dmma">https://dhss.delaware.gov/dhss/dmma</a>
Delaware Division of Substance Abuse and Mental Health	Herman M. Holloway, Sr. Campus 1901 N. Du Pont Hwy, Main Bldg. New Castle, DE 19720	P: (302) 255-9399 F: (302) 255-4428 <a href="https://dhss.delaware.gov/dsamh/">https://dhss.delaware.gov/dsamh/</a>
Delaware Hospice	100 Patriots Way Milford, DE 19963	P: (302) 856-7717 <a href="https://www.delawarehospice.org/">https://www.delawarehospice.org/</a>

<sup>16</sup> Analyst's Note: Additional details not provided.

<b>Interest Groups (continued)</b> <b>(Groups affected by APS actions or represent others served by or affected by APS actions)</b>		
<b>Group or Association Name/Contact Person</b>	<b>Address</b>	<b>Phone Number Fax Number Internet Address</b>
Delaware MENTOR	28417 DuPont Blvd. Units 1 & 2 Millsboro, DE 19966	P: (302) 934-0512 F: (302) 934-0514 <a href="https://www.de-mentor.com/">https://www.de-mentor.com/</a>
Delaware State Police	1441 N. DuPont Highway P.O. Box 430 Dover, Delaware 19903-0430	P: (302) 739-5901 <a href="https://dsp.delaware.gov/">https://dsp.delaware.gov/</a>
Delaware Victim Rights Task Force	N/A	Email: <a href="mailto:DelVRTF@gmail.com">DelVRTF@gmail.com</a> <a href="https://sites.google.com/site/delawar-evrtf/home">https://sites.google.com/site/delawar-evrtf/home</a>
Home Instead Senior Care	755 A Walker Rd., Dover, DE 19904	P: (302) 697-6435 <a href="https://www.homeinstead.com">https://www.homeinstead.com</a>
JEVS Human Services	913 N Market St. Wilmington, DE 19801	P: (302) 654-3950 <a href="https://www.jevshumanservices.org/">https://www.jevshumanservices.org/</a>
Justice of the Peace Courts	Concord Professional Building 1010 Concord Ave Wilmington, DE 19802	P: (302) 577-2550 F: (302) 577-2526 <a href="https://courts.delaware.gov/jpcourt/">https://courts.delaware.gov/jpcourt/</a>
The Lewes Senior Center	32083 Janice Rd. Lewes, DE 19958	P: (302) 645-9293 <a href="https://www.lewesseniorcenter.org/">https://www.lewesseniorcenter.org/</a>
Long Term Care Ombudsman Program	Herman M. Holloway, Sr. Campus 1901 N. Du Pont Hwy, Main Bldg. New Castle, DE 19720	P: (800) 223-9074 F: (302) 255-4453 <a href="https://dhss.delaware.gov/dsaapd/ltpco.html">https://dhss.delaware.gov/dsaapd/ltpco.html</a>
Modern Maturity Center	1121 Forrest Ave. Dover, DE 19904	P: (302) 734-1200 F: (302) 674-1265 <a href="http://www.modern-maturity.org/">http://www.modern-maturity.org/</a>
Nanticoke Health Services	801 Middleford Rd. Seaford, DE 19973	P: (302) 629-6611 <a href="http://www.nanticoke.org/">http://www.nanticoke.org/</a>
New Castle County Police Department	Public Safety Building 3601 North DuPont Highway New Castle, DE 19720	P: (302) 395-8171 <a href="https://www.nccde.org/238/Police">https://www.nccde.org/238/Police</a>
Seasons Hospice & Palliative Care	4755 Ogletown Stanton Rd. Newark, DE 19718	P: (866) 443-9856 <a href="https://www.seasons.org/">https://www.seasons.org/</a>

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<b>National Organizations or Other Government Entities (that serve as an information clearinghouse or regularly interact with APS)</b>		
<b>Group or Association Name/Contact Person</b>	<b>Address</b>	<b>Phone Number Fax Number Internet Address</b>
Administration for Community Living	330 C St SW Washington, DC 20201	P: (202) 401-4634 <a href="https://www.acl.gov/">https://www.acl.gov/</a>
National Adult Protective Services Association	PO Box 96503 PMB 74669 Washington, DC 20090	P: (202) 370-6292 <a href="http://www.napsa-now.org/">http://www.napsa-now.org/</a>
National Association of States United for Aging and Disabilities	1201 15th St. NW, Ste. 350 Washington, DC 20005	P: (202) 898-2578 F: (202) 898-2583 <a href="http://www.nasuad.org/">http://www.nasuad.org/</a>
National Center on Elder Abuse	1000 South Fremont Ave., Unit 22 Bld. A-6 Alhambra, CA 91803	<a href="https://ncea.acl.gov/">https://ncea.acl.gov/</a>
The National Clearinghouse on Abuse in Later Life	1245 E. Washington Ave., Suite 150 Madison, WI 53703	P: (608) 255-0539 F: (608) 255-3560 <a href="http://www.ncall.us/">http://www.ncall.us/</a>
US Department of Justice Elder Justice Initiative	950 Pennsylvania Ave., NW Washington, DC 20530-0001	P: (202) 514-2000 <a href="https://www.justice.gov/elderjustice">https://www.justice.gov/elderjustice</a>

### **COMPLAINT AND APPEALS PROCESS**

APS complaints received are taken seriously and addressed immediately. Procedures for complaints from an alleged victim are outlined in DSAAPD Policy Memorandum Number 12 that covers the Standards for Service Action Notification and Appeals. Under this policy, alleged victims may appeal APS investigations and service plan decisions. Alleged victims' guardians and those who have power of attorney may also participate in the appeals process.

APS must provide alleged victims a written notice within 10 business days' of a denial, reduction, or termination of APS services, investigation, or service plan decision. An APS investigator sends written notices using the Notification of Service Action Form. The written appeal process and an appeal form are included in the mailing.

The following actions do not result in formal notifications and may not be appealed:

- Placement on service waitlists.
- Changes in service providers due to contract terminations.
- Service-wide reductions to participants due to funding limitations.

Otherwise, the process for an appeal is based on the voluntary or involuntary nature of the underlying investigation or service plan decision:

#### Appeals of Involuntary Investigations and Decisions:

A grievance involving an involuntary APS investigation or service plan decision must go through the Court of Chancery.

#### Appeals of Voluntary Investigations and Decisions:

A grievance involving a voluntary investigation or decision goes through DSAAPD. An alleged victim has 30 calendar days from the date of the Notification of Service Action Form

to appeal. All appeals must be in writing, using the Service Action Appeal Form. Accommodations are provided if requested in the written appeal. An alleged victim's caregiver, guardian, or representative may also appeal on the alleged victim's behalf. DSAAPD must receive a Release of Information form, proof of guardianship, or power of attorney before DSAAPD staff may speak with anyone other than the alleged victim.

Within 10 business days of receiving an appeal, the DSAAPD Social Services Chief Administrator of Operations ("CAO") must conduct a review of the decision under appeal. After the review, the alleged victim is sent the CAO's determination in a Notification of Service Action Appeal Review, along with a Service Action Final Review Request Form ("Form"). The Form provides instruction on how to request a final review if the alleged victim disagrees with the CAO's decision.

An alleged victim has 5 business days from receipt of the Notification of Service Action Appeal Review to request a final review, which may be made by phone or in writing using the Form. Final review requests must be sent to the DSAAPD Deputy Director. The Deputy Director reviews the appeal; speaks to the alleged victim, if appropriate; makes a final decision; and notifies the alleged victim in writing using the Notification of Service Action Final Review. All appeals end at this level and no further action may be taken.

During an appeal, services already in place will continue until the appeal is resolved. Services that have been denied are not provided unless an appeal is successful.

Complaints regarding APS staff members are directed to the DHSS Director of Constituent Relations, APS supervisors, and DSAAPD Director's Office. The complaints are usually resolved through the APS supervisors; complaints unresolved at that level are escalated to the Director's Office, and then to the Secretary's Office, at which point it is usually handled through the DHSS Director of Constituent Relations.

Typical complaints include dissatisfaction that APS made an announced visit, a desire for more services, internal complaints, and routine customer service complaints. Complaints are usually resolved with a single phone call from the DHSS Director of Constituent Relations. There are no known complaints from the media, Attorney General's Office, or consumer groups. Most complainants are individuals closely involved with an alleged victim.

DSAAPD does not have a formal record of complaints over the past 3 years, as APS was not housed in the Division; the numbers below are based on the recollection the DHSS Director of Constituent Relations.

	<b>Calendar Year 2016</b>	<b>Calendar Year 2017</b>	<b>Calendar Year 2018</b>
Total Complaints Received	1	1	1
Total Complaints Investigated	1	0	1
Total Complaints Found to be Valid	0	0	0
Total Complaints Forwarded to the Attorney General	0	0	0
Total Complaints Resulting in Disciplinary Action	0	0	0



There have been no reports of employee misfeasance over the last 3 years, and there have been no disciplinary actions related to complaints of how an APS staff member handled a case. If a complaint is received regarding a staff member's behavior, the staff member may receive a verbal or written write-up, have cases reassigned, be required to attend meetings with the complainant or the Cabinet Secretary, or other actions as directed. Policy changes may be implemented based on the nature of situations reported. DSAAPD also uses the process outlined in the Merit Rules to address employee conduct, specifically Merit Rule 12.1:

Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

### **Audit History:**

DSAAPD – not including APS – was audited for the federal fiscal year covering October 1, 2016, through September 30, 2017. The audit was completed for the federal fiscal year covering October 1, 2016, through September 30, 2017. There were 2 findings related to DSAAPD:

1. There was a material weakness in internal control over compliance in the SF-425 Federal Financial Report reporting. The Division is reviewing its formal policy regarding the review and approval of supporting documentation received and is modifying its review structure by re-educating staff of the structure and policies in place regarding federal financial reporting.
2. There was significant deficiency in internal controls over compliance for allowable costs, Time and Effort certifications. The Division is reviewing its formal policy regarding the review and approval of supporting documentation received and is modifying its review structure by re-educating staff of the structure and policies in place regarding Time and Effort reporting.

At the time of questionnaire completion, DHSS was in the middle of its 2018 audit. Results received in early 2019 did not impact APS.

### **ENACTED LEGISLATION IMPACTING APS**

#### **State:**

136<sup>th</sup> General Assembly, June 1991, HB 190 – Added definitions for abuse, caregiver, mistreatment, and neglect. It also added the violations associated with abuse, neglect, and exploitation of an infirm adult.

147<sup>th</sup> General Assembly, September 2014, HB 417 – Updated the definition of "exploitation" and added a new definition for "financial exploitation," and created a duty to report mandate for all financial institutions.

149<sup>th</sup> General Assembly, July 2018, HB 362 – Broadened confidentiality of APS records to include anyone in the Department of Health and Social Services that provides adult protective services to the alleged victim and their relatives.

#### **Federal:**

The Older Americans Act: Title VII, Chapter 3 Vulnerable Elder Rights Protection, reauthorized in 2016, this act specifically established a funding line for States to carry out the development and enhancement of programs to address elder abuse, neglect, and exploitation. APS received \$23,710 in

fiscal year 2018. Use of the allotment is also described in the Act. Delaware consistently provides input to its national partners, including the Administration for Community Living and other national advocacy groups who will be working on the next reauthorization, after fiscal year 2019.

The Elder Justice Act, enacted into law in 2010, is the first comprehensive legislation to address the abuse, neglect, and exploitation of older adults at the federal level. The law authorized a variety of programs and initiatives to better coordinate federal responses to elder abuse, promote elder justice research and innovation, support Adult Protective Services systems, and provide additional protections for residents of long-term care facilities. Some of the programs, from which APS benefits include:

- State Grants to Enhance Adult Protective Services.
- Voluntary Consensus Guidelines for State APS Systems.
- National Adult Maltreatment Reporting System (“NAMRS”).

## **PENDING LEGISLATION**

APS is not aware of any pending legislation that would affect its operations.

## **ADMINISTRATIVE PROCEDURES ACT COMPLIANCE**

APS has not promulgated any rules or regulations in accordance with the Administrative Procedures Act and currently has no proposals to do so.

## **FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE**

DHSS’s FOIA coordinator receives FOIA requests via email or postal service. If a FOIA request pertain to APS, the FOIA coordinator may contact DSAAPD for information. However, due to the extensive confidentiality provision for APS in the Delaware Code, a FOIA request is denied unless it is for general statistics. APS, and by extension DHSS, have never received complaints that they violated FOIA. DSAAPD DAGs have not reviewed provisions of the Public Integrity Act with Division members.<sup>17</sup>

## **FISCAL INFORMATION**

### **Actual Revenue:**

<b>Fiscal Year</b>	<b>Source(s)of Funds</b>	<b>Amount \$\$</b>
<b>FY19 (budgeted)</b>		
\$968,739.20	General Funds	
\$229,660	Federal Funds	<b>TOTAL: \$1,198,399.20</b>
<b>FY18 (actual)</b>		
\$968,739.20	General Funds	
\$395,160.51	Federal Funds	<b>TOTAL: \$1,363,899.71</b>
<b>FY17 (actual)</b>		
\$968,739.20	General Funds	
\$398,712.51	Federal Funds	<b>TOTAL: \$1,367,451.71</b>

<sup>17</sup> Analyst’s Note: More discussion of FOIA is in the Additional Comment from the Committee Analyst section.

**State v. Federal Funds:**

APS receives federal and state funds as follows:

- Total amount of **federal** dollars: **\$1,198,399.20**.
- Type of federal funds: Older Americans Act Title VII, Federal State Grant to Enhance APS, and Victims of Crime Act (“VOCA”).
- State/Federal Match Ratio: There is no match requirement for Title VII funds. The State Grant to Enhance APS, has a 25% match. VOCA funding, has a 20% match.
- Total amount of **state** dollars: **\$2,906,217.60**.

**Breakdown of FY18 budgeted expenses:**

Line Item	Source(s) <sup>18</sup>	Amount of Expenditures
Personnel and Fringe		\$1,124,663.71
Contractual		\$206,023.00
Travel		\$4,833.00
Supplies		\$28,380.00
		<b>TOTAL \$1,363,899.71</b>

APS does not collect revenue from fines or fees. Over the last three fiscal years, APS received three federal grants that positively impacted its revenue, allowing it to hire additional staff on a short term basis and aiding it in addressing some of the agency’s more pressing needs, including the purchase of a new data management system.

**ACCOMPLISHMENTS**

APS has made several significant accomplishments over the past few years. Prior to joining DSAAPD in October 2017, APS worked with DSAAPD to receive grant funding for three projects:

- The Financial Exploitation Advocate Program – Advocates work directly with victims of financial exploitation statewide, in operation since 2016.
- Mediware Harmony for APS Data Management System Project – To strengthen and improve APS systems statewide. APS implemented a data management system to allow for data collection, reporting, and infrastructure, including the technical ability to provide comprehensive case component data to Administration for Community Living's National Adult Maltreatment Reporting System (“NAMRS”). Prior to the new system, APS could not extract data on APS operations. Implemented in 2017.
- After-Hours Emergency Care Coordinators Program – Coordinators work after hours to give alleged victims access to emergency support services at the time of need, in operation since early 2018.

Now that APS is under the purview of DSAAPD, there is better coordination of communication and services, resulting in a less fragmented approach to abuse, neglect, and exploitation cases. APS, along with all DSAAPD community services programs, takes a holistic, person-centered approach to helping people. All of this has helped to address complex cases such as those concerning self-neglect in a much more advantageous way.<sup>19</sup> In other jurisdictions, APS is often the entity that handles self-neglect cases; in Delaware, DSAAPD served inadequate self-care cases. With APS as a unit within DSAAPD,

<sup>18</sup> Analyst’s Note: Source information not provided; the chart is copied here as received.

<sup>19</sup> Analyst’s Note: The issue of self-neglect was central to JLOSC’s decision to review APS. See the Additional Comments from the Committee Analyst for more discussion.

self-neglect cases may be assigned, at the discretion of leadership, to nursing, case management, or APS units within the organization.

## **CHALLENGES**

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### **Growing Caseloads:**

A steady increase in APS referrals corresponds with the increase in Delaware's older population. In 2014, APS received 1,355 complaints and completed 866 investigations.<sup>20</sup> Just 2 years later, in 2016, complaints and investigations jumped to 1,728 and 1,272, respectively. Funding for APS, however, remained stagnant. Caseload sizes are growing due to the number of investigations, putting additional burdens on staff.

### **Growing Case Complexity:**

Referrals are becoming more complex as more financial exploitation cases are referred to APS. In just 10 years, APS saw nearly a 240% increase in financial exploitation cases. While this is consistent with national trends, APS is not adequately equipped to handle such complex cases without proper training and staffing levels. APS works with other agencies, including Department of Justice and the Division of Health Care Quality, to address these complex cases, but the increase in referrals remains a challenge.

### **Staff Safety:**

APS case managers consistently place themselves in dangerous situations when conducting investigations. Homes may be infested with bed bugs or other pests, often due to hoarding. APS also can come in contact with dangerous individuals because of the investigation. This has caused a high turnover of staff, which can create a backlog of investigations. When a new APS staff member joins the unit, a lengthy orientation process takes place. Caseworkers must complete the training before they can independently take on an investigation. The time taken for necessary training adds to the backlog of investigations or case closures.

### **Public Perception:**

There is a general perception that APS is mandated to help any vulnerable adult who needs protection. Comparisons are made to child protective services. When working with adults who have capacity, however, APS services are voluntary. There is a lack of understanding of an individual's civil rights and the ability to refuse services offered by APS and other agencies.

## **OPPORTUNITIES FOR IMPROVEMENT**

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### **Operations:**

Extend APS hours to 8:00 am until 8:00 pm. APS currently operates fully staffed from 8:30 am to 4:30 pm. Unlike many other states that address only cases of those aged 60 and older, APS addresses cases of vulnerable adults aged 18 and older.<sup>21</sup> APS has 2 Emergency Care Coordinators that work until 8:00 pm, funded through a federal grant that expires on June 30, 2019, but they provide only coordination of services and no investigative services. Having the ability to investigate and provide services to alleged victims in the evening would alleviate any backlog and help the most vulnerable at their time of need. If new hours are implemented, APS will need to reevaluate its staffing structure and operational processes to better align with the new hours.

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<sup>20</sup> Not all complaints are deemed appropriate for investigation for a variety of reasons, including that the alleged victim does not want an investigation.

<sup>21</sup> Analyst's Note: According to a 2012 APS survey report conducted by the National Association of States United for Aging and Disabilities, 37 out of 50 states surveyed stated that suitable age of APS clients was 18+.

**Develop the Elder Justice Multidisciplinary Team:**

Delaware should create an Elder Justice Multidisciplinary Team to review cases in which prior interventions for alleged victims were unsuccessful or in which multiple agencies are involved and there is a lack of clarity regarding each agency's role. Membership would include high-level professionals and advocates from cross-systems who work in the area of elder justice. By discussing these “real life” situations, teams are also likely to identify systemic problems that can be addressed through advocacy, training, or coordination.

**Updates to the APS statute:**

- **Investigative Time Frames** – APS's governing statute does not provide time frames for investigating alleged incidents or specify processes for doing so. The statute should establish the state response to reports of abuse or neglect, including roles, time frames, and processes by codifying what is already in APS policies and procedures. APS currently follows national best practices in adhering to specific time frames.
  - As a point of reference, the abuse of children covered under 16 *Del. C.* § 906, clearly defines the state response time frame for reports of abuse or neglect, and includes defining information pertaining to roles and processes.
- **Privileged Communication** – The statute does not recognize privileged communication. Language could state, “No legally-recognized privilege, except that between attorney and client and that between priest and penitent in a sacramental confession, applies to a situation involving known or suspected abuse, neglect, or exploitation, and does not constitute grounds for failure to report or to give or accept evidence in any judicial proceeding relating to abuse or neglect.”
- **Training and Information** – The statute does not address training and information topics. Language could state, “The Department shall conduct ongoing training programs to advance the purpose of this section. The Department shall continuously publicize the existence of the 24-hour report-line to those required to report abuse or neglect pursuant to § 3910 of this title of their responsibilities and to the public the existence of the 24-hour statewide toll-free telephone number to receive reports of abuse or neglect.”
- **Neglect** – Update the statutory definition of “neglect” to include “self-neglect.”
- **Eliminate the APS Advisory Council** – The Council's statutory purpose is to promulgate rules and regulations to establish the adult protective services system program.<sup>22</sup> The Advisory Council currently provides little oversight or advisement. APS oversight should be within the already-established Council on Services for Aging and Adults with Physical Disabilities. An at-large member of that council could be dedicated to APS representation.<sup>23</sup>

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<sup>22</sup> Analyst's Note: This is under 31 *Del. C.* § 3903(a). However, no regulations for the operation of adult protective services program could be located in the Registry of Regulations.

<sup>23</sup> Analyst's Note: Legislation is required to ensure APS representation on the Council on Services for Aging and Adults with Physical Disabilities. See 29 *Del. C.* § 7915(c).

## **ADDITIONAL COMMENT FROM THE COMMITTEE ANALYST**

### **Self-Neglect:**

JLOSC decided to review APS after a 2018 case involving self-neglect was brought to JLOSC's attention. In summary, police responded to a report that an elderly couple was living in deplorable conditions. Ultimately, the couple was admitted to the hospital and the police contacted code enforcement who condemned the house. As part of the police investigation, a service provider reported that it had contacted APS about the couple. The police learned that DSAAPD had attempted to help the couple four times, but the man, who also spoke for the woman, would not voluntarily accept assistance. The police noted that their main concern was not to single out an agency, but wanted to ensure there was adequate funding and resources to assist with cases involving "self neglect."

At JLOSC's August 2018 meeting regarding the case, the DSAAPD Director explained that APS never engaged with the couple. DSAAPD handled the initial referrals, which it received as a request for services by a concerned neighbor. The DSAAPD Social Service Chief Administrator explained that DSAAPD offered services to the couple on four separate occasions but the man refused them; attempts to contact or speak to the woman were unsuccessful. DSAAPD cannot enter a home without permission, and adults may refuse services. DSAAPD's nurse believed that the man was mentally competent, even though his decisions were clearly poor. DSAAPD case managers tried to establish trust with the couple, to increase the likelihood that they would accept services, but were unsuccessful. DSAAPD requested the Community Ombudsman visit the home; the result was the same level of resistance.

The DSAAPD case was open when the police contacted the agency. DSAAPD was still going to the home to offer services. DSAAPD emphasized that APS was organized under DSAAPD in October 2017 so the organizations could work better together. At the time, the focus of APS had narrowed to victim and perpetrator relationship allegations, including abuse, caregiver neglect, and exploitation. APS viewed a situation with no perpetrator as out of their purview. DSAAPD disagreed, and they worked on broadening APS's focus. APS is now able to work together with DSAAPD's Community Services Program on other types of allegations, including self-neglect, to better serve vulnerable Delawareans.

APS did not include in their initial responses to the JLOSC questionnaire any information regarding the issue of self-neglect, or any detailed plans to address the growing issue. The only mention of self-neglect in their initial responses was under the explanation of APS's accomplishments. APS later clarified their responses regarding the Opportunities for Improvement section of the JLOSC questionnaire, indicating they wished to define self-neglect under their existing statute. They also provided the following in response regarding how DSAAPD served "inadequate self-care cases":

All self-neglect cases are referred to DSAAPD's nursing unit. Nursing conducts a home visit and addresses all medical needs and resolve any emergent needs. DSAAPD's Community Services Program ("CSP") will work with nursing and the client to develop a care plan where services can be put into place. In 2018, DSAAPD received 393 self-neglect referrals and did 734 home visits for these clients. In comparison, CSP received a total of 1,734 referrals in 2018 and made 2,261 home visits. There are no laws or regulations that govern how DSAAPD handles these cases, but DSAAPD does look at national best practices in doing so.

Under current law, APS's ability or duty to address cases of self-neglect is unclear, the statute does not specifically define self-neglect. Many states have adapted self-neglect into the jurisdiction of their APS units providing community education and outreach to the public on the topic of self-neglect and protection services for those who exhibit self-neglect behavior. Self-neglect cases are becoming the

most common condition handled by APS units nationwide; according to the Arizona Attorney General Mark Brnovich, self-neglect is responsible for almost half of their state’s APS investigations. Additionally, the federal Elder Justice Act provides a definition for “self-neglect” as follows:<sup>24</sup>

SEC. 2011. (18) SELF-NEGLECT.—The term “self-neglect” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including—

- (A) obtaining essential food, clothing, shelter, and medical care
- (B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or
- (C) managing one’s own financial affairs.

### **APS Communications:**

A 10-page APS presentation document is on the DHSS website under DSAAPD that states APS receives, investigates, assesses, and evaluates “reports of adult abuse (including physical abuse, emotional abuse, sexual abuse, financial abuse, neglect, and self-neglect).”<sup>25</sup> DHSS has started to implement a new design of its website but this document is included under the “publications and forms” link under the APS Program listing. It is unclear why an APS presentation indicates that they serve self-neglect cases, given the assertion that DSAAPD performs this function.

### **FOIA Compliance:**

The Advisory Council meeting notices, agendas, or meeting minutes are not on the State’s public meeting calendar or the agency’s website. The Advisory Council is not listed on the State’s public meeting calendar. APS submitted a limited number of agendas and meeting minutes in printed format as part of their supplemental materials. The following is a list of meeting dates provided as held meetings (except where notated). Cancelled meetings, of which there were several, are not included in the following list. The following dates listed are presumed to have been held by the Advisory Council and minutes were provided except where notated.

- Agenda and Meeting Minutes for June 17, 2015.
- Agenda and Meeting Minutes for September 16, 2015.
- Agenda and Meeting Minutes for December 16, 2015.
- Agenda and Meeting Minutes for March 9, 2016.
  - Agenda for September 14, 2016 meeting. No meeting minutes were provided, but are presumed to exist since it was noted in the March 8, 2017, meeting minutes that the minutes from the September 14, 2016, meeting were approved as submitted.
- Agenda and Meeting Minutes for March 8, 2017.
- Agenda and Meeting Minutes for June 14, 2017.
- Agenda for December 13, 2017 meeting.
  - No minutes were taken for this meeting as noted on the submitted meeting agenda and is recorded in the meeting minutes of the June 13, 2018 meeting.
- Agenda and Meeting Minutes for June 13, 2018
  - Last known scheduled meeting included in the minutes from the June 13, 2018, meeting was to be held on September 12, 2018, but there was no agenda or meeting minutes provided. It is unclear if that meeting was held or cancelled.

<sup>24</sup> See 42 U.S.C. § 1397j(18).

<sup>25</sup> Retrieved from <https://www.dhss.delaware.gov/dhss/dsaapd/files/aps.pdf>.

As stated in the by-laws, meetings are supposed to take place on a quarterly basis, or 16 meetings in a 3-year period spanning 2015 – 2018. According to APS submitted materials, only 9 quarterly meetings were held. Reasons for cancellation included “unforeseen circumstances” and APS workers overloaded with cases and unable to attend.

APS provided the following additional information regarding the Advisory Council:

APS meets internally on a regular basis. Outside of the agency, there are no scheduled APS public meetings, however DSAAPD’s Council on Services for Aging and Adults with Physical Disabilities meets monthly. Those meetings are posted on the Public Meeting Calendar.

It is unclear who is meeting internally, or if the internal meetings meet FOIA requirements. The following provides additional context regarding DSAAPD’s Council on Services for Aging and Adults with Physical Disabilities and public meetings:

- The Council on Services for Aging and Adults with Physical Disabilities has not posted a meeting schedule for 2019 on the DSAAPD website.
- Minutes for the 3 meetings held in 2018 are not posted on the DSAAPD website.
- Minutes for only 2 of 7 meetings held in 2017 are posted on the DSAAPD website.
- FOIA requires public bodies to maintain meeting minutes and make them available for public inspection.
- The Council on Services for Aging and Adults with Physical Disabilities is using the State’s public meeting calendar to post meeting dates and minutes, however, meeting dates, minutes, and Council information posted on the DSAAPD website is not consistent and information is out of date.



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## **APPENDIX A**

### **APS ADVISORY COUNCIL BY-LAWS**

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#### **STATE OF DELAWARE ADULT PROTECTIVE SERVICES ADVISORY COUNCIL BY-LAWS**

##### **ARTICLE I**

The Adult Protective Services Advisory Council is established under Section 3903, Chapter 39, Title 31 of the Delaware code.

##### **ARTICLE II**

The purpose of the Council is to assist the Department of Health and Social Services. In the development of continuance of a comprehensive and coordinated system of protective services for infirm and incapacitated adults in the state.

##### **ARTICLE III**

The objectives of the Council include:

- a. To increase public understanding of and obtain public support for programs concerning the Adult Protective Services.
- b. To routinely review the APS statute and propose recommendations to the Department of Health And Social Services regarding changes in the law.
- c. To request, assemble and prepare recommendations for new programs and projects.
- d. To propose study, research and planning of projects and activities benefiting Adult Protective Services.
- e. To advise on program and activity standards and to propose corrective action where standards are not met.
- f. To initiate, advise and develop, in cooperation with the Aging Network and the Division of Aging and Adults with Physical Disabilities, priorities, strategy and proposed legislation benefiting the impaired, at-risk adults.
- g. To submit recommendations on Federal proposals.
- h. To advise the Director of the Division of Aging and Adults with Physical Disabilities, the Secretary of the Department Health and Social Services, and/or the Governor on matters it deems appropriate to assist the impaired, at-risk adults.
- i. To accept such matters pertaining to aid for impaired at-risk adults as may be referred to it by the Director, the Secretary, or the Governor for research, study and advice.
- j. Review and make recommendations on specific Adults Protective Services cases.

##### **ARTICLE IV**

Membership on this Council is by appointment of the Secretary of the Department of Health and Social Services.

The Council is composed of a minimum of 15 members with at least one representing a private consumer.

Term of office is a minimum of two years, with the option of an open-end appointment.

The Chairperson chosen from the Council, shall serve for one year in that capacity, and shall be eligible for re-election.

The Council membership shall be composed of representatives in the following areas: General Public, the Office of the Public Guardian, the Division of Mental Retardation, the Division of Alcoholism, Drug Abuse and Mental Health, the Division of Public Health, the Division of Social Services, and at least three members from the general public including those from private agencies.

If absent two consecutive times without an excuse or designee, the committee will warn the member of possible suspension.

Members of the Council serve without compensation.

Secretary and other staff may be requested from the Division of Aging and Adults with Physical Disabilities with the approval of the Director.

The Director attends all Council meetings ex-officio. Other staff may be requested to provide information.

#### ARTICLE V

Meetings are held quarterly.

Meeting agenda and place of meeting are distributed to Council and the Secretary of the Department of Health and Social Services at least 10 days before determined date.

Place of each meeting is determined by the Council.

Minutes of meeting are distributed to members. Minutes are expected to be available with the issuance of the next meeting's agenda.

#### ARTICLE VI

By-Laws are accepted and changed by a majority of six members being in accord. A simple majority vote is needed for passing motions, and a council body of five represents a quorum to hold a meeting.

Designee's have permission to vote. If designee declines to vote, then the member could be polled via telephone or mail.

**APPENDIX B**

**MEMORANDUMS OF UNDERSTANDING**

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**WORKING AGREEMENT**

**By and Between**

**ADULT PROTECTIVE SERVICES  
of the**

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**and**

**THE ATTORNEY GENERAL'S OFFICE**

**WHEREAS, Adult Protective Services is conferred such powers, duties and responsibilities as set forth in Title 31, Chapter 39 of the Delaware Code, and**

**WHEREAS, through enactment of Title 31, Chapter 39 of the Delaware Code, the General Assembly, recognizing that many adult citizens of Delaware are subject to psychological or physical injury or exploitation because of physical or mental infirmity, disease or other causes which render them incapable of providing for their basic living needs, has established a system of services for impaired adults designed to protect their health, safety and welfare, and**

**WHEREAS, the Attorney General's Office recognizing that elder abuse is a crime affecting increased segments of the elderly community, believes it is necessary to have an advocate/investigator within its office to help facilitate the prevention, reporting, investigation and prosecution of such cases, and**

**WHEREAS, the Attorney General's Office has received a VOCA grant through the Criminal Justice Council entitled "Elder Abuse and Exploitation Project" (hereinafter "the Project"), and**

**WHEREAS, the Project calls for a working agreement between Adult Protective Services and the Attorney General's Office for the purpose of delineating each agency's responsibilities and assuring mutual cooperation for the benefit of Delaware elderly population,**

**NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED THAT:**

**A. The Adult Protective Services shall continue to perform all of its responsibilities and services as set forth in 11 Del.C. Section 3904, including the preliminary investigation and evaluation of reports of adults needing protective services, and shall maintain with the Project's Advocate/Investigator a spirit of cooperation and mutual commitment to enhance the security and well-being of the elderly in this state.**

B. As part of its cooperative effort, Adult Protective Services, along with other social service agencies, shall refer those cases to the Project's Advocate/Investigator which indicate that a victim of elderly abuse is in or may be in need of prosecution-based assistance services.

C. Upon receipt of any such referral, the Advocate/Investigator will record information pertaining to the referral, determine the appropriateness of the referral and initiate contact with the victim. The Advocate/Investigator will address the victim's concerns and questions and determine needs and services such as:

1. Contact with the victim to ascertain the physical, psychological and financial impact of crime, obtain background information, verify address, explain case status, determine if there have been new problems or violations of bail conditions, etc. Develop intervention and assistance plans relating to victim needs;
2. Interact with the victim to determine needs for counseling/therapy and make referrals, the victims' concerns for reluctance regarding prosecution, and to assist the victim in understanding the prosecution process;
3. Provide supportive assistance and counseling to the victim throughout the process;
4. Provide victims with court orientation; preparation for court events including case review, hearings, trial and sentencing, and provide accompaniment;
5. Assist in coordinating cases in which charges are pending in other courts (i.e., multiple incidents, out-of-state jurisdiction) to reduce victim anxiety and confusion;
6. Collaborate with Adult Protective Services and other various professionals that may be involved in a case (i.e., police, prosecutor, DCPS, therapists, doctors, private attorneys, probation staff, etc.) regarding intervention plans, treatments options and safety strategies;

7. Determine if the victim is receiving services from prosecution-based victim services. If so, the project social worker would serve as liaison on the case, monitor case status, and provide direct services to the victim when appropriate. (This would ensure that services are not duplicated, that the advocate active with the case and the victim are informed of events, make services available to victims who are not already active with victim assistance staff);
8. Assist victims in completing victim loss statements and in filing for Violent Crimes Compensation;
9. Assist in evaluating cases, charging and disposition decisions and sentencing recommendations to minimize risk to the victim;
10. Establish procedures for victims requesting to withdraw charges (i.e. collect complete background on relationship, in-person interview with victim, consultation with victim regarding dispositional alternatives, case assessment (criteria including future/risk escalation recommendations to the prosecutor, etc.);
11. Collect background information on cases (i.e. criminal history, current status of defendant, substance abuse information, etc.);
12. Contact the assigned police officer to obtain police reports and other relevant information;
13. Inform the prosecutor of the background, evidence, victim concerns, and dynamics specific to individual cases;
14. Schedule and conduct intakes on serious or complex cases;
15. Prepare a quarterly report including the number of victims serviced by the project, volume of cases by defendant, referrals provided to victims, victim contacts and disposition information;
16. Develop and maintain a system for collecting statistics on these cases;
17. Establish procedures for reporting referrals;
18. Establish a prevention program that will be presented to the elderly at various facilities throughout the state.

- D. Essentially, by this Agreement, the parties acknowledge that any cases or investigations referred to the Project's Advocate/Investigator by Adult Protective Services are to be monitored by the Advocate/Investigator of the Project with the view towards increasing effectiveness of prosecution of elder abuse offenders whenever possible.
- E. Adult Protective Services and the Attorney General's Office have had, and by this Agreement shall continue to have, the common and noble goal of increasing the efficiency in reporting, investigating and prosecuting cases of elder abuse and are hopeful that Delaware's elderly, vulnerable population is benefitted hereby.

Dated: 4/7 1997

Adult Protective Services

by Eleanor L. Cain  
Eleanor L. Cain, Director  
Division of Aging

The Attorney General  
of the State of Delaware

by Keith Brady  
Keith Brady  
Chief Deputy Attorney General



**DELAWARE HEALTH & SOCIAL SERVICES**

**Division of Developmental Disabilities Services**

**And**

**Adult Protective Services**

**Memorandum of Understanding**

**I. SCOPE AND PURPOSE**

This memorandum represents an understanding between the Division of Developmental Disabilities Services (DDDS) Community Services Program and Adult Protective Services (APS), regarding individuals who may have developmental disabilities and who may require protective services. The purpose of this agreement is to cooperatively provide appropriate services in a timely and efficient manner. Services may be provided as a collaborative effort, or in a manner that establishes one agency as the primary or "lead" agency, with the other providing support. Under this agreement, the Divisions agree to provide referral, joint planning, appropriate assessment, and those support services necessary to those who meet the criteria for joint care.

**II. ACTION PROCESS**

When a person who is in need of APS Protective services and is also believed to be an individual who has developmental disabilities, the following actions will occur:

1. The APS Supervisor from the appropriate county will communicate with the corresponding Regional Program Director (RPD)/Designee from the appropriate region to determine whether or not the individual is receiving DDDS services.
2. DDDS will locate an emergency placement. It should be noted that despite all efforts, there may be an occasion when an appropriate placement cannot be found, especially if there aren't any providers willing to accept the individual in their home.
3. APS will provide transportation of the individual from their location to the emergency placement site. A DDDS representative must meet the APS worker at the placement site.



### **III. Defining Roles & Responsibilities Following the Emergency Placement**

If a person identified by Adult Protective Services is not listed in the DDDS Registry at the time APS Protective services are required, then APS will be responsible for all follow-up services, including screening, initiating application process, transportation, family visitations, appointments, investigations, guardianship application, and Social Security change status, and any other support services necessary.

If a person identified by Adult Protective Services is listed in the DDDS Registry at the time APS Protective services are required, then the DDDS contracted Family Support Specialist will be responsible for all follow-up services, including screenings, transportation, family visitations, appointments, assistance with investigations (as needed) guardianship application, Social Security change status and any other support services necessary.

### **IV. CONFIDENTIALITY**

The employees of both divisions are to adhere to *DHSS Policy Memorandum Number 5* regarding *Client Confidentiality* and Adult Protective Services Title 31:3912 Confidentiality of records.

### **V. DISPUTE RESOLUTION**

Case Managers from both agencies shall work cooperatively to resolve all disputes by pro-actively communicating with one another. If for some reason they are unable to reach an agreement regarding a case, they should refer the case to each of the respective regional supervisors (RPD/Designee and the APS Supervisor.) If the RPD/Designee and the APS Supervisor are not able to reach an agreement regarding a case, then the case will be referred to the Director of Community Services/designee and the APS Social Services Administrator. If the Director of Community Services/designee and the APS Social Services Administrator are not able to reach an agreement regarding the case, the case will be referred to the Director of the Division of Developmental Disabilities and the DHSS Director of Constituent Relations.

### **VI. MEETINGS**

Quarterly meetings between DDDS and APS will be held to discuss on-going cases and to identify and resolve any issues occurring between the agencies.

### **VII. TRAINING**

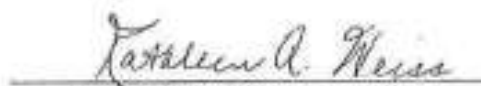
Each Division will provide the other with current information about training germane to their respective areas of specialization. In addition, each Division will ensure equal access to said training for the staff of the other Division.

This agreement is proposed and executed with the greatest spirit of cooperation and desire for person-centered services. Both divisions recognize that certain steps of the action process may be altered based on specific individual needs, as well as the resources available to each division at any given time. Every effort will be made to expedite the action process.

This memorandum shall be reviewed annually.

In witness whereof and giving approval for this agreement to be in effect as of the 15th Day May 2012 the parties hereto have set their hands.

  
\_\_\_\_\_  
Jane J. Gallivan, Director  
Division of Developmental  
Disabilities Services

  
\_\_\_\_\_  
Kathleen Weiss, Director  
Constituent Relations  
Office of the Secretary

6/21/12  
\_\_\_\_\_  
Date

6/27/12  
\_\_\_\_\_  
Date

**DDDS Contact Information**

<b>Title</b>	<b>Contact Information</b>
New Castle County Regional Program Director	Office: (302) 836-2100
Kent County Regional Program Director	Office: (302) 744-1100
Sussex County Regional Program Director	Office: (302) 933-3100
Assistant Director of Community Services	Office: (302) 933-3140
Director of Community Services	Office: (302) 836-2100
Stockley Center	(302) 933-3000

**Adult Protective Services Contact Information**

New Castle APS Supervisor	Office: (302) 453-3824
Kent/Sussex APS Supervisor	Office: (302) 424-7385
APS Administrator	Office: (302) 255-9242

## ATTACHMENT

### **ROLES & RESPONSIBILITIES: ADULT PROTECTIVE SERVICES**

#### **Screening:**

- APS will contact DDDS on any referral where ID/DD is indicated or suspected
- APS (preferably in conjunction with a designee from DDDS) will screen the individual utilizing the attached assessment. The APS Supervisor/designee will contact the Regional Program Director/designee to determine if client is in their registry.

#### **Transportation:**

- If an emergency placement is necessary and a placement has been found, APS will provide transportation. If the individual requires specialized transportation, then APS will request assistance from DDDS.

#### **Application Process:**

- APS will complete the “Checklist for APS Emergency Placement Form” and inform family/and or representative of their need to obtain and complete a formal application for DDDS services. When necessary, APS will make appropriate referrals to other agencies that can assist in completing the application and obtaining needed documents, (i.e. birth certificates, social security information, past medical history, etc.)

#### **Placement:**

- APS will attempt to obtain the individuals personal belongings, including medications. If APS is unable to do so, placement will not be delayed. A DDDS representative must meet the APS worker at the placement site. When necessary, APS will seek approval to use its emergency funds for client’s immediate needs. Additional personal items will be obtained as soon as possible.
- The Regional Program Director/designee and the APS Supervisor will ensure the DDDS Family Support Specialist and the APS Worker jointly facilitate the transition of the individual and the personal belongings to the emergency placement.

#### **Investigation:**

- APS will be responsible for informing the family/caretaker of the need to have the individual removed from the home until the investigation is complete and for the actual removal of the individual from the home.
- There may be occasions for a joint visit to the home. APS will request such as needed by a DDDS worker.
- APS will communicate with DDDS as much information as possible regarding the substantiation of the investigation allegations.

#### **Guardianship:**

- If the individual is not receiving services from DDDS, APS will take the lead in completing the guardianship paperwork/process if necessary, during the time that the APS investigation is active.

## **ROLES & RESPONSIBILITIES: DDDS SERVICES**

### **Screening:**

- If an individual has become involved with APS and the results of the screening suggest the probable presence of a qualifying developmental disability and it has been determined that the individual needs to be removed from the home, DDDS will attempt to arrange an emergency placement. Once deemed eligible for DDDS services and formal application approved, DDDS will become lead agency.
- If an individual who is already open in DDDS services becomes involved with APS and is in need of an emergency placement, DDDS will attempt to arrange placement.

### **Transportation:**

- If requested/needed by APS, DDDS will provide specialized transportation during the emergency placement (i.e. wheelchair, power wheelchair, physically disabled, or unable to self-transfer.)

### **Placement:**

- DDDS will attempt to locate an emergency placement for those individuals with developmental disabilities who are in need of protective services.
- A DDDS representative will meet the APS worker at the emergency placement location or another agreed upon location site to ease the removal of the individual. This assistance can also be needed at the home if necessary.
- The DDDS worker and the APS worker will communicate regularly during the first 30 days of placement on issues regarding the status of the investigation and continued placement needs.
- The DDDS Regional Program Director/designee and the APS Supervisor will ensure that the DDDS Family Support Specialist and the APS Worker jointly facilitate the transition of the individual and the personal belongings to the emergency placement.

### **Investigation:**

- At times, DDDS may be asked to participate in the initial interview to help establish rapport while APS is conducting the investigation. For example, APS may request a DDDS worker to accompany them to an individual's Day Program.
- DDDS will provide APS with any medical history, information and/or documents requested and needed by APS for the expeditious resolution of the APS investigation. DDDS will likely have the responsibility of working with the individual or family members for years to come. It is important to develop a rapport with the individual and family and not be viewed as the agency that removed the individual from the family situation.

### **Guardianship:**

- If the individual is already eligible for services from DDDS, then DDDS will take the lead in completing the guardianship paperwork/process as necessary.

**Attachment 1****DDDS Quick Screen Tool****Identifying Individuals with a Possible Qualifying Developmental Disability**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Age: \_\_\_\_\_ Informant/s: \_\_\_\_\_

Screening completed by: \_\_\_\_\_

1. Is there documentation that the individual's deficits or limitations began prior to age 22 (for example: enrolled in special school or program, previous diagnosis of some type of mental retardation, autism, documentation of delays in development, or an IQ below 70)?
2. Does the individual have a high school diploma or a certificate of attendance? If neither, it is clear that the individual did not attend or regularly attend and complete school.
3. Is the individual performing substantially below the level expected for his/her age in two or more of the following adaptive skills areas (see definitions noted on the back of this form)? If so, circle those applicable.
  - a. Communication
  - b. Self-Care
  - c. Home Living
  - d. Social
  - e. Community Use
  - f. Self-Direction
  - g. Health and Safety
  - h. Functional Academics
  - i. Leisure
  - j. Work
4. Is it clear that the individual did not function at a higher or more independent level at a previous time in his/her life?

**DDDS Quick Screen Tool****Adaptive Skills Areas**

- a. Communication: Ability to understand and express information through symbolic behavior (spoken word, written word, sign language, manually coded English) or non-symbolic behaviors (e.g.: facial expressions, body, body movement, touch, gesture).
- b. Self-care: skills involved in toileting, eating, dressing, hygiene, and grooming.
- c. Home living: home-related skills such as cooking, clothing care, housekeeping, food preparation, planning/budgeting for shopping, and home safety.
- d. Social skills related to social interactions with others such as initiating, interacting, and terminating interactions, making choices, coping with demands, confirming conduct to social norms, and displaying appropriate socio-sexual-behavior.
- e. Community use: skills related to the appropriate use of community resources, travel in the community, shopping in stores, purchasing/obtaining services from community businesses, visiting places/events.
- f. Self-Direction: skills related to making choices, learning and following a schedule, engaging in/initiating activities of personal interest that are appropriate to the setting and conditions.
- g. Health and Safety skills: related to the maintenance of own's own health in terms of eating, identification of illness, treatment and prevention, basic first aid, sexuality, physical fitness, and interacting with strangers.
- h. Functional Academics: cognitive abilities and skills related to school that also have direct application in one's life (e.g.: writing, reading, basic science). Of importance is not the grade-level, but that the skills are functional in terms of independent living.
- i. Leisure: the development of a variety of leisure and recreational interests that reflect personal choice and preferences. Skills would be choosing and self-initiating interests, using home and community activities with others and/or alone and determining amount and type of involvement.
- j. Work: skills related to holding a part or full-time job in the community in terms of specific job skills and appropriate social behavior.



**Attachment 3**

**Please assist the individual with bringing the following items, if possible:**

<b>Personal items of the individual:</b>
Pajamas/robe
Clothes (at least a 7 day supply)
Underwear
Shoes (at least 2 pr.)
Coat/sweater/jacket
Medications (at least a 3- 7 day supply) or RX's
Assistive devices (glasses, hearing aid, etc.)
<b>Hygiene items</b>
Toothbrush/toothpaste
Deodorant
Perfume or cologne
Razor/Aftershave
Shampoo/conditioner
Hair brush/comb
Special soap, if required
Feminine hygiene products, if needed
Diapers/Adult Depends, etc.
<b>Personal items</b>
Radio/walkman
CD's
Movies/DVD's
Magazines
Spending Money
Insurance Card
Photo ID card, if available
DART tickets, if needed
Other items needed by the individual

\_\_\_\_\_  
APS Worker Signature / Date





## DELAWARE HEALTH AND SOCIAL SERVICES

*Division of Services for Aging and Adults with Physical Disabilities*

**MOU #: M35-1400-2018-82**  
**CATS Sys Doc #: 023478-0000-0000**

Memorandum of Understanding (MOU)  
Between  
STATE OF DELAWARE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES (DSAAPD)  
and  
STATE OF DELAWARE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION (DLTCRP)

### **Purpose of the Memorandum of Understanding (MOU)**

WHEREAS, the Delaware Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) and the Division of Long Term Care Residents Protection (DLTCRP) serve the aging and persons with disabilities population in Delaware; and

WHEREAS, the partners listed below have agreed to enter into a collaborative agreement in order to provide appropriate services in a timely and efficient manner; and

WHEREAS, the partners listed below have clearly identified and come to an agreement on the roles and responsibilities of both parties; and

WHEREAS, the partners herein desire to enter into a Memorandum of Understanding setting forth the services to be provided by the collaborative; and

WHEREAS, the application prepared and approved by the collaborative through its partners is to be submitted to the Delaware Department of Health and Social Services on or before January 1, 2018.

### **Description of Partner Agencies**

- a) The Delaware Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) - The Division of Services for Aging and Adults with Physical Disabilities advocates for, provides access to, and coordinates long-term services and supports for older adults and people with disabilities in the most appropriate setting. DSAAPD is a division of the Delaware Department of Health and Social Services, established through 29 Del.C. §7920. The Adult Protective Services Program (APS) is a unit within DSAAPD. APS responds to cases of suspected abuse, neglect, or exploitation of impaired adults. Specifically, the program serves persons who are aged 18 or over, who have a physical or mental impairment, and who are not living in a long term care facility (for example, a nursing home).
- b) The Division of Long Term Care Residents Protection (DLTCRP) - The Division of Long Term Care Residents Protection (DLTCRP) protects residents in Delaware long term care facilities through promotion of quality of care, quality of life, safety and security, and enforcement of compliance with State and Federal laws and regulations. DLTCRP is a division of the Delaware Department of Health and Social Services, established through 29 Del.C. §7970-72.

The purpose of the Investigative Section of DLTCRP is to ensure that individuals receiving services in long term care facilities are safe, secure, and free from abuse, neglect, mistreatment, and financial exploitation. The Investigative Section is responsible for:

- Operating the Complaint and Incident Referral Center (IRC), which receives complaints/incidents regarding long term care facilities and assigns them for follow-up
- Investigating complaints of alleged abuse, neglect, mistreatment, and financial exploitation
- Ensuring compliance with the criminal background check and mandatory drug testing laws and
- Maintaining and administering the Adult Abuse Registry.

#### **Need for the MOU**

- a) In 2017, DLTCRP designated two full-time positions within the Investigation Section to respond to financial exploitations cases within the community.
- b) Since APS currently investigates financial exploitation cases and has a financial exploitation victim advocate employed, there is a need for cooperation between the two agencies.
- c) This MOU seeks to clarify roles within DSAAPD and DLTCRP in order to investigate financial exploitation reports fully.

#### **Responsibilities**

*(Subject to Change upon Consent of All Parties Involved)*

NOW, THEREFORE, it is hereby agreed by and between the partners as follows, as it relates to financial exploitation investigations:

- a) APS will continue to investigate financial exploitation cases. However, if the APS investigator cannot acquire information necessary to continue their investigation in order to determine if the allegations are substantiated, a referral will be made to DLTCRP.
- b) More complex financial exploitation reports will be referred directly to DLTCRP.
- c) APS will continue to investigate any reports of abuse and/or neglect and provide appropriate services to the alleged victim, even if a referral to DLTCRP for financial exploitation has been made for the same alleged victim.
- d) DLTCRP will accept referrals from anyone in the general community using their [online web reporting form](#) or through their [Incident Referral Center email](#). Referrals from APS staff may be made using the [LTCReporting website](#).
- e) When making a referral to DLTCRP, APS will provide all available information that is pertinent to the investigation.
- f) Both APS and DLTCRP will investigate cases statewide. DLTCRP will have an investigator located in Wilmington and Milford, respectively. APS will have investigators located in Newark and Milford.
- g) Once DLTCRP closes an investigation that was referred from APS, the DLTCRP investigator will share the results of the investigation with the APS investigator that referred the case.
- h) If the alleged victim is in need of services once DLTCRP closes an investigation, the DLTCRP investigator will make a referral to the Aging and Disability Resource Center for services by calling 1-800-223-9074.

#### **Commitment to Partnership**

- a) The partners agree to collaborate and provide financial exploitation investigation and support services to alleged victims of the financial exploitation pursuant to the program details within this agreement.
- b) We, the undersigned have read and agree with this MOU. Further, we have reviewed the proposed program and approve it.

MOU #: M35-1400-2018-82  
CATS Sys Doc #: 023478-0000-0000

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

For the State of Delaware:  
Department of Health & Social Services (DHSS)

Jeudy M. Brown  
Witness

Kara Odom Walker  
Kara Odom Walker, MD, MPH, MSHS  
Cabinet Secretary, DHSS

12/22/17  
Date

For the State of Delaware:  
Division of Services for Aging & Adults with Physical Disabilities  
(DSAAPD)

[Signature]  
Witness

Dava Newnam  
Dava Newnam  
Director, DSAAPD

12/18/17  
Date

For the State of Delaware:  
Division of Long Term Care Residents Protection (DLTCRP)

Richard B. McKee  
Witness

Mary Peterson  
Mary Peterson  
Director, DLTCRP

12/13/17  
Date

### DSAAPD MEMORANDUM OF UNDERSTANDING (MOU) ROUTING SHEET

MOU INITIATOR	Cindy Mercer ✓
MOU SERVICE PROVIDED	Clarify the APS and financial exploitation roles
MOU PARTNER NAME	DLTCRP ✓
MOU SERVICE PERIOD	January 1, 2018 - No End Date ✓
MOU NUMBER	M35-1400-2018-82 ✓

Initial/Date	Task
cm 11/15	1. MOU created by MOU Initiator & MOU Checklist (CF-014) completed for new MOU.
cm 11/15	2. MOU Initiator contacts DSAAPD Senior Fiscal Officer (SFO) for MOU number. request should include: <b>VENDOR / SERVICE / FUNDING AMOUNT / CONTRACT DATES</b> Fiscal
F 11/16	3. MOU data entered and Level 1 approved in CATS by MOU Initiator. Record CATS Sys Doc #: <u>023478-0200-0200</u> ✓ * System Document # is found on the CONTRACT INFO tab of CATS entry*
N/A	4. Contract/amendment submitted to Contract Initiator's immediate supervisor for review
F 12/13	5. MOU sent to MOU Partner for review and sign signature pages. **Attach "Sign Here" stickers to the signature page on each copy of the MOU
F 12/13	6. MOU Partner signs the MOU and returns signature pages MOU Initiator
F 12/13	7. MOU Initiator creates adequate copies of the MOU. MUST add a signature & date line for the Dept. Secretary **Attach "Sign Here" stickers to the signature page on each copy of the MOU
N/A	8. MOU signed copies submitted to Frank Jones - DSAAPD for 2nd Level CATS entry
F 12/13	9. 2nd Level CATS entry completed by DSAAPD
F 12/13	10. MOU submitted to DSAAPD CFO for review
N/A 12/13	11. DSAAPD CFO reviewed MOU and then submits MOU to DSAAPD Director.
N/A 12/17	12. MOU 3rd Level CATS review & approval is completed by DSAAPD Director ** The Certification Page, Contract Review Sheet, & FORM CF-048 must be printed from CATS and signed by the Director or designee. (CF-048 must have Director initial - see Dept. Approval Section below)
N/A 12/17	13. Once signed the MOU is submitted to Frank Jones - DSAAPD
F 12/19	14. MOU received by Frank Jones - DSAAPD
F 12/19	15. DSAAPD delivers the signed MOU, Procurement Checklist (CF-009), Signature Request Form (CF-048), signed CATS Certification sheet, Contract Review Sheet (from CATS) the Contract Checklist (CF-009) and the SAM.gov verification printout to DHSS Procurement for Department Secretary approval and signature. **Do not send the MOU folder or this MOU routing sheet with the MOU to Procurement
F 12/26	16. Secretary signed MOU returned DSAAPD from Procurement
F 12/26	17. DSAAPD scans a copy of the MOU for DSAAPD MOU master files
F 12/26	18. DSAAPD delivers signed copy of MOU to MOU Initiator.
	19. MOU Initiator provides a copy of signed MOU to MOU partner.

**MEMORANDUM OF UNDERSTANDING (MOU) CHECKLIST**

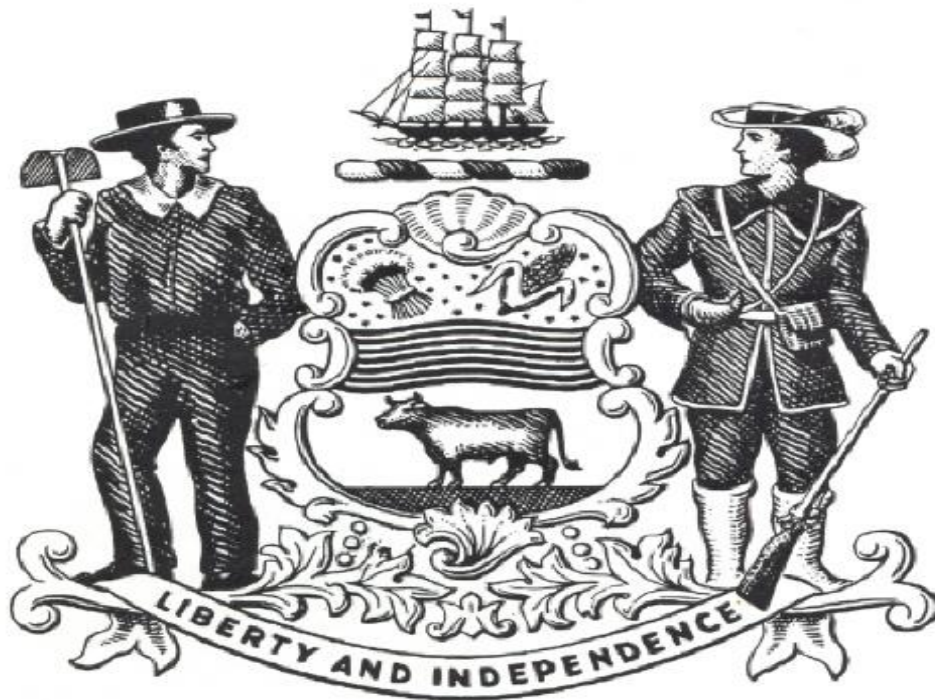
<b>MOU INITIATOR</b>	Cindy Mercer
<b>MOU SERVICE PROVIDED</b>	Clarification of APS roles
<b>MOU PARTNER NAME</b> Use formal business name	DLTCRP
<b>MOU SERVICE PERIOD</b> Insert the beginning and end date of the MOU.	January 1, 2018 – No End Date
<b>MOU NUMBER</b> Insert MOU number provided by DSAAPD Fiscal	M35-1400-2018-82

Initial	Required Documentation
✓	<b>MOU Agreement / Work Plan</b>
N/A	<b>Business Associate Agreement – (CF-011)</b> Required if the contractor has access to the participant's private health information
N/A	<b>Business License</b>
N/A	<b>Professional License</b> (if applicable)
N/A	<b>Verification of Provider's good standing</b> – include website printout of finding using <a href="http://sam.gov">sam.gov</a> (Please include two (2) copies of the form) <b>Providers DUNS #</b> - _____ <a href="http://www.dnb.com/get-a-duns-number.html">http://www.dnb.com/get-a-duns-number.html</a>



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# Joint Legislative Oversight & Sunset Committee 2019 Final Report



## Delaware Advisory Council on Career and Technical Education (“DACCTE”)

*A Report to the Governor and the  
150<sup>th</sup> General Assembly of the State of Delaware.*

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June 2019

Final Report for the Delaware Advisory Council on Career and Technical Education was completed by:

Mark Brainard Jr., Joint Legislative Oversight and Sunset Analyst

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# 2019 Joint Legislative Oversight and Sunset Committee Members

Senator S. Elizabeth Lockman,  
Chair

Representative David Bentz,  
Vice-Chair

Representative Andria L. Bennett

Representative Sherry Dorsey Walker

Representative Jeffrey N. Spiegelman

Representative Lyndon D. Yearick

Senator Anthony Delcollo

Senator Stephanie L. Hansen

Senator Ernesto B. Lopez

Senator John Walsh

## ***Final Report Prepared By:***

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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## 2019 Final Recommendations

### Delaware Advisory Council on Career and Technical Education (“DACCTE”)

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that the Delaware Advisory Council on Career and Technical Education (“DACCTE”) be held over, and report before the Committee in January 2020.

**RECOMMENDATION 1:** DACCTE shall continue, subject to any further recommendations that the Committee adopts.

**Status:** Passed

**RECOMMENDATION 2:** Add to DACCTE’s governing statute: DACCTE shall produce an annual report to the Governor, General Assembly, and the Department of Education’s CTE and STEM Office. The report must outline the following:

- Advocacy efforts made to lawmakers & school administrators on behalf of CTE students & programming.
- Career Compass and a list of recipients; both print and digital.
- Needs assessment of statewide CTE programming.
- Reports from all on-site monitoring school visits.
- Written procedure should any on-site visit require follow-up.

**Status:** Passed

**RECOMMENDATION 3:** Add to DACCTE’s governing statute: DACCTE shall create a 2-year, rotating on-site program/school monitoring schedule, and all final reports based on the monitoring will be posted to its website.

**Status:** Passed

**RECOMMENDATION 4:** DACCTE shall create a digital copy of the annual Career Compass publication and distribute it via email or other appropriate methods to all locations that receive a print copy. The digital copy shall be made available on the Council’s website.

**Status:** Passed

**RECOMMENDATION 5:** Change DACCTE’s membership as follows:

- Add a non-voting member who is a representative from the Department of Education and appointed by the Secretary.
- Add a non-voting member who is a student enrolled in a Delaware CTE program.
- Limit membership to no more than 2 members fulfilling each qualification listed in the statute.
- Remove the requirement that the Chairperson is a member of the private sector.
- Language shall be added to limit the term of the Chairperson to 5 years, with the ability to serve 1 additional 5 year term.

**Status:** Passed

**RECOMMENDATION 6:** DACCTE will create a presence on various social media platforms, and an online portal through its website, to connect students, teachers, administrators, and parents with local business leaders. Selection of social media platforms must include those that are most commonly used by the target demographics. DACCTE shall update and modernize its website.

**Status:** Passed

**RECOMMENDATION 7:** Add to DACCTE’s governing statute: DACCTE will schedule no less than 3 meetings after regular business hours at locations within each county.

**Status:** Passed.

**RECOMMENDATION 8:** The Committee will sponsor a bill, drafted by the Committee’s Legislative Attorney, to make technical corrections to DACCTE’s entire governing statute, including the addition of standard removal and quorum provisions. Additionally, the language “students will special needs” in §8602 will be updated to read “students with disabilities.”

**Status:** Passed.

**RECOMMENDATION 9:** DACCTE is held over and shall report to the Committee in January 2020.

**Status:** Passed

**A NOTE ABOUT THIS FINAL REPORT**

The information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled Additional Research from the Analyst. It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the review processes, in the final version of this report.

## **AGENCY HISTORY**

In 1963, the federal government adopted the Vocational Education Act providing federal funds for the redirection and expansion of vocational education programs. The Vocational Education Amendments of 1968 stipulated that each state establish a State Advisory Council on Vocational Education to be eligible to receive federal funds for vocational education. In 1969, Delaware complied and established the Delaware Advisory Council on Vocational Education.

In 1973, the Delaware General Assembly formally recognized the work of the Advisory Council and expanded its role to include career education programs. It established the Delaware Advisory Council on Career and Vocational Education (“DACCVE”) in Title 14, Chapter 86 of the Delaware Code. Volunteer representatives from business, industry, labor, and other special populations were responsible for evaluating and advising on matters pertaining to vocational education programs and the employment needs across the state.

In June 2005, House Bill 71 was enacted, amending the name to the Delaware Advisory Council on Career and Technical Education (“DACCTE”).<sup>1</sup>

The Carl D. Perkins Career and Technical Education Act of 2006 provides federal funding for career and technical education (“CTE”) to the states on an annual basis. In the last 5 years, through this grant program, Delaware has received:

- FY 15: \$4,725,500
- FY 16: \$4,725,040
- FY 17: \$4,723,551
- FY 18: \$5,114,664 \*estimated
- FY 19: \$5,458,959 \*estimated

DAACCTE is an independent agency composed of volunteer citizens appointed by the Governor from both the private and public sectors throughout the State. Membership includes representatives from business, industry, labor and trade organizations, the National Guard, and educators representing secondary and post-secondary institutions.

## **JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY**

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) last reviewed DACCTE in 2002-2003.

Following JLOSC’s 2002-2003 review of DACCTE, then-named the Advisory Council on Career and Vocational Education, the subsequent recommendations were adopted:

1. The ACCVE will recommend to each school district that completion of the Senior Project should be a requirement for all students enrolled in vocational technical high schools.

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<sup>1</sup> Unless otherwise noted, “DACCTE” is used throughout this report to refer to either DACCVE or DACCTE.



2. The ACCVE must follow the requirements of the Freedom of Information Act when posting public meeting notices. This includes, advertising the meeting notice in two newspapers, and identifying the meeting place and agenda.
3. The ACCVE should post public meeting schedules on its website.
4. The ACCVE must develop annual reports for distribution to the Joint Sunset Committee and the House and Senate Education Committees.
5. Legislation updating 14 *Del. C.* § 8603 to reflect that the ACCVE is not required to submit annual evaluation reports to the U.S. Commissioner of Education.

## **COMPOSITION & STAFFING OF THE COUNCIL**

---

### **Composition:**

DACCTE's governing statute establishes a minimum of 11 members, appointed by and serving at the pleasure of the Governor. Currently, 14 members serve on DACCTE and meet the qualifications under § 8602, Title 14, which requires at least 1 member to represent each of the following:

- Knowledgeable about the vocational needs and the problems of management and labor in the State.
- Industrial and economic development agencies.
- Institutions of higher education.
- Institutions which provide CTE programs and training.
- Knowledgeable about programs in CTE
- School boards.
- Knowledgeable about students with special needs.
- Business and industry familiar with current and projected employment opportunities.
- CTE student organizations.
- The Delaware National Guard.
- The general public, with an interest in public education.
- Chair must represent the private sector and be selected by DACCTE members.

Potential members must complete the application form from the Governor's office requiring confirmation that they have no conflicts of interest with the appointment. According to DACCTE, there has not been an issue with conflict of interest with any current or past members.

### **Compensation:**

Members are not compensated for related expenses or services provided.<sup>2</sup>

### **Member Training:**

Newly-appointed members received a mandatory orientation and training related to DACCTE's mission and operations, and information related to CTE in Delaware.

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<sup>2</sup> See 14 *Del. C.* § 8605.

**Staffing:**

DACCTE employs 2 full-time exempt employees: an executive director and administrative assistant. DACCTE has 1 casual/seasonal employee.<sup>3</sup>

<b>Name &amp; Title</b>	<b>Responsibilities</b>	<b>Percentage of Time Devoted to Responsibility</b>
Dr. Manera A. Constantine, Executive Director	Accomplish DACCTE mission, goals and objectives directed by the Council.  Direct and approve all programmatic, fiscal, and operational activities of the agency and staff.	100%
Janet S. Nichols, Administrative Assistant	Fiscal responsibilities, payroll, benefits and human resources; office manager duties.	100%

**MISSION & RESPONSIBILITIES**

Under Title 14, the statutory mission of DACCTE is to advise the Governor, General Assembly, Secretary of Education, and the State Board of Education on all matters pertaining to career and technical education. Section 8601 of 14 Del. C. states:

It is the purpose of the General Assembly of the State, through this chapter, to establish and maintain the Delaware Advisory Council on Career and Technical Education (DACCTE). DACCTE is established to advise the Governor, General Assembly, Secretary of Education and the State Board of Education on all matters pertaining to career and technical education with emphasis on recommending policies and initiatives that should be pursued to strengthen and modernize the career and technical education delivery system.

Further, it is the intent and purpose of the General Assembly to provide an objective agency to conduct evaluations, program reviews and serve as a clearinghouse for state and national information on career and technical education, so that citizens have access to the experience and judgment of lay and professional groups from the fields of employment and education in the formation of public policies.

Section 8603 of 14 Del. C. outlines DACCTE's duties and responsibilities:

The Advisory Council on Career and Technical Education shall:

- (1) Advise policymakers on the development of the State Plan for Career and Technical Education and any amendments to the State Plan.
- (2) Recommend policies that the State should pursue to strengthen career and technical education and related initiatives.
- (3) Evaluate career and technical education programs, services, activities and career initiatives throughout the State.
- (4) Provide technical assistance to local school districts, agencies and other organizations to enhance and improve the career and technical education delivery system.

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<sup>3</sup> Analyst's Note: An additional full time position has remained vacant due to budget cuts and the temporary hiring freeze.

- (5) Analyze and report on the distribution of funds for career and technical education and on the availability of career and technical education activities and services within the State.
- (6) Promote coordination, collaboration and effective partnerships among business, industry, labor, education and employment and training programs to help meet the economic needs of the State.
- (7) Disseminate relevant career information to teachers, counselors, students and the general public.
- (8) Schedule and conduct at least 4 regular meetings each year at which the public is given opportunity to express views concerning career and technical education. The time, place and manner of meeting shall be determined by the Council.

### **ENACTED LEGISLATION IMPACTING THE COUNCIL**

July 1973: [HS 1 for HB 308, 127<sup>th</sup> General Assembly](#) – Established the Delaware Advisory Council on Career Education, DACCTE’s predecessor.

June 2000: [SB 385, 140<sup>th</sup> General Assembly](#) – Required specific allocation of funds to support State-approved occupational-vocational courses and programs.

June 2005: [HB 71, 143<sup>rd</sup> General Assembly](#) – Reformed and refocused DACCTE to include technical education in both its name and purpose.

### **PENDING LEGISLATION**

SB 138 is the result of the Committee’s review of DACCTE and codifies a number of the final recommendations while updating the statute with quorum and member removal provisions.<sup>4</sup> The legislation was introduced on June 6, 2019. At the time of this report, SB 138 has not yet been enacted.

### **ADMINISTRATIVE PROCEDURES ACT COMPLIANCE**

DACCTE does not promulgate rules or regulations and there are no plans to develop any rules or regulations specific to Corrections.

### **FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE**

There have been no FOIA requests made to DACCTE.

Based on JLOSC recommendations in 2003, DACCTE posts meeting agendas on its website at least 2 weeks prior to the meeting and on the State’s Public Meeting Calendar (“PMC”) within 7 days of an upcoming meeting. Meeting minutes are transcribed and posted on DACCTE’s website and the PMC once DACCTE has approved them at the next regularly-scheduled meeting. Meeting notices are also advertised in the News Journal and the Delaware State News.<sup>5</sup>

DACCTE has gone into Executive Session one time to discuss personnel issues. This occurred in June 2018.

<sup>4</sup> Recommendations 2, 3, 5, 7, 8 on pages 7 and 8 of this report include changes to DACCTE’s governing statute.

<sup>5</sup> Analyst’s Note: DACCTE submitted additional meeting notices, agendas, and proofs of advertisement dating back to April 2015, when its webpage was hosted on the Department of Education’s website.

**FISCAL INFORMATION**

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Actual Revenue:

<b>Fiscal Year</b>	<b>Line Item</b>	<b>Amount</b>
<b>FY19 (General Funds)</b>	Personnel Costs	\$273,200.00
	Contractual Services	\$57,200.00
	Supplies/Materials	\$3,000.00
	Travel	\$2,500.00
		<b>TOTAL: \$335,900.00</b>
<b>FY18 (General Funds)</b>	Personnel Costs	\$273,200.00
	Contractual Services	\$57,200.00
	Supplies/Materials	\$3,000.00
	Travel	\$2,500.00
		<b>TOTAL: \$335,900.00</b>
<b>FY17 (General Funds)</b>	Personnel Costs	\$268,400.00
	Contractual Services	\$57,200.00
	Supplies/Materials	\$3,300.00
	Travel	\$2,800.00
		<b>TOTAL: 331,700.00</b>

Actual Expenditures for FY18:

<b>Line Item</b>	<b>Source</b>	<b>Amount</b>
Salaries and OEC Costs	General Fund	\$219,922.69
Buildings – Office Space	General Fund	\$26,111.11
Training	General Fund	\$22,800.00
Equipment Rental	General Fund	\$2,138.77
Other Rental	General Fund	\$1,928.95
Food Service	General Fund	\$1,779.75
Office Supplies	General Fund	\$1,372.05
Mileage – Personal Vehicle	General Fund	\$1,172.40
Telecommunications	General Fund	\$1,085.10
Postage	General Fund	\$385.49
Advertising	General Fund	\$121.33
		<b>TOTAL: \$278,817.64</b>

Neither the State Auditor nor any other external organization has recently audited or evaluated DACCTE.<sup>6</sup>


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<sup>6</sup> Analyst's Note: DACCTE notes the Office of Management and Budget, the Division of Accounting, the Controller General's Office, and the Joint Finance Committee monitor and review DACCTE's activities.

## **ACCOMPLISHMENTS**

Throughout its history, DACCTE has promoted the development and implementation of legislation, policy, and programs to enhance Career and Technical Education opportunities for Delaware students.

Since 2005, DACCTE has assisted in the development of the Delaware Career Compass, an annual publication providing comprehensive, career-planning information that is disseminated to approximately 60,000 middle and high school students and teachers each year free of charge. The Teacher's Guide serves as an instructional tool with the Career Compass publication.

DACCTE continues to conduct on-site monitoring visits of CTE programs in the secondary schools on a regular basis as charged by the General Assembly. Information materials regarding the purpose and procedures are sent to district superintendents and school principals. These include an introductory letter and a program monitoring brochure. Department chairs and teachers are sent questionnaires regarding program rules and regulations to be discussed during the visit. According to DACCTE, these on-site monitoring visits provide vital information as programs of study and career pathways are created and expanded often with changes in curriculum, personnel, funding, and equipment.

DACCTE leads the review process if a district requests a waiver on the use of CTE funds. The Executive Director is one of three people required to approve any waiver requests after the review is conducted.

DACCTE sponsors 2 annual, statewide professional development workshops for all CTE teachers, counselors, and school administrators. Information, rules, guidelines, and resources are provided on educational issues including funding, curriculum, development, federal and state laws and mandates, and other relevant topics. Attendees receive state professional development credits. In 2016, there were 59 attendees at both the spring and fall workshop. In 2017, 54 attended the spring workshop with 51 attending the fall. The spring 2018 workshop had 58 in attendance.

DACCTE believes that CTE must be continuously evaluated by objective persons engaged in various occupational fields to ensure the instruction provided in schools is relevant, requiring constant review and revision of curriculum and standards. This assessment, from various segments of the community, assures all sectors are continuously served. With Delaware in the process of developing, refining, and implementing career pathways and programs of study in occupation areas, an independent advisory organization should continue to advocate for professional development for teachers, administrators, and counselors.<sup>7</sup>

## **CHALLENGES**

DACCTE has experienced budget cuts, the state's hiring freeze, and a zero growth mandate in the past decade. Because of this, a staff position remains vacant resulting in additional workloads for the staff of 2. Additionally, resources are limited to develop and expand services and activities to benefit CTE. Inflation and an increase in the cost of goods and services over the past 3 fiscal years exacerbate DACCTE's budgetary challenges.

CTE involves a large and complex delivery system. It must maintain high standards and be rigorous, relevant, and current, and respond quickly to changes in schools and the workplace.

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<sup>7</sup> See Appendix A for DACCTE's organizational chart.

The CTE curriculum is in transition from career pathways to programs of study based on career clusters that will better prepare students to be career and college ready. These reforms are resulting in a more rigorous curriculum and new state and local programs of study. DACCTE must be flexible to adjust and adapt to these changes.

### **OPPORTUNITIES FOR IMPROVEMENT**

Opportunities for improved operational efficiency include:

- Increase and enhance communications with stakeholders and the general public.
- Fill the existing staff vacancy with a full-time person to better DACCTE’s ability to deliver services.
- Strengthen coordination with the Department of Education to ensure local school districts are in compliance with current regulations when monitoring CTE programs.
- Explore opportunities to use other forms of social media to promote CTE and DACCTE’s mission and goals.

### **ADDITIONAL COMMENT FROM THE JOINT SUNSET ANALYST**

1. DACCTE was brought to JLOSC’s attention when [HB 261 of the 149<sup>th</sup> General Assembly](#) was introduced. The purpose of the bill was to delete Chapter 86, Title 14, DACCTE’s governing statute. The synopsis stated:

The Delaware Advisory Council on Career and Technical Education received \$331,700 out of the Delaware General Fund for the fiscal year ending June 30, 2017. Based upon a simple cost benefit analysis weighed against the budget issues Delaware is facing, it is clear these funds would produce greater benefits if utilized elsewhere. This bill will eliminate this annual expenditure by terminating this Committee via a total repeal of Chapter 86 of Title 14 of the Delaware Code.

HB 261 was tabled in committee to allow JLOSC the opportunity to fully review the entity and determine whether DACCTE is “meeting a recognized State need and [is] accountable to and responsive to the public interests.”<sup>8</sup>

2. On June 10, 2018, DACCTE created a special committee. The creation and purpose of the committee is explained in the following excerpt from DACCTE’s October 10, 2018 meeting minutes:

At the June 10, 2018 Council meeting, Chairman Lathem appointed a Special Committee of the Council to be chaired by Vice Chairman Bob Suppe. The committee was to identify areas in which DACCTE can improve and be more effective in carrying out its mission and purpose to recommend policies that the State should pursue to strengthen Career and Technical Education (CTE). The Special Committee met on August 8, 2018 and decided to focus on two topics/issues to pursue at this time. Those recommendations included the need to expand and enhance the new website with more informational items and the

<sup>8</sup> See 29 *Del. C.* § 10202(c), JLOSC’s declaration of policy.

possibility of producing an annual report which would feature a summary of the school monitoring visits and related issues. The committee also suggested that a Communications Committee be formed to monitor and recommend suggestions/improvements to the DACCTE website.

Given the Committee's recommendation for DACCTE to produce an annual report in addition to modifying the website, this special committee could aide in the process of completing those undertakings.

3. Two vacancies occurred in September of 2018, when the Governor rotated 2 members off DACCTE. As of April 2019, the process to fill those vacancies is underway. Currently, DACCTE is missing a qualifying member who is knowledgeable about students with special needs, a representative of a school board, and a representative of the Delaware National Guard.<sup>9</sup>
4. DACCTE's updated website can be found at [daccte.delaware.gov](http://daccte.delaware.gov).

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<sup>9</sup> See Appendix C for the list of members, appointment dates, and member type as of October 2018.

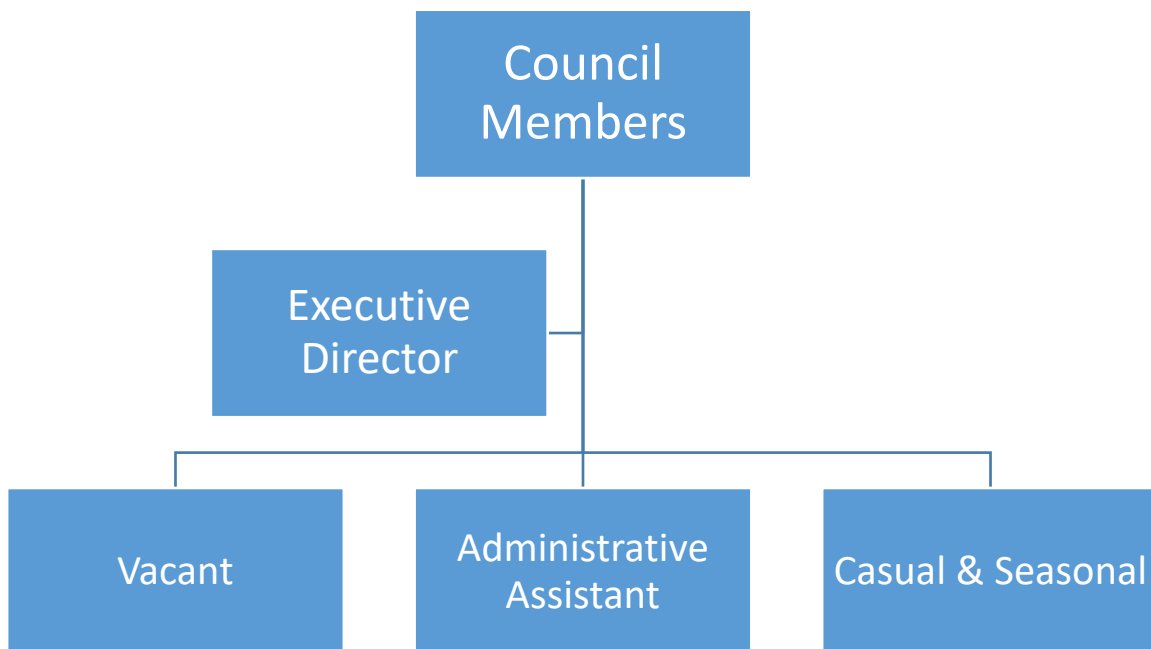
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**APPENDIX A**

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## Delaware Advisory Council on Career and Technical Education Organization Chart



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## **APPENDIX B**

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### **Delaware Advisory Council on Career and Technical Education (DACCTE)**

#### **ARTICLES OF ORGANIZATION**

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##### **ARTICLE I**

###### **Purpose**

The Delaware Advisory Council on Career and Technical Education is an agency of the State of Delaware. DACCTE was established to advise the Governor, General Assembly, Secretary of Education and the State Board of Education on all matters pertaining to career and technical education with emphasis on recommending policies and initiatives that should be pursued to strengthen and modernize the career and technical education delivery system in Delaware.

##### **ARTICLE II**

###### **Membership**

Members of the Delaware Advisory Council on Career and Technical Education shall be appointed by the Governor. Such membership shall include:

- (1) A person or persons knowledgeable about the vocational needs and the problems of management and labor in the State;
- (2) A person or persons representative of industrial and economic development agencies;
- (3) A person or persons representative of institutions of higher education;
- (4) A person or persons representative of institutions which provide programs of career and technical education and training;
- (5) A person or persons knowledgeable about programs in technical and career education;
- (6) A person or persons representative of school boards;
- (7) A person or persons knowledgeable about students with special needs;
- (8) A person or persons representative of business and industry familiar with current and projected employment opportunities;
- (9) A person or persons representative of career and technical student organizations;
- (10) A person or persons representative of the Delaware National Guard; and
- (11) A person or persons representative of the general public-interest in public education.

## Delaware Advisory Council on Career and Technical Education

### ARTICLES OF ORGANIZATION

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#### ARTICLE III

##### Officers

The officers of DACCTE shall include a Chairperson, Vice Chairperson and Secretary. The officers shall be selected by the membership. The Chairperson shall be a representative of the private sector.

#### ARTICLE IV

##### Duties and Responsibilities

The Advisory Council on Career and Technical Education shall comply with Title 14, Sections 8601-8606 of the Delaware Code and any subsequent legislation related thereto:

The Advisory Council on Career and Technical Education shall:

- (1) Advise policymakers on the development of the State Plan for Career and Technical Education.
- (2) Recommend policies that the State should pursue to strengthen career and technical education and related initiatives.
- (3) Evaluate career and technical education programs, services, activities and career initiatives throughout the state.
- (4) Provide technical assistance to local school districts, agencies and other organizations to enhance and improve the career and technical education delivery system.
- (5) Analyze and report on the distribution of funds for career and technical education and on the availability of career and technical education activities and services within the state.
- (6) Promote coordination, collaboration and effective partnerships among business, industry, labor, education and employment and training programs to help meet the economic needs of the state.
- (7) Disseminate relevant career information to teachers, counselors, students and the general public.
- (8) Schedule and conduct at least four regular meetings each year at which the public is given opportunity to express views concerning career and technical education. The time, place and manner of meeting shall be determined by the Council.

## Delaware Advisory Council on Career and Technical Education

### ARTICLES OF ORGANIZATION

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#### ARTICLE V

##### Committees

DACCTE may establish a committee structure to assist in carrying out its duties and responsibilities. Committees may include a Steering Committee, Policy and Assessment Committee and a Projects and Activities Committee. Committees may be added or deleted based on need. Committee recommendations must be adopted by a majority of DACCTE members present at a regular DACCTE meeting.

*Steering Committee:* The Steering Committee shall work with council staff in establishing council priorities and planning council meetings. This committee shall be composed of the DACCTE Chairperson, Vice Chairperson, Secretary and two members selected by the Chairperson.

*Policy and Assessment Committee:* The Policy and Assessment Committee shall assess and recommend action on matters relating to legislation, state regulations, the state plan, program evaluations and equity issues. The Committee chairperson and committee members shall be appointed by the DACCTE Chairperson.

*Project and Activities Committee:* The Project and Activities Committee shall assess and recommend action on matters relating to publications, workshops and seminars, technical assistance issues, student organizations and the awards program. The Committee chairperson and committee members shall be appointed by the DACCTE Chairperson.

#### ARTICLE VI

##### Meetings

The Advisory Council on Career and Technical Education shall meet at least four times per year. All meetings shall be open to the general public. Other special meetings may be called by the Chairperson or by a majority of the members of DACCTE. A majority of the members present at a meeting shall constitute a quorum to transact business.

#### ARTICLE VII

##### Rules of Order

All meetings and activities where parliamentary procedure is involved shall be governed by Robert's Rules of Order.

#### ARTICLE VIII

##### Amendments

Amendments may be adopted or rejected at any meeting by a majority of the total DACCTE membership.

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**APPENDIX C**

**Delaware Advisory Council on Career and Technical Education**  
**List of Members with Appointment Dates & Member Type**

<b>Member</b>	<b>Appt. Date</b>	<b>Member Type</b>
<b>Mr. Samuel Lathem, {Council Chairman}</b> Former President Delaware State AFL-CIO 20 Lochview Drive Bear, DE 19701	(03/97)	Public
<b>Mr. Robert Suppe, {Council Vice-Chairman}</b> President/Owner, R. C. Fabricators 824 Locust Street Wilmington, DE 19801	(01/04)	Public
<b>Mrs. Leann Hornung, {Council Secretary}</b> Former Business Education Teacher 159 Rockrose Drive Newark, DE 19711	(03/81)	Public
<b>Mr. Ronald Burkle</b> Director of Operations, SoDel Concepts 34741 Port Court Dagsboro, DE 19939	(10/17)	Professional
<b>Mrs. Judith Diogo, President</b> President Central DE Chamber of Commerce 435 N. duPont Highway Dover, DE 19901	(11/14)	Professional
<b>Mr. Mark Freidly</b> Former Technology Education Teacher Newark High School 631 Candlestick Lane	(10/17)	Public
<b>Mrs. Sandy Gray</b> Career & Technical Education Specialist Capital School District 1563 Autumn Moon Lane Magnolia, DE 19962	(09/18)	Professional

**Dr. Henry Harper**

Former Director, Tech Prep  
 1 Pittsburgh Court  
 Newark, DE 19713

(03/82)

Public

**Dr. Karen Hutchison**

Local Program Success Specialist  
 National FFA Organization  
 50 Billings Drive  
 Dover, DE 19901

(10/17)

Professional

**Mr. Michael Jahnigen**

President/Owner  
 Sun Pile Foundation  
 35322 Bayard Road  
 Frankford, DE 19945

(10/17)

Professional

**Dr. Joel Littlejohn**

Education Consultant  
 Former Colonial School District Administrator  
 14 Lexington Drive  
 Middletown, DE 19709

(03/82)

Professional

**Ms. Janis Nesterak, CPA**

Faw, Casson & Co., LLP  
 160 Greentree Drive, #203  
 Dover, DE 19904

(11/14)

Professional

**Mrs. Karen Pickard**

Nursing Program Administrator  
 Beebe Healthcare  
 33248 Nautilus Court  
 Lewes, DE 19958

(10/17)

Professional

**General (Ret) Frank Vavala**

Veterans Advocacy Specialist  
 Delaware Technical & Community College  
 3019 Ridgevale Road  
 Wilmington, DE 19808

(09/18)

Professional

10/11/18



## APPENDIX D



SPONSOR: Sen. Lockman & Rep. Bentz  
Sens. Delcollo, Hansen, Lopez, Walsh; Reps. Bennett,  
Dorsey Walker, Spiegelman, Yearick

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 138

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE DELAWARE ADVISORY COUNCIL ON CAREER AND TECHNICAL EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 8601, Title 14 of the Delaware Code by making deletions as shown by strike through and  
2           insertions as shown by underline as follows:

3           § 8601. Purpose.

4           (a) It is the purpose of the General Assembly of the State, through this chapter, to establish and maintain the  
5           Delaware Advisory Council on Career and Technical ~~Education (DACCTE)~~ Education, referred to as "DACCTE"  
6           throughout this chapter. DACCTE is established to advise the Governor, General Assembly, Secretary of ~~Education~~  
7           Education, and the State Board of Education on all matters pertaining to career and technical education with emphasis on  
8           recommending policies and initiatives that should be pursued to strengthen and modernize the career and technical  
9           education delivery system.

10           (b) Further, it is the intent and purpose of the General Assembly to provide an objective agency to conduct  
11           ~~evaluations,~~ evaluations and program reviews and serve as a clearinghouse for state and national information on career and  
12           technical ~~education, so that citizens have education, to provide citizens of this State~~ access to the experience and judgment  
13           of lay and professional groups from the fields of employment and education in the formation of public policies.

14           Section 2. Amend § 8602, Title 14 of the Delaware Code by making deletions as shown by strike through and  
15           insertions as shown by underline as follows:

16           § 8602. Membership.

17           (a)(1) ~~Members of the Delaware Advisory Council on Career and Technical Education (DACCTE) shall be The~~  
18           Governor shall appoint all voting DACCTE members, who shall serve at the Governor's pleasure. Such membership shall  
19           ~~include: The voting members must represent, at a minimum, the following:~~

20                       (1)a. ~~A person or persons~~ An individual knowledgeable about the vocational needs and the problems of  
21           management and labor in the ~~State;~~ State.

22 ~~(2)b. A person or persons representative of~~ An individual representing an industrial and economic  
23 ~~development agencies; agency.~~

24 ~~(3)c. A person or persons representative of institutions~~ An individual representing an institution of higher  
25 ~~education; education.~~

26 ~~(4)d. A person or persons representative of institutions which provide~~ An individual representing an  
27 ~~institution that provides~~ programs of career and technical education and ~~training; training.~~

28 ~~(5)e. A person or persons~~ An individual knowledgeable about programs in technical and career  
29 ~~education; education.~~

30 ~~(6)f. A person or persons representative of school boards;~~ An individual representing a school board.

31 ~~(7)g. A person or persons~~ An individual knowledgeable about students with ~~special needs; disabilities.~~

32 ~~(8)h. A person or persons representative of~~ An individual representing business and industry and familiar  
33 ~~with current and projected employment opportunities; opportunities.~~

34 ~~(9)i. A person or persons representative of~~ An individual representing a career and technical student  
35 ~~organizations; organization.~~

36 ~~(10)j. A person or persons representative of the~~ An individual representing the Delaware National Guard;  
37 ~~and Guard.~~

38 ~~(11)k. A person or persons representative of the general public;~~ An individual representing the general  
39 ~~public, with a demonstrated interest in public education.~~

40 l. An individual to serve as chair.

41 (2) The Governor may not appoint a member to representative of more than 2 of the membership  
42 qualifications under paragraph (b)(1) of this section.

43 (3) The Secretary of the Department of Education shall appoint the following nonvoting DACCTE members:

44 a. A representative of the Department of Education.

45 b. A student enrolled in a Delaware career and technical education program, whose term is for 1 school  
46 year. The Secretary shall consider geographical and other diversities in appointing this member.

47 ~~(b) The Chairperson of DACCTE shall be a representative of the private sector and shall be selected by the~~  
48 ~~members of the Council. A member may be removed by the member's appointing authority for gross inefficiency,~~  
49 ~~misfeasance, nonfeasance, malfeasance, or neglect of duty in office. A member is deemed in neglect of duty if the member~~  
50 ~~is absent from 3 consecutive, regular Board meetings or attends less than 50% of Board meetings in a calendar year. The~~  
51 ~~member's appointing authority may consider the member to have resigned, and may accept the member's resignation.~~

52           Section 3. Amend § 8603, Title 14 of the Delaware Code by making deletions as shown by strike through and  
53           insertions as shown by underline as follows:

54           § 8603. Duties and responsibilities.

55           ~~The Advisory Council on Career and Technical Education~~ DACCTE shall do all of the following:

56           (1) Advise policymakers on the development of the State Plan for Career and Technical Education and ~~any~~  
57           amendments to the State Plan.

58           (2) Recommend policies that the State should pursue to strengthen career and technical education and related  
59           initiatives.

60           (3) Evaluate career and technical education programs, services, ~~activities~~ activities, and career initiatives  
61           throughout the State.

62           (4) Provide technical assistance to local school districts, ~~agencies~~ agencies, and other organizations to  
63           enhance and improve the career and technical education delivery system.

64           (5) Analyze and report on the distribution of funds for career and technical education and on the availability  
65           of career and technical education activities and services within the State.

66           (6) Promote coordination, ~~collaboration~~ collaboration, and effective partnerships among business, industry,  
67           labor, ~~education~~ education, and employment and training programs to help meet the economic needs of the State.

68           (7) Disseminate relevant career information to teachers, counselors, ~~students~~ students, and the general public.

69           (8) Schedule and conduct at least 4 regular meetings each year at which the public is given opportunity to  
70           express views concerning career and technical education. The Council shall determine the time, place ~~place~~, and  
71           manner of meeting ~~shall be determined by the Council~~.

72           Section 4. Amend § 8604, Title 14 of the Delaware Code by making deletions as shown by strike through and  
73           insertions as shown by underline as follows:

74           § 8604. Acceptance of and compliance with federal and state legislation and regulations.

75           (a) ~~The Delaware Advisory Council on Career and Technical Education~~ DACCTE shall comply with the  
76           ~~provisions of the federal Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) [20 U.S.C. § 2301 et~~  
77           ~~seq.], seq.] and any subsequent reauthorization thereof, and thereof.~~ DACCTE is subject to its requirements of the Carl D.  
78           Perkins Career and Technical Education Act of 2006, and any implementing regulations thereto, and any state laws or  
79           regulations related to career and technical education. As used in this title, "career and technical education" shall have has  
80           the same meaning as "vocational-technical education."

81 (b) The State Treasurer ~~shall be~~ is the fiscal agent for ~~the Delaware Advisory Council on Career and Technical~~  
82 ~~Education~~ DACCTE and shall make disbursements upon the order of the Council to carry out its functions.

83 Section 5. Amend § 8605, Title 14 of the Delaware Code by making deletions as shown by strike through and  
84 insertions as shown by underline as follows:

85 § 8605. Member reimbursement.

86 Members ~~shall~~ serve without pay and may be reimbursed for travel in connection with their responsibilities.

87 Section 6. Amend § 8606, Title 14 of the Delaware Code by making deletions as shown by strike through and  
88 insertions as shown by underline as follows:

89 § 8606. Staff.

90 The Council ~~is authorized to~~ may obtain the services of ~~such~~ professional, ~~technical~~ technical, and clerical  
91 personnel and to contract for such services as may be necessary ~~to enable it~~ to carry out the duties and responsibilities of  
92 this chapter.

93 Section 7. Amend Chapter 86, Title 14 of the Delaware Code by making deletions as shown by strike through and  
94 insertions as shown by underline as follows:

95 § 8607. Meetings; quorum.

96 (a) DACCTE shall schedule no less than 3 meetings per year after regular business hours at locations in each of  
97 the 3 counties of this State.

98 (b) A majority of the voting DACCTE members must be present at a meeting in order to have a quorum and  
99 conduct official business. The nonvoting members or a vacant position are not counted for quorum purposes.

100 § 8608. School monitoring.

101 DACCTE shall do all of the following:

102 (1) Create a 2-year, rotating career and technical education program monitoring schedule.

103 (2) Conduct on-site monitoring visits of schools.

104 (3) Post all final reports regarding the program monitoring under this chapter to DACCTE's website.

105 § 8609. Annual report.

106 (a) DACCTE shall produce an annual report that includes all of the following:

107 (1) Advocacy efforts made to lawmakers and school administrators on behalf of career and technical  
108 education students.

109 (2)a. A copy of that year's issue of DACCTE's annual publication, Career Compass.

- 110                    b. A list of recipients of both the print and digital versions of Career Compass. The list must include the  
 111                    names of specific entities that receive Career Compass, but may not include the names of specific individuals,  
 112                    unless the individual receives a Career Compass by virtue of the individual's position.  
 113                    (3) A needs assessment of statewide career and technical education programming.  
 114                    (4) The reports from all on-site monitoring visits to programs conducted under § 8608 of this title.  
 115                    (5) Written procedure if an on-site monitoring visit requires follow up.  
 116                    (b) DACCTE shall submit the annual report under this section to the Governor, the General Assembly, the  
 117                    Department of Education's Director of Career and Technical Education, and the Director and Librarian of the Division of  
 118                    Research of Legislative Council.

#### SYNOPSIS

This Act is the result of the Joint Legislative Oversight and Sunset Committee's review of the Delaware Advisory Council on Career and Technical Education ("DACCTE"), and does the following:

- Clarifies that no more than 2 members may represent any 1 membership qualification.
- Adds 2 nonvoting members, a representative from the Department of Education and a student enrolled in a career and technical education ("CTE") program.
- Removes the requirement that the chair represent the private sector.
- Limits the chair to 2, 5-year terms.
- Requires DACCTE to submit an annual report that includes advocacy efforts, a needs assessment for statewide CTE programming, and reports from on-site school monitoring visits.
- Requires at least 3 meetings per year take place after regular business hours and in each of the 3 counties.
- Adds quorum and member removal provisions.
- Conforms existing law to the drafting standards of the Delaware Legislative Drafting Manual.

Author: Senator Lockman



SPONSOR: Sen. Lockman

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1  
TO  
SENATE BILL NO. 138

- 1 AMEND Senate Bill No. 138 on line 41 by deleting "representative of" and inserting in lieu thereof "represent".
- 2 FURTHER AMEND Senate Bill No. 138 on line 109 by deleting "DACCTE's" and inserting in lieu thereof "the".

SYNOPSIS

This Amendment corrects 2 technical errors. The first is a typographical error. The second removes reference to Career Compass as a publication of the Delaware Advisory Council on Career and Technical Education ("DACCTE"), which is published by the Department of Labor. Also, although a synopsis cannot be amended, it is worth noting that the synopsis for Senate Bill No. 138 incorrectly references term limits for the DACCTE chair. Under SB 138, the chair serves at the pleasure of the Governor.

Author: Senator Lockman





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# Joint Legislative Oversight & Sunset Committee 2019 Final Report



## Delaware Health Information Network

*A Report to the Governor and the  
150<sup>th</sup> General Assembly of the State of Delaware.*

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June 2019



Final Report for Delaware Health Information Network completed by:  
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Vice-Chair

Representative Andria L. Bennett

Representative Sherry Dorsey Walker

Representative Jeffrey N. Spiegelman

Representative Lyndon D. Yearick

Senator Anthony Delcollo

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which typically take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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## **2019 Final Recommendations: Delaware Health Information Network**

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that Delaware Health Information Network (“DHIN”) be held over, and report before the Committee in January 2020.

**RECOMMENDATION 1:** DHIN shall continue, subject to any further recommendations that JLOSC adopts.

**Status:** Approved

**RECOMMENDATION 2:** DHIN shall continue to work with the Department of Health and Social Services, Delaware Office of Management and Budget, Division of Public Health, Division of Medicaid and Medical Assistance (“DMMA”), and Delaware Health Care Commission to finalize MOUs permitting those collaborating state agencies to access data in the HCCD.

Option: DHIN shall explore possible partnerships and develop MOUs with other agencies that will strengthen research and data for the HCCD. For example, DHIN could explore partnership with the Department of Correction (“DOC”) and organ procurement organizations (such as the Gift of Life program) to identify ways in which DHIN data can be used to safely and quickly assist with organ donation suitability determinations.

**Status:** Approved with option.

**RECOMMENDATION 3:** DHIN shall continue their work with DMMA to leverage their previously-appropriated state funding for the HCCD by seeking a federal match through the Implementation Advance Planning Document (“IAPD”) process.

Option: Should the IAPD process be unsuccessful for any reason, DHIN shall work with JLOSC to ensure that the \$2 million already appropriated funds remain available to DHIN for its work setting up and maintaining the HCCD.

**Status:** Approved with option.

**RECOMMENDATION 4:** DHIN shall submit an annual status report, no later than January 1, to the Governor and General Assembly, regarding the HCCD. Reports shall include:

- a. Analysis of strengths and weakness of HCCD.
- b. Current status and future plans of HCCD.
- c. Detailed Budget for HCCD operations.
- d. Grant applications and status for HCCD operational funding.
- e. Status of contracts with vendors supporting HCCD operations.
- f. Number of data access requests submitted and granted.

Option 1: The first report shall be submitted no later than January 1, 2020.

Option 2: The annual reports shall be included on the DHIN website.

**Status:** Approved with both options.

**RECOMMENDATION 5:** JLOSC will sponsor a bill to make technical corrections to DHIN’s entire governing statute, Chapter 103, Title 16.

**Status:** Approved

**RECOMMENDATION 6:** At DHIN’s request, DHIN wishes to work with the Committee’s legislative attorney to draft bills that will:

- a. Maximize the number and types of claims that are submitted to the Delaware HCCD.
- b. Permit more detailed reporting of claims related to sensitive diagnoses (by, for example, identifying DHIN as an appropriate holder of data associated with an HIV-related test (16 Del. C. § 717) or genetic testing (16 Del. C. § 1205)).
- c. Maximize the number and types of entities that submit clinical information to the DHIN.
- d. Permit use of clinical data for public health reporting and research.
- e. Permit the use of de-identified clinical data for appropriate research purposes.
- f. Ensure that pharmacy prescription fill data is provided to the DHIN.
- g. Permit DHIN to provide data to the Gift of Life program on potential donors (this would be needed to establish a partnership between the two entities as referenced in recommendation number 2).

Option 1: Create a small JLOSC subcommittee to will discuss the proposed statutory amendments and report back to the JLOSC in January 2020. Subcommittee membership will include DHIN’s private counsel, the Committee’s legislative attorney, and other members the Committee deems appropriate.

Option 2: Same as Option 1, but create a task force instead of a JLOSC subcommittee.

- OR -

Option 3: The Committee’s legislative attorney will work with DHIN’s private counsel to draft proposed bills and report back to the JLOSC in January 2020.

**Status:** Approved with option 2.

**RECOMMENDATION 7:** At DHIN’s request, DHIN shall identify areas of overlap between its capabilities and those separately contracted for or provided by State agencies, and work with those agencies to eliminate overlap or redundancies. As a part of these efforts, DHIN shall explore whether it can reasonably be the “single point of contact” for delivery of health data on Delaware residents to assist state and federal public health efforts. By statute, DHIN is the “State’s sanctioned provider of health information exchange (HIE) services” (16 Del. C. § 10301).

Option: DHIN will report back to the JLOSC on progress of this research in January 2020.

**Status:** Approved with option.

**RECOMMENDATION 8:** DHIN shall update its regulations to reflect current operational procedures.

Option: DHIN will report back to the JLOSC on progress of these efforts in January 2020.

**Status:** Approved with option.

**RECOMMENDATION 9:** DHIN shall review and apply updates as needed to internal procedures involving HCCD operations. Areas of focus must include:

- a. Data staging, storage, and management.
- b. Reviewing and granting data access applications.
- c. Reviewing data access pricing.
- d. Reviewing and implementing marketing strategies and goals.

Option: DHIN will report back to the JLOSC on progress of these efforts in January 2020.

**Status:** Approved with option.

**RECOMMENDATION 10:** DHIN shall make the following updates to their website to advertise and promote the use of the HCCD to increase private funding opportunities associated with granting data access applications:

- a. Create a banner for the HCCD on the DHIN homepage.
- b. Include an icon on the DHIN homepage for the HCCD (current icons only include Patients, Healthcare Providers, and Data Senders).
- c. Add a specific webpage menu for the HCCD that would be included at the top of all DHIN webpages.
- d. Update the “in the news” section of the DHIN website and include recent news regarding the HCCD. The most recent news item was from August 2018.
- e. Create and include a HCCD brochure for the website.
- f. Redesign the HCCD webpage in order to adequately market the HCCD and attract data access applications.
- g. Make the HCCD data access application a fillable PDF document or fillable web form for easier submissions.
- h. Include a prominent link to the HCCD Committee’s information including meeting agendas and minutes.

**Status:** Approved

**RECOMMENDATION 11:** DHIN is held over and shall report to the Committee in January 2020.

**Status:** Approved



**A NOTE ABOUT THIS REPORT**

Much of the information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled “Additional Comment from the Committee Analyst.” It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the Joint Legislative Oversight and Sunset review processes.

## **AGENCY HISTORY**

The Delaware Health Information Network (“DHIN”) established in 1997 by statute, under the direction of the Delaware Health Care Commission. The State committed to partner in funding DHIN over a five-year period, with the stated expectation that DHIN would be financially self-sustaining by the end of that time.

DHIN “went live” in 2007 and became the first operational statewide health information exchange in the nation.<sup>1</sup> After an amendment to the enabling statute in 2010, DHIN became a semi-autonomous, not-for-profit public instrumentality of the State of Delaware.<sup>2</sup> The State of Delaware is now a customer of DHIN’s services, paying on the same footing as other customers for the same or similar services. Fiscal year 2012 was the last year DHIN received any funds through the Capital Bond Bill.

DHIN is currently operating as a statutory not-for-profit instrumentality of the State of Delaware with the rights, obligations, and privileges with the purpose to promote the design, implementation, operation, and maintenance of facilities for public and private use of health care information in the State.<sup>3</sup>

DHIN’s statutory mission is to develop and operate a statewide health information network integrating patient satisfaction, clinical, and financial data sources to inform decisions. The law intends for DHIN to be a public-private partnership for the benefit of all citizens of Delaware.

## **JUSTIFICATION AND NEED FOR EXISTENCE**

At the time of DHIN’s creation, electronic exchange of health information was in its nascent stage. There was no central delivery method for clinical results to improve healthcare delivery in Delaware. The sound analysis and access of health data is a critical component to any state-based healthcare reform effort.

DHIN was formed to advance the creation of a statewide health information and electronic data interchange network for public and private use, to be a public-private partnership for the benefit of all citizens of Delaware, and to address Delaware’s needs for timely, reliable, and relevant health care information.

Over the past decade, DHIN has proven its value in helping Delaware in its efforts to achieve the “Triple Aim of Healthcare” which is defined as improved quality of care, improved patient experience, and lower costs. More than 14 million clinical results and reports post to DHIN each year and the system includes 2.5 million patient records from all 50 states. DHIN currently serves all of Delaware’s acute care hospitals, long-term care, and skilled nursing facilities. DHIN also serves nearly all of Delaware’s medical providers who make orders.

Over the past several years, DHIN operations have assisted with the State’s focus on the Roadmap to Health.<sup>4</sup> The Health Care Claims Database is a unique and key component of this effort, housing both

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<sup>1</sup> Analyst’s Note: This information taken from <https://dhin.org/about> on March 12, 2019.

<sup>2</sup> Analyst’s Note: As defined by the Internal Revenue Service (“IRS”) an “instrumentality” is an organization created by or pursuant to state statute and operated for public purposes. Generally, an instrumentality performs governmental functions, but does not have the full powers of a government, such as police authority, taxation, and eminent domain.

<sup>3</sup> See 16 *Del. C.* § 10301.

<sup>4</sup> Analyst’s Note: DHIN is possibly referring to the DHSS established initiative “Delaware’s Road to Value,” which came from House Joint Resolution 7, approved on September 9, 2017. This legislation authorized the Secretary of DHSS to undertake actions necessary to establish a health care benchmark. The Delaware Health Care Claims Database was created in anticipation of this initiative.

clinical and claims data, coupled with analytic tools to support insights into healthcare spending in Delaware.<sup>5</sup>

In addition to serving Delaware’s medical facilities and providers, DHIN is poised to serve in the event of an emergency or disaster situation. DHIN is aware that its services would be vital to the delivery of healthcare if the State of Delaware faced an emergency event or disaster. The safety and security of its information is one of DHIN’s greatest strengths. The timeliness of data delivery and the ability to recover from a disaster or emergency are critical to DHIN’s ability to serve as Delaware’s health information exchange. In order to be prepared to serve in this capacity, DHIN has developed and routinely tested its business continuity and disaster recovery plans.

An independent review completed by Maestro Strategies monetized DHIN’s value, by calculating the following:<sup>6</sup>

- DHIN has saved data senders nearly \$7 million by delivering results to enrolled providers in 2013 alone.
- DHIN has saved enrolled practices a collective \$885,000 in electronic health record interface implementation
- DHIN saved insurance companies and consumers \$10 million annually in the reduction of duplicate radiology and lab tests.<sup>7</sup>

In summary, DHIN saves time, money, and lives by providing medical professionals with secure and immediate access to up-to-date test results, reducing duplicated testing, leveraging technology and reducing paper records, and improving the speed and quality of care. As DHIN enters its next decade, it continues to modernize and provide value beyond result delivery, delivering success as a public-private partnership, and helping position Delaware as a national leader in health information exchange. Without DHIN, Delaware would lose its data exchange broker and a centralized source for Delaware’s clinical data.

### **JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY**

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) reviewed the DHIN in 2010. At the time of review, the committee was known as the Joint Sunset Committee (“JSC”). The Committee made specific recommendations as follows:

Recommendation #1: Amend the statute to provide state fiscal oversight of the DHIN.

Recommendation #2: Management should immediately implement control procedures to ensure that all DHIN financial information reported to stakeholders is reconciled to both Delaware Financial Management System (“DFMS”) and the project management system.

Recommendation #3: Management should provide complete and timely reporting of the DHIN financials. Reporting should include budget to actual reports of revenue and expenditures and include progress reports that detail projected timelines.

<sup>5</sup> Analyst’s Note: On July 21, 2016, Senate Bill 238 created the Delaware Health Care Claims Database to be administered and operated under the existing DHIN framework.

<sup>6</sup> Maestro Strategies is identified in JLOSC questionnaire responses as a company that evaluates health information exchanges.

<sup>7</sup> Response to JLOSC Questionnaire, pg. 33, indicates that these savings estimates were based on data from 2009-2013 that saw a 64% reduction in high volume and high cost lab tests and a 20% reduction in high cost, high volume radiology tests.

Recommendation #4: Comply with state law and enforce the reporting requirements of the Bond Bill.

Recommendation #5: Management should implement a sustainability plan and corresponding business plan that will ensure financial viability into the future.

Recommendation #6: Research and explore long-term care and home health care opportunities to expand DHIN across the continuum of care.

Recommendation #7: Explore the functionality that will help practices that are not ready to embrace technology and the financial investment meet the “meaningful use” criteria in ARRA (stimulus) in order to qualify for Medicare/Medicaid incentive payments and report back to the JSC regarding the DHIN’s continuing progress.

Recommendation #8: Define an appropriate and cost-effective approach to implementing electronic eligibility verification and claims submission through DHIN as required by the State Health Information Exchange Cooperative Agreement Program under ARRA and report back to the JSC

Recommendation #9: Continue to demonstrate the value of health information exchange and attempt to connect all hospitals in the state to DHIN.

Recommendation #10: The DHIN provide the JSC with reports making sure that those challenges with regard to the signatures between the Delaware Health Care Commission and the Department of Health and Social Services be addressed.

Recommendation #11: Develop a conflict of interest policy.

Recommendation #12: Develop a process for measuring how the DHIN is keeping up with the latest technology.

Recommendation #13: Develop skills sets for Board appointees.

Recommendation #14: Develop a policy for performance evaluation and bonus structure evaluation for employees.

Recommendation #15: Develop a policy for performance evaluation and bonus structure evaluation for contracted employees.

Recommendation #16: Report back to the JSC relating to the process for reimbursing a funding source (i.e. hospitals, labs, etc.) and discussions or advancement regarding the development of a policy for reimbursement.

In April of 2012, the JSC released DHIN from sunset review without reporting requirements. The following was the progress highlights concerning the 2010 JSC Recommendations:

- Pursuant to the FY 2012 Bond Bill, DHIN was required to submit a business plan to the members of the Bond Bill Committee, among others. The business plan was submitted on September 16, 2011; subsequent correspondence dated September 28, 2011 from the co-

chairs of the Bond Bill Committee informed DHIN that they endorse and approve the business plan.

- Successful execution of DHIN's FY 2012 budget will establish a solid fiscal foundation for FY 2013, permitting DHIN to operate independently of any Bond Bill funding.
- Preliminary results from an actual usage study show that Delaware has achieved measurable and significant savings from DHIN, including a greater than 30% reduction in a sub-set of high cost laboratory tests.
- 100% of Delaware acute care hospitals participate in DHIN.
- More than one million unique patients represented in the master patient index, representing 90% of Delaware residents, as well as patients from other states.
- 88% of providers currently practicing in Delaware are enrolled in DHIN. DHIN expects this percentage to reach 95% by June 30.
- More than 5,000 providers and staff at 551 Delaware practices are live on DHIN; 226 of these practices receive clinical results/reports exclusively through the DHIN. (As of 3/29/2012)
- 80% of laboratory tests ordered or performed in Delaware are reported through DHIN (as of September 2011). DHIN is working with the Department of Health & Social Services to ensure that all required reporting of clinical data to any state agency can be accomplished through DHIN.
- DHIN offers providers and hospitals the tools necessary to attest for Meaningful Use by enabling exchanges of health information outside of their respective organizations.

### **MISSION, GOALS, OBJECTIVES, & AUTHORITY**

DHIN's mission is to serve providers and care consumers through innovative solutions that make health data useful. DHIN's mission, as outlined in statute:<sup>8</sup>

- Promote more efficient and effective communication among multiple health care providers, including, but not limited to, hospitals, physicians, payers, employers, pharmacies, laboratories and other health care entities.
- Create efficiencies in health-care costs by eliminating redundancy in data capture and storage and reducing administrative, billing and data collection costs.
- Create the ability to monitor community health statuses.
- Provide reliable information to health-care consumers and purchasers regarding the quality and cost-effectiveness of health care, health plans, and health-care providers.

The vision of DHIN is to develop a network to exchange real-time clinical information among all health care providers (office practices, community clinics, hospitals, laboratories, diagnostic facilities, etc.) across the state to improve patient outcomes and patient-provider relationships, while reducing service duplication and the rate of increase in health care spending.

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<sup>8</sup> See 16 *Del. C.* § 10303.

The basis for interoperability among health care providers in the State of Delaware is served by DHIN's five primary goals:

- To improve the care received by patients of Delaware's health care system and to reduce medical errors associated with often inaccurate and incomplete information available to providers of medical care.
- To reduce the time required and financial burdens of exchanging health information among health care providers and payers (necessary for patient care), by addressing the currently isolated and un-integrated model of distribution methods and dramatically increasing use of electronic means.
- To improve communication between healthcare providers and their patients to provide the right care at the right time based on the best available information.
- To reduce the number of duplicative tests to afford specialists a more comprehensive view of the patient upon referral from a primary physician. To expedite the reporting of consultant opinions and tests or treatments between specialists and the referring physicians.
- To improve the efficiency and value of electronic health records (EHR) in the physician's office. To assist those physicians without an EHR to better organize and retrieve test results.

In addition, DHIN sets annual corporate goals, which follow best practices for a balanced scorecard approach. For fiscal year 2019, DHIN's Board of Directors approved the following corporate goals:

- Goal 1 – Financial
  - Introduce a pricing structure that incentivizes sending DHIN data
    - Contributes to a sustainable business model based on value
    - Allows for possible lowering of our data sender and payer participation fees or enhanced services for same fees
- Goal 2 – Customer
  - Complete all phases of DHIN's technology refresh (Community Health Record, MIRTH Results, Medication History, Image Viewing, Clinical Gateway)<sup>9</sup>
    - Produce additional value for current DHIN participants
    - Improve stakeholder confidence
    - Contribute to a sustainable business model based on value
  - Enhance at least one current service or introduce a new service to attract new customer segments.
    - Develop new customer segments

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<sup>9</sup> MIRTH Results definition not supplied by DHIN, could be related to Mirth Connect, also known as Nextgen Connect, which is a cross-platform interface engine used in the healthcare industry that enables the management of information using bi-directional sending of many types of messages.

- Sustainable business model based on value
- Diversify revenue stream
- Goal 3 – Internal Processes
  - Implement the Health Care Claims Database
    - Open new market segments
    - Diversification of revenue stream
    - Contribute (over time) to a sustainable business model based on value
    - Contribute to a viable analytics service
- Goal 4 – Learning and Growth
  - At least 30% of DHIN employees receive certification at the intermediate level for at least one additional Information Technology Infrastructure Library (“ITIL”) course and produce process maps, responsibility assignment matrix (“RACI”) charts, critical success factor charts (“CSFs”), and key performance indicators for at least 70% of defined ITIL processes.
    - Part of implementing Gartner’s suggested 5-year roadmap<sup>10</sup>
    - Improved portfolio management
    - More clearly defined internal processes

All levels of the DHIN team are engaged in goal setting, and DHIN follows the Balanced Scorecard model in setting, monitoring, and attaining corporate and personal goals.

Each year, the Board of Directors defines DHIN’s strategic organizational goals. From this set of organizational goals, employees establish personal goals, approved by the Chief Executive Officer, that demonstrably contribute to DHIN achieving its Board-defined goals.

At the mid-point of the fiscal year, each employee meets with his or her immediate supervisor to review performance to date against goal and again at the close of the fiscal year.

In addition to personal goals, DHIN team members also serve as business owners and service owners for DHIN’s service offerings. The teams conduct quarterly internal service meetings with DHIN’s CEO, reporting on the adoption, utilization, performance, and return on investment for each of the twenty service offerings.

DHIN’s management team provides monthly reports on key metrics, which contribute to the monthly Board report presented by DHIN’s CEO. The members of the Board and executive team meet quarterly, per the by-laws, to review DHIN’s financial reports.

As part of the State’s focus on the healthcare roadmap, members of the DHIN team work very closely with the Department of Health & Social Services (“DHSS”) and Delaware Health Care Commission on shared goals, including the Delaware Health Care Claims Database and State Innovation Model funded projects. DHIN’s CEO serves on the Health Care Commission; Delaware Center for Health Innovation Board of Directors, Quality & Safety Committees of Highmark Blue Cross Blue Shield of Delaware and Christiana Care Health System, and meets regularly with DHSS leadership.

Additionally, DHIN works collaboratively with the Lt. Governor’s Office on health-related projects, including representation at the Behavioral Health Consortium and associated sub-committees.

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<sup>10</sup> In 2016, DHIN consulted with industry leader Gartner to develop a five-year roadmap for maturing as an organization.

DHIN's own Board of Directors, per statute, includes representatives from the Office of Management and Budget, Department of Technology and Information, Department of Health & Social Services and Office of the Controller General, all of whom are appointed by the Governor. The DHIN Board receives monthly reports from the DHIN executive team on progress against corporate goals, financial status, and organizational challenges/opportunities.

Representatives from all agencies and the public are invited to DHIN's monthly Town Hall meetings, which are held both in-person and by phone.

At a more granular level, DHIN team members work directly with representatives from nearly all State agencies on a variety of data-related projects. These agencies include:

- Department of Health & Social Services
- Division of Public Health
- Delaware Health Care Commission
- Division of Medicaid & Medical Assistance
- Department of Correction
- Division of Substance Abuse & Mental Health
- Delaware Office of Management and Budget
- State Employee Benefits Committee
- Department of Technology & Information

## **COMPOSITION OF THE BOARD OF DIRECTORS**

The governing statute requires DHIN to be managed and operated by a Board of Directors consisting of 19 members. It is the intent that the membership of the Board includes individuals with various business, technology, and healthcare industry skills committed to managing the Corporation in an efficient, effective, and competitive manner. The Board shall be comprised of the following members:<sup>11</sup>

- The Director of the Office of Management and Budget or the Director's designee;
- The Chief Information Officer of the Department of Technology and Information or the Chief Information Officer's designee;
- The Secretary of the Department of Health and Social Services or the Secretary's designee;
- The Controller General or the Controller General's designee;
- Six members, appointed by the Governor, including at least one person who shall represent the interests of medical consumers and at least three with experience and/or expertise in the health-care industry;
- Three members appointed by the Governor representing hospitals or health systems;
- Three members appointed by the Governor representing physicians;
- One member appointed by the Governor representing businesses or employers; and
- Two members appointed by the Governor representing health insurers or health plans

Each member can serve two consecutive, three-year terms, with initial term appointments staggered by the Governor; each member continues to serve beyond their term end until a successor is appointed. Members must attend all scheduled meetings either in person or by electronic means. A member may be removed from the Board with the approval of the Governor upon recommendation by the Board if

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<sup>11</sup> 16 Del. C. § 10302



a member is absent for three consecutive meetings without adequate reason or fails to attend at least half of regularly scheduled meetings during any calendar year.

A member may resign by providing a written resignation notice to the chair and secretary of the Board. Any submitted written resignation becomes effective according to the date included in the notice. The chair or the Board determines the resignation effective date in events where a resignation notice does not include a date. Members who have resigned from a term will not be eligible for re-appointment to the Board for a period of one year. DHIN has never had a board member removed for any reason other than resignation or expiration of a term.

The Board has the ability to conduct business by reaching a quorum, a simple majority of currently appointed members. The Board will elect a chairperson, vice-chairperson, and secretary. The Board will establish an Executive Committee comprised of seven members, to include the chairperson, vice-chairperson, secretary and four other members elected by a majority of the Board. The Executive Committee acts on behalf of the full Board in instances that prevent the full Board from reasonably convening in order to conduct business in a timely manner.

The Board currently has 16 appointed members.<sup>12</sup> There are currently three vacancies, which include a consumer representative and a representative from the Office of the Controller General.<sup>13</sup> DHIN forwards information concerning board vacancies to the Governor's office.

### **Board Compensation**

Board members do not receive any compensation but may authorize, by resolution, reimbursement of reasonable expenses incurred in the performance of their duties. Such authorization may prescribe the procedure for approval and payment of such expenses by designated officers of DHIN. Board members can serve DHIN in other capacities, and may receive compensation for such services. Any such compensation is subject to all applicable requirements concerning conflict of interest and disclosure.

### **Board Member Trainings**

A responsibility of DHIN's Chief Executive Officer includes developing a comprehensive training and orientation curriculum for new members. Currently, newly appointed Board members meet with DHIN leadership prior to attending the first board meeting and are provided background information on DHIN, a system demonstration, current status of DHIN, plans for the future, and an overview of Board member duties.

DHIN introduced training in 2019 to allow members to attend a voluntary offsite training session with an outside facilitator. This training will better equip members to advocate for DHIN within their organizations and beyond.

### **Avoiding Conflicts of Interest**

As a public instrumentality of the State of Delaware, Board members and employees of DHIN are subject to the laws regulating the conduct of officers and employees of the State, as set forth in 29 *Del. C.* § 5806. All board members shall be required, upon their appointment and on an annual basis thereafter, to sign a conflict of interest statement on a form approved by the Executive Committee.<sup>14</sup>

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<sup>12</sup> Board roster available on DHIN's website.

<sup>13</sup> Analyst's Note: Information on the third vacancy not provided.

<sup>14</sup> Executive committee defined in by-laws provided in Appendix A.

## **STAFFING**

DHIN currently employs 30 staff members. With DHIN's expanded role via statutory obligations, adequate staff is a necessity. Otherwise, work is not completed and responsiveness is jeopardized. The DHIN Board of Directors considers staffing requests annually and generally approves additional resources as requested. Internally, the DHIN management team employs enterprise education and awareness to work collaboratively to meet deadlines.

DHIN posts vacancies on their website, as well as job boards and social media websites. The hiring manager reviews received applications and multiple rounds of interviews occur with potential candidates. Generally, both staff and management team members submit feedback regarding potential candidates. After the hiring decision process is completed, a new team member is hired and an onboarding session occurs on the first day of employment. Each new hire receives an employee manual. Training and education is a central part of DHIN's staff philosophy. At least one of DHIN's annual corporate goals will involve ongoing staff training initiatives. Additionally, each staff member is required to incorporate training into his or her yearly personal goals. DHIN launched its Information Technology Infrastructure Library ("ITIL") two years ago to establish a strong commitment to staff training. ITIL is a set of detailed practices for service management in the information technology ("IT") field that focuses on aligning IT services with business needs. All DHIN staff members are required to hold at least an intermediate level certification with ITIL training. The goal is to have the majority of DHIN's management team certified at the expert level by 2020.

DHIN staff work with state agencies to coordinate services. DHIN maintains Memoranda of Understanding ("MOUs") with the following State agencies or departments:

- **Division of Public Health** – Governs data sharing/reporting for the following services provided:
  - Syndromic Surveillance.
  - Electronic Laboratory Reporting.
  - Immunization Update/Query.
  - Newborn Screening.
  - DPH Laboratory Information System
- **Delaware Health Care Commission** – Outlines agreement for services (previously used for provider scorecard; now, payer webinars and health care claims database) performed by DHIN in exchange for State Innovation Model funding.<sup>15</sup>
- **Division of Medicaid & Medical Assistance** – Outlined pilot agreement for consumer mobile alert system.

As part of the Health Care Claims Database work, an MOU between DHIN and the collaborating State agencies (Delaware Office of Management and Budget, State Employee Benefits Committee, Division of Public Health, Division of Medicaid and Medical Assistance, and Delaware Health Care Commission) is in progress.

## **COMPLAINT AND DISCIPLINARY PROCESS**

Outlined in DHIN's rules and regulations is the complaint process. A Dispute Resolution Committee resolves disputes regarding DHIN policies, procedures, and regulations. Members of the DHIN Board, appointed by the Board chair, compose the Dispute Resolution Committee. That committee may create

<sup>15</sup> Analyst's Note: State Innovation Model funding ended on January 31, 2019.

rules and regulations for administering any such dispute; relief provided to an aggrieved party includes financial penalties, suspension, or termination of an entity or individual's use or participation of DHIN. In the event that a party is dissatisfied with the decision of the Dispute Resolution Committee, the decision is appealable to the Delaware Superior Court. DHIN is not presently aware of any instances when any party has triggered this dispute resolution procedure.

DHIN has received few complaints. Received complaints originated with data senders, insurers, or healthcare providers that have periodically questioned fees charged for DHIN's services or voiced concerns about service interruptions. Complaints received from consumers, have periodically involved requests to remove an individual from the Community Health Record. This is resolved as outlined in the rules, regulations, and DHIN health record forms available on the DHIN website. There have been no complaints filed with the Attorney General's office and no complaint investigations conducted involving DHIN.

DHIN also has a disciplinary process in place for employee conduct. It is DHIN's policy that any conduct, which, in its view, interferes with, or adversely affects employment could be grounds for disciplinary action, up to and including termination. Disciplinary action could include any or all of the following: verbal counseling/warnings, written warnings, and termination. Factors considered in ascertaining the appropriate disciplinary actions include:

- Seriousness of conduct.
- Employment record.
- Employee's ability to correct conduct.
- Action taken with respect to similar conduct by other similarly situated employees.
- Surrounding circumstances.

If a situation requires an investigation, DHIN's expectation is that employees cooperate fully with the investigation. DHIN's employee disciplinary policy does not alter the at-will nature of the employment relationship. DHIN or the employee may terminate the employment relationship at any time with or without reason, with or without prior notice.

## **ENACTED LEGISLATION IMPACTING THE COMMISSION**

### **State Legislation – Substantive Amendments to DHIN**

139<sup>th</sup> General Assembly, July 1997, HB 276 – Created a public instrumentality of this State known as the DHIN under the direction and control of the Delaware Health Care Commission ('Commission') to promote the design, implementation, operation and maintenance of facilities for public and private use of health care information in the State.

143<sup>rd</sup> General Assembly, July 2006, SB 339 – Amended the composition of DHIN. This bill deletes the Delaware Health Care Coalition from the Delaware Health Information Network Board of Directors, since that organization no longer exists, and replaces it with the Secretary of the Department of Technology and Information, which did not exist when the legislation was originally enacted.

145<sup>th</sup> General Assembly, July 2010, SB 231 – Removed DHIN from the organizational structure of the Delaware Healthcare Commission. This bill resulted from input from DHIN and the Joint Sunset Committee. The bill implemented greater accountability and transparency by requiring annual reports including annual certified audits to be submitted to the Governor and the General Assembly. The bill also modified the makeup of the Board by adding representation from the healthcare industry and government, including the State's Director of Management and Budget and the Controller General.

148th General Assembly, May 2015, HB 64 – Authorizes the use of Medical Orders for Scope of Treatment (“DMOST”) in Delaware and for DHIN to create an electronic registry to maintain and store DMOST forms. DMOST forms allow Delawareans to plan ahead for health-care decisions, express their wishes in writing, and both enable and obligate health care professionals to act in accordance with a patient’s expressed preferences.<sup>16</sup>

148th General Assembly, July 2016, SB 238 – Created the Delaware Health Care Claims Database to be administered and operated under the existing DHIN framework. The Delaware Health Care Claims Database was created in order to assist with Delaware’s ongoing work to transform the State’s health care system from a fee-for-service system to a value-based system that rewards health care providers for quality and efficiency of care. This bill created the basic structure and parameters of the Health Care Claims Database, which was subject to further guidance to be set forth in rules and regulations to be promulgated by the DHIN, in continued consultation with the Department of Health and Social Services, the Health Care Commission, and stakeholders in the health care community.

149th General Assembly, September 2017, HJR 7 – Authorized the Secretary of DHSS to undertake actions necessary to establish a health care benchmark. In anticipation of this initiative, legislation passed the year prior created the Delaware Health Care Claims Database. In response to House Joint Resolution 7, DHSS established the “Delaware’s Road to Value” initiative.<sup>17</sup>

149th General Assembly, June 2018, SB 236 – Created a one-time appropriation of two million dollars in General Funds to the Office of Management and Budget (“OMB”) for the development of the Delaware Health Care Claims Database. The bill also stated that the Delaware Health Information Network might seek technical assistance from DHSS, in collaboration with the Delaware Health Care Commission, in support of DHIN’s efforts to develop long-term sustainable funding strategies for the Health Care Claims Database.

149th General Assembly, August 2018, SB 227 – Created a Primary Care Reform Collaborative under the Delaware Health Care Commission, which required all health insurance providers to participate in the Delaware Health Care Claims Database. This bill also required individual, group, and State employee insurance plans to reimburse primary care physicians, certified nurse practitioners, physician assistants, and other front-line practitioners for chronic care management and primary care at no less than the physician Medicare rate for the next three years.

149th General Assembly, August 2018, SB 230 – Set annual reporting requirements for insurance carriers with regard to coverage for serious mental illness and drug and alcohol dependencies. The bill also added a new set of annual reporting requirements for insurance carriers providing mental illness and drug and alcohol dependencies benefits, and the carriers' compliance with the Mental Health Parity and Addiction Equity Act of 2008. Additionally, the bill set annual reporting requirements for insurance carriers regarding coverage for serious mental illness and drug and alcohol dependencies for recipients of public assistance.

### **Current State Legislation – Directly Impacts DHIN Operations or Functions**

DHIN is not aware of any currently proposed or pending legislation that would directly affect DHIN operations or functions. There were three bills passed during the last legislative session that have direct impact on DHIN operations or functions.

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<sup>16</sup> Analyst’s Note: Analyst added this legislation to the supplied listing from the JLOSC questionnaire responses.

<sup>17</sup> Analyst’s Note: Analyst added this legislation to the supplied listing from the JLOSC questionnaire responses.

### **Federal Legislation – Directly Impacts DHIN Operations or Functions**

On February 17, 2009, the Health Information Technology for Economic and Clinical Health (“HITECH”) Act was signed into law. HITECH created funding opportunities for health information technology. One such opportunity is that of health information exchange, for which the DHIN is exceptionally well positioned to take advantage when funding opportunities are made available through the U.S. Department of Health and Human Services, specifically the Office of the National Coordinator (“ONC”). As the state-sanctioned health information exchange, only DHIN can receive federal grants pertaining to health information exchanges (“HIEs”) in Delaware. In 2015, DHIN received two, two-year grants totaling \$3.1 million from ONC. Requirements as a grant recipient included adherence to federal procurement rules and document retention policies.

HITECH also added additional privacy and security rules, which were included in the updated Health Insurance Portability and Accountability Act (“HIPAA”), which was part of the American Recovery and Reinvestment Act of 2009. While HIEs are not defined as covered entities by HIPAA, HIEs are nonetheless contractually obligated as business associates of the data senders to meet the requirements of the HIPAA privacy and security rules. DHIN has ensured its own HIPAA compliance since its inception, even though it was not required to do so prior to 2009.

On December 13, 2016, the 21st Century Cures Act, which incorporated the Trusted Exchange Framework and Common Agreement (“TEFCA”), was signed into law. The Cures Act is a vast healthcare bill that funds medical research through improved technology and science and includes provisions for Application Programming Interfaces (API) use to promote interoperability.

- The law states that the Office of the National Coordinator (ONC) within the Department of Health and Human Services has the authority to certify health IT software, which must allow health information to be accessed and exchanged without special effort.
  - Fines up to one-million dollars per occurrence may be imposed for refusing to share information that it is legal to share, deliberately making it hard to share information, or sharing deliberately incomplete data sets. These requirements may result in DHIN receiving more data than in the past.
  - Provisions of the law require improved patient access to their data. Since DHIN aggregates data from many sources, DHIN is the obvious best place for patients to get access to all of their health data with the least effort on their part. DHIN has made available a Personal Health Record, which can be utilized by patients for this purpose. DHIN is actively working with hospitals and practices to encourage adoption of this tool.
- In promoting interoperability, the law directs ONC to set up TEFCA to share health data among healthcare systems, insurers and others.
- TEFCA will implement federally recognized, national interoperability standards, policies, guidance, and practices for electronic health information, and adopt best practices including those related to privacy and security.

The Substance Abuse and Mental Health Services Administration (“SAMHSA”) amended Part II of the Substance Abuse Confidentiality Regulations (“Part II”) in 2017 and again in 2018. This is the federal confidentiality law and regulations that protect the privacy of substance use disorder (“SUD”) patient records by prohibiting unauthorized disclosures of patient records except in limited circumstances.

Originally enacted in the 1970s, the intent of SUD legislation is to encourage individuals with SUDs to enter and remain in treatment. Part II creates further limitations on use and sharing of behavioral

health and substance abuse data. While there is movement at the federal level to make this less restrictive in the hopes of assisting with tackling the opioid epidemic, state statutes still restrict the sharing of this data. At this point, federal law does not permit sharing personally identifiable data related to these conditions without patient consent.

### **Recent Judicial Decisions Affecting DHIN**

To DHIN’s knowledge, *Gobeille v. Liberty Mutual Insurance Company* (decided March 1, 2016) is pertinent, as it limits the scope of data available to a state’s all-payer claims database. *Gobeille v. Liberty Mutual Insurance Company* held that the Employee Retirement Income Security Act (“ERISA”) preempted a Vermont state law requiring the disclosure of certain information relating to health care services to the extent that the state law applied to ERISA plans.

### **PENDING LEGISLATION**

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There is no known pending legislation that would directly affect the functions or operations of DHIN.

### **ADMINISTRATIVE PROCEDURES ACT COMPLIANCE**

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DHIN is authorized under 16 *Del. C.* § 10306 to promulgate its own rules and regulations. Additionally, the Delaware Health Care Commission had enacted rules and regulations regarding DHIN. Prior to July of 2017, the State supplied a Deputy Attorney General (“DAG”) for legal counsel, who had periodically reviewed the DHIN’s rules and regulations. On July 18, 2017, DHIN received notice that the Delaware Attorney General’s Office would no longer provide legal counsel to DHIN. As a result and at its own expense, DHIN hired private counsel Scott W. Perkins, Esq. to represent DHIN. DHIN’s private counsel primarily assists in vendor contract reviews, matters of privacy and security concerns, and the Health Care Claims Database, but is also available as needed to address DHIN’s broader legal issues.

DHIN is reviewing its governing statute as well as its rules and regulations in order to apply general updates to reflect DHIN’s current operational practices and to address any deficiencies discovered during the review process.<sup>18</sup> DHIN has already identified a couple of areas in which it intends to draft rule and regulation changes. DHIN is considering a revision to its rules and regulations to remove reference to the Health Care Commission in order to separate itself from the Health Care Commission. DHIN is also planning an update to its participation requirements in order to mandate participation by all insurers. DHIN is consulting with its legal counsel regarding proposed changes.

### **FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE**

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To date, there have been no FOIA requests received by DHIN and there have been no complaints that DHIN is aware of concerning FOIA violations.

DHIN is prepared to respond to FOIA requests promptly and in agreement with the State of Delaware’s FOIA response protocol. DHIN is unable to disclose patient data in connection to any FOIA request and advises that some FOIA requests could take up to ten business days to complete. DHIN’s FOIA policy includes consulting with their contracted legal counsel regarding situations where the content of a requested document is fully or partially exempt from public record. Any FOIA requests greater

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<sup>18</sup> Analyst’s Note: DHIN updated Rules and Regulations pertaining to the Delaware Health Care Claims Database on 10/01/2017, 21 DE Reg. 293, 03/01/2018, 21 DE Reg. 712, and on 12/01/2018, 22 DE Reg. 465. It is unknown if legal counsel was consulted during these changes as they were not mentioned in submitted JLOSC questionnaire responses and attorney information was not provided in the Register of Regulation volumes that contain the changes.

than twenty pages in length will be subject to a fee of ten cents per page starting with the twenty-first page of the request.

Prior to July of 2017 DHIN's DAG had reviewed the provisions of the Public Integrity Act with DHIN. DHIN held a Board of Directors meeting in October of 2018 and their private counsel reviewed the conflict of interest form and other components of the Public Integrity Act with DHIN.

DHIN posts public meeting announcements on both the State of Delaware public meeting calendar and DHIN's website at least seven days prior to the scheduled meeting. DHIN posts transcribed meeting minutes on its website after receiving approval at the next scheduled meeting. Within the past three calendar years, DHIN has conducted the following executive sessions:

July 25, 2018: Executive Session: [Pursuant to DE Code – Title 29, Chapter 100, §10004 (b)(9)] ACTION ITEM: End of Fiscal Year Personnel Matters  
 June 22, 2018: Executive Session: [Pursuant to DE Code – Title 29, Chapter 100, §10004 (b)(9)] ACTION ITEM: End of Fiscal Year Personnel Matters  
 July 19, 2017: Executive Session: [Pursuant to DE Code – Title 29, Chapter 100, §10004 (b)(9)] ACTION ITEM: End of Fiscal Year Personnel Matters  
 July 20, 2016: Executive Session: [Pursuant to DE Code – Title 29, Chapter 100, §10004 (b)(9)] ACTION ITEM: End of Fiscal Year Personnel Matters

The meeting minutes only record the outcomes of held Executive Sessions.

#### **Process for Public Access to Health Information:**

DHIN has published a process on their website in which citizens can acquire their health records and audit the access to their network information by submitting a request form to DHIN. The form is available on DHIN's website. In order to protect the safety and security of personal health information, only in person or mail requests are accepted. All requests must include a raised notary seal in order to validate the identity of the person making the request. For the convenience of the requester, DHIN offers notary services for those making their request in-person at the DHIN office. All individuals must present corresponding copies of identification, one type of must be a copy of state, or government issued identification. Once DHIN receives a request, DHIN will review the materials submitted and furnish a response to the request. An individual can contact DHIN by email or phone if there is a question concerning the accuracy or validity of their results or for any questions pertaining to who has accessed their account.

DHIN publishes the following information or educational resources for the public relating to DHIN's activities:

- Town Hall Meetings: Monthly
- Leadership Summits: Every 18 Months
- Newsletters: Monthly or Semi-Monthly

DHIN does not have any industry or trade publications that are relevant to DHIN's work. The following are interest groups and other entities that interact with DHIN.

<b>Interest Groups</b> (Groups affected by DHIN actions or represent others served by or affected by DHIN actions)		
<b>Group or Association</b>	<b>Address</b>	<b>E-mail Internet Address</b>
SHIEC – Strategic Health Information Exchange Collaborative	744 Horizon Ct Ste 210 Grand Junction, CO 81506-3939	e-mail: <a href="mailto:info@strategichie.com">info@strategichie.com</a> website: <a href="https://strategichie.com/">https://strategichie.com/</a>
NAHDO – National Association of Health Data Organizations	124 South 400 East, Suite 220 Salt Lake City, Utah 84111-5312	e-mail: <a href="mailto:esullivan@nahdo.org">esullivan@nahdo.org</a> website: <a href="https://www.nahdo.org/">https://www.nahdo.org/</a>

<b>National Organizations or Other Government Entities</b> (that serve as an information clearinghouse or regularly interact with the DHIN)		
<b>Group or Association Name/Contact Person</b>	<b>Address</b>	<b>Phone Number Internet Address</b>
ONC – Office of the National Coordinator for Health Information Technology Larry Jessup, Branch Chief	330 C Street Suite 7033A Washington, DC 20201	Phone number - 202-720-2861 <a href="https://www.healthit.gov/">https://www.healthit.gov/</a>

### **Health Information Exchange Process for Private Organizations:**

DHIN offers nearly twenty distinct services for practices, payers, data senders, and consumers. Private organizations exchange health information with DHIN, which can be broken down into two service types: results delivery and the community health record.

### **Results Delivery**

DHIN facilitates the electronic transmission of clinical data from data sending organizations, such as hospitals, commercial laboratories and imaging centers to the ordering health care provider. Data senders include all of Delaware's acute care hospitals, three border hospitals in Maryland, all commercial laboratories, and approximately 95% of imaging centers serving Delaware, as well as the Delaware Public Health laboratory.

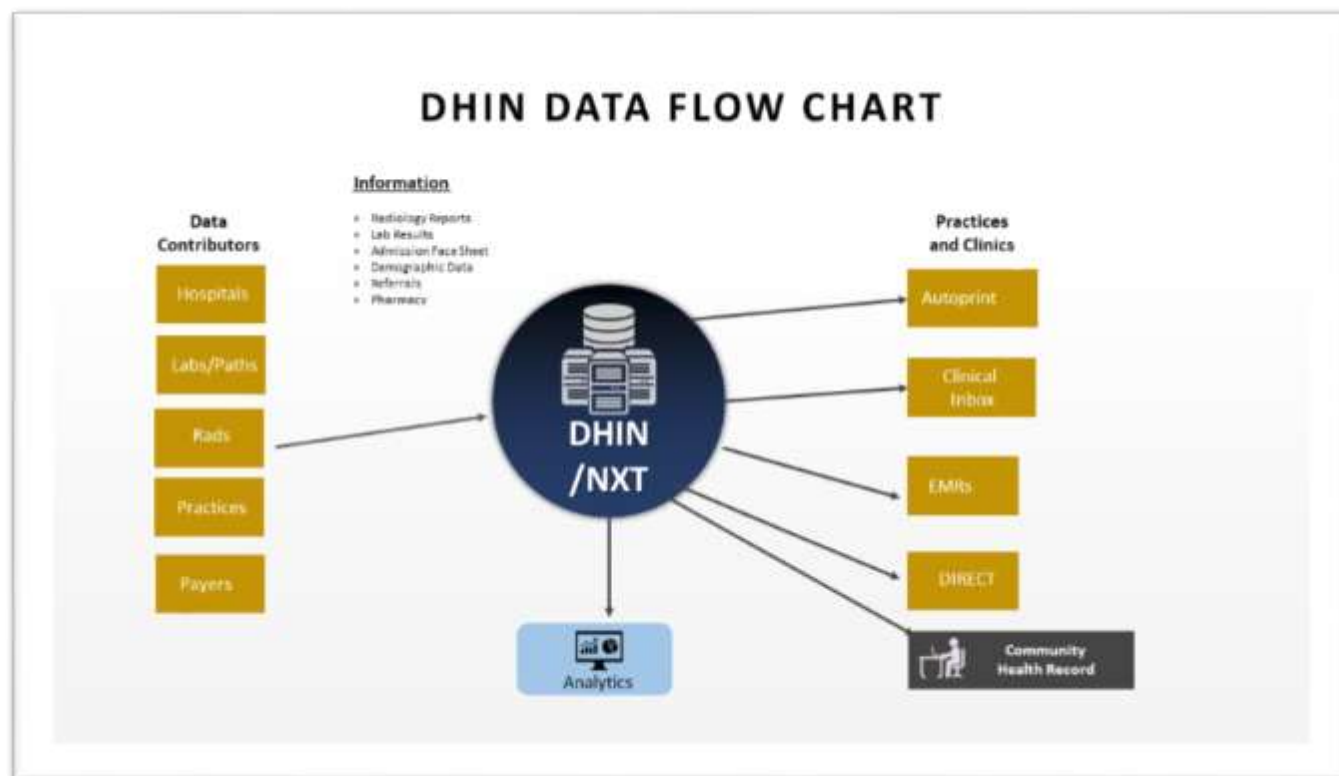
DHIN supports the receipt and delivery of laboratory and pathology results, radiology reports, and a range of transcribed reports, admission, discharge, and transfer ("ADT") files.<sup>19</sup>

Almost all health care professionals in Delaware who place clinical orders receive their results through DHIN. DHIN receives approximately 1.2 million unique results and makes approximately 1.5 million deliveries to practices each month – more than 14 million per year. These results can be shared four ways: direct, clinical inbox, auto-print, and electronic medical record ("EMR") integration.

<sup>19</sup> Transcribed reports include hospital discharge summaries, history and physical examination reports, operative reports, and various others.



*The following chart illustrates that flow of information from DHIN data sender organizations to clinicians, through DHIN's NXT platform, and the query of information through DHIN by authorized users of the system.*



### **Community Health Record**

All clinical data from all data sending organizations is aggregated into a composite longitudinal record for each patient. Properly privileged users can query this record for both previously unknown patients and unknown data about a known patient. This aggregated view of the patient across geography, time, and care settings is core to DHIN's value proposition.

The Community Health Record contains health data on nearly all Delawareans, and patients from all fifty states – nearly 2.5 million in total. In addition to information from Delaware facilities on Delaware patients, DHIN also receives information on Delaware patients from providers and facilities in other states.

### **Out-of-State Sources of Information:**

- DHIN and the Maryland's HIE, Chesapeake Regional Information System for Our Patients ("CRISP") exchange inter-state ADT notifications based on the patient's state of residence. CRISP also provides the infrastructure for HIEs for Washington, DC and West Virginia, which enables DHIN to receive ADT data on Delawareans who receive care in any of these markets.
- DHIN exchanges data with six member hospitals of HealthShare Exchange ("HSX"), the HIE for southeastern Pennsylvania and is working on growing that number.
- DHIN also exchanges information with NJSHINE, the HIE covering the southern counties of New Jersey, for similar exchange of ADTs based on state of residence of the patient.

**FISCAL INFORMATION****Revenue:**<sup>20</sup>

<b>Fiscal Year</b>	<b>Source(s) of Funds</b>	<b>Amount \$</b>
<b>FY19 (budgeted)</b>	Operating Revenue: Core Services	\$7,414,680
	Operating Revenue: Value-Added Services	\$497,628
	Non-Operating Revenue	\$45,000
	Total Revenue	\$7,957,308
<b>FY18 (actual)</b>	Operating Revenue: Core Services	\$7,082,435
	Operating Revenue: Value-Added Services	\$730,423
	Non-Operating Revenue	\$745,692
	Total Revenue	\$8,558,550
<b>FY17 (actual)</b>	Operating Revenue: Core Services	\$6,883,478
	Operating Revenue: Value-Added Services	\$615,555
	Non-Operating Revenue	\$4,469,982
	Total Revenue	\$11,969,015
<b>TOTAL \$</b>		<b>\$28,484,873</b>

**Expenditures and Net Income:**

<b>Fiscal Year</b>	<b>Total Expenditures</b>	<b>Net Income</b>
<b>FY19 (budgeted)</b>	\$9,094,262	(\$1,136,954)
<b>FY18 (actual)</b>	\$12,313,121	(\$3,754,571)
<b>FY17 (actual)</b>	\$10,469,722	\$1,499,293
<b>TOTAL \$</b>	<b>\$31,877,105</b>	<b>(\$3,392,232)</b>

<sup>20</sup> Analyst's Note: DHIN provides annual reports on its website.

**DHIN Fee Information:**

*Information is as of DHIN's FY2019 Mid-Year Financial Reforecast*

Description of Fee	Current Fee	Number of Individuals or Entities Paying Fee	Fee Revenue \$\$	Where is the Fee Revenue Deposited
Data Sender Bundle - includes 8 services listed in DHIN's service pricing guide.	See Table 1 - DHIN Data Sender Tiered Fee Schedule	25	\$4,393,958	DHIN's WSFS MMDA account.
DHIN Payer Service Bundle - includes 3 services listed in DHIN's service pricing guide.	\$0.70 Per Member Per Month	6	\$3,099,610	DHIN's WSFS MMDA account.
DHIN Ambulatory Provider Services - 8 combinations of services to choose from, as listed in DHIN's service pricing guide.	Varies based on options selected by Provider see Table 2	311	\$124,100	DHIN's WSFS MMDA account.

**Table 1 - DHIN Data Sender Tiered Fee Schedule**

based on number of unique results sent to DHIN annually

Annualized Volume	Price per result
150,000 or less	\$0.24
150,001 to 2,400,000	\$0.32
Greater than 2,400,000	\$0.35

**Table 2 - DHIN Provider Fee Schedule**

Service	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6	Option 7	Option 8
CHR Access	X	X	X	X	X	X	X	X
ENS			X		X		X	X
CCD Exchange		X			X	X	X	X
PHR Portal				X		X	X	X
Not Signed Off								X
Price - per practice	\$400	\$200	\$500	\$500	\$300	\$300	\$400	\$800
*Implied \$200 discount if practice sends CCD's to DHIN								

**Fee Development Process:**

As part of its annual financial processes, DHIN creates a revenue and expense listing for each of its services, which the service business owners track. DHIN management reviews the allocations of its revenue received to ensure accuracy. In addition, DHIN management reviews each line item in its annual budget to ensure that service expense allocations are accurate and current with recent developments to DHIN's services and customer preferences.

**External Factors Affecting Revenue or Expenditures**

Since DHIN's inception, the State had provided legal counsel to DHIN. Per earlier responses, in July of 2018, the State ceased DHIN's legal counsel representation. As a result, DHIN has had to hire its own counsel, at a cost of approximately \$175,000 annually.

DHIN launched its Personal Health Record (“PHR”) service in 2017, based on an approved operating plan for the State Innovation Model (“SIM”) funds.<sup>21</sup> As such, DHIN allocated other grant funding to implement its PHR, with the knowledge that SIM funds would cover the ongoing costs.<sup>22</sup> After the service was in production, DHIN learned that those funds, \$600,000 annually, were appropriated to other activities.<sup>23</sup> Additionally, Highmark’s five-year funding commitment ended, leaving DHIN with a one million dollar annual revenue gap to fill.

DHIN currently receives SIM funds in the form of a contract with the Delaware Health Care Commission to establish the Delaware Health Care Claims Database.<sup>24</sup> The State made an additional one-time appropriation of two million dollars to provide additional support for the establishment of the Delaware Health Care Claims Database.<sup>25</sup> DHIN is working with the Delaware Health Care Commission, DHSS, and the Division of Medicaid and Medical Assistance to seek additional federal funding participation through an implementation advance planning document (“IAPD”) which would use the two million dollar appropriation as the State matching requirement.<sup>26</sup>

## ACCOMPLISHMENTS

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- First operational statewide health information exchange (“HIE”) in the nation
- Regional footprint includes patient data from all or parts of six states and the District of Columbia
- Nearly 2.5 million patients from all fifty states included in DHIN’s master patient index
- 14 million deliveries of clinical results and reports each year
- DHIN is the first public HIE to reduce participation fees (10% in FY15; 8% in FY19)
- One of a select group of HIEs nationwide to receive the HITRUST CSF Certification, the gold standard for measuring and certifying security management programs.<sup>27</sup>
- \$7 million saved in Delaware through DHIN’s annual results delivery<sup>28</sup>
- \$10 million in annual savings from fewer duplicate tests<sup>29</sup>

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<sup>21</sup> Analyst’s Note: Information not provided and could not be located regarding this claim. SIM funding documents indicate funds granted to DHIN were for use in supporting the Delaware Health Care Claims Database, Common Provider Scorecard, and webinar series. It is unclear how the PHR service fit into the structure of the SIM grant. DHIN’s website states that the PHR was built with a “sizable grant” from the Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

<sup>22</sup> Analyst’s Note: It is unknown what other grant funding DHIN has received or utilized.

<sup>23</sup> Analyst’s Note: This service is listed as one of eight bundled services in the *DHIN Data Sender Service Bundle* offered to healthcare providers per DHIN supplied document.

<sup>24</sup> Analyst’s Note: Award year four (February 1, 2018- January 31, 2019) marked the final year of Delaware’s SIM grant.

<sup>25</sup> Analyst’s Note: 149th General Assembly, June 2018, SB 236 – Created a one-time appropriation of two million dollars in General Funds to OMB for the development of the Delaware Health Care Claims Database. In order for OMB to disperse the appropriation, the bill outlined provisions that DHIN had to meet. DHIN met the requirements and OMB began the release of funds on or around March of 2019.

<sup>26</sup> Analyst’s Note: Status of this work is unknown.

<sup>27</sup> HITRUST CSF Certified: DHIN Archive, DHINFTPS01, DHIN iSpecimen Prod, Medicity and Managed Infrastructure

<sup>28</sup> per October 2013 Maestro Strategies evaluation of DHIN

<sup>29</sup> per October 2013 Maestro Strategies evaluation of DHIN

- DHIN is a national model of excellence for the development of an effective HIE. On the Advanced HIE Systems Maturity rating scale, DHIN is emerging on Stage 7 as shown below and continues to grow in the provision of statewide critical HIE services and capabilities.<sup>30</sup>



## CHALLENGES

A rapidly changing healthcare environment poses challenges to health information exchanges nationwide, and DHIN faces several challenges at both the state level and the national level.

### Statutory obligations

DHIN's evolution through the years has likely caused some confusion at the legislative level, as member of the General Assembly and agency staff may not realize that DHIN is an instrumentality of the State, but does not receive financial assistance for operations from the State.<sup>31</sup>

<sup>30</sup> Analyst's Note: Maestro Strategies adapted the rating scale from the eHealth Initiative 2011 report on Health Information Exchange-Sustainability. Maestro Strategies identified DHIN as emerging on stage 7 in their ONC-HIE Final Evaluation Report of DHIN, March 7, 2014.

<sup>31</sup> Analyst's Note: DHIN noted in JLOSC questionnaire responses that the Division of Public Health pays DHIN approximately \$44,000 annually for ongoing services provided.

As such, several bills passed by the 148<sup>th</sup> General Assembly affected DHIN's fiscally by assigning a specific role to DHIN, without funding to undertake the work. Among these:

- 148<sup>th</sup> General Assembly, May 2015, HB 64 – DMOST Act, DHIN to establish a repository for DMOST forms which outline a patient's end-of-life care preferences.<sup>32</sup>
- 148<sup>th</sup> General Assembly, July 2016, SB 238 – Health Care Claims Database, DHIN to create and maintain the State's health care claims database, including both clinical and claims data.<sup>33</sup>
- 148<sup>th</sup> General Assembly, July 2016, HB 381 – Pre-Authorizations, DHIN to collect de-identified pre-authorization statistics for approvals, denials and appeals twice a year from insurers, health benefits plans, and health service corporations.<sup>34</sup>
- 148<sup>th</sup> General Assembly, July 2015, SB 58 – Newborn Screening and Genetic Testing, DHIN delivers early hearing detection messages from labs to the Division of Public Health.<sup>35</sup> DHIN was to deliver a packaged report of both the early hearing detection messages, along with accompanying metabolic data to the ordering providers.<sup>36</sup>
- 148<sup>th</sup> General Assembly, August 2016, SB 52 – Lay Caregiver, DHIN to develop and maintain a process to enable a hospital to record the designation of a lay caregiver and the individual's contact information in the patient's electronic health record.

DHIN's efforts to secure funding for the Health Care Claims Database in 2018 demonstrated the need for further education about DHIN's structure and associated costs for projects. DHIN is willing to take on projects that help Delaware achieve its health outcomes, however, legislation should include the input of the DHIN executive team and the inclusion of a fiscal note (where appropriate) prior to passage.

### **Health Insurer Participation Fees**

Nearly half of DHIN's revenue stream is funded by the state's health plans, fees paid for population health related services and access to the community health record. Prior to the 2012 approved merger of Blue Cross Blue Shield of Delaware and Highmark, at DHIN's request, the Delaware Department of Insurance mandated Highmark pay DHIN one-million dollars per year for five years. That fifth year ended in DHIN's fiscal year 2018, leaving a one-million dollar revenue gap to overcome going forward.

In addition to the population health subscription services, the payers receive value indirectly from DHIN and its material contributions to the healthcare ecosystem of Delaware and the surrounding

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<sup>32</sup> Analyst's Note: DMOST Registry is available to authorized users on DHIN's website. Patient information, DMOST forms, and a patient brochure are also included.

<sup>33</sup> Analyst's Note: SB 238 was passed as revenue-neutral; the Health Care Claims Database was created with the intent that it would be funded with grant money and other independent funding sources identified by the DHIN, in accordance with the DHIN's existing statutory authority.

<sup>34</sup> Analyst's Note: Delaware Public Media reported on November 19, 2018 that the Medical Society of Delaware and Haven Health Solutions was working with DHIN to establish a new system called the Smart Prior Authorization Project utilizing medical data already stored by DHIN. It is unknown how this project is funded.

<sup>35</sup> The Division of Public Health pays DHIN for this service.

<sup>36</sup> DHIN indicated this project is on hold.

region. For example, professional market research studies conducted over a four year period, 2009-2013, showed that DHIN helped reduce the unnecessary duplication of high volume, high cost lab and radiology tests by 64% and 22% respectively, which resulted in over ten million dollars in annual savings to the healthcare system in the State. Additionally, a prominent Delaware accountable care organization (“ACO”) credits DHIN’s Event Notification System for reducing 30-day readmission rates for their patients by 12% during a year when the national average increased by 9%. During this period, the same Delaware ACO credits DHIN with helping them reduce emergency room utilization by 6%. It is clear that the regional coordination of results delivery, the elimination of information-sharing barriers between disjointed care delivery systems, and the introduction of innovative tools and services have all served to improve care, efficiencies, and reduce costs. Payers of health insurer participation fees have been reluctant to acknowledge these benefits. As a result, they stand resistant to participating and supporting DHIN financially, which is a threat to DHIN’s long-term self-sustainability.

### **National Landscape**

The ever-changing national health care environment makes planning for the future difficult. The alphabet soup of new federal regulations and incentive programs (TEFCA/MACRA/MIPS)<sup>37</sup> confuses health care providers and leads to a collective change paralysis. Meeting the evolving needs of DHIN’s increasingly diverse membership base is more difficult due to a lack of cohesiveness at the national level.

### **OPPORTUNITIES FOR IMPROVEMENT**

At the heart of DHIN operations, is a continued commitment to demonstrate the value of health information exchange and to create an ecosystem where all participants both contribute and receive value. More specifically, DHIN will continue to build organizational capacity, as recommended as part of the Gartner five-year roadmap.<sup>38</sup> There are five key domains identified for improvement:

- Organizational Capabilities.
- Customer Engagement and Marketing.
- Service Offerings.
- Enterprise and Solution Architecture.
- Service Operations and Management.

Under each domain are a series of initiatives the DHIN team has undertaken to bolster its organizational structure, refine its service offerings, and align all efforts with its strategic direction.

### **ADDITIONAL COMMENT FROM THE COMMITTEE ANALYST**

DHIN listed statutory obligations as a challenge in their JLOSC questionnaire responses. Enacted in July of 2016 Senate Bill 238 mandated DHIN to create the Health Care Claims Database (“HCCD”). This project has proven to be a tremendous undertaking for DHIN which required additional financial support.

Funding to support the creation of the HCCD initially came from SIM funds through a contract with the Delaware Health Care Commission. SIM funds for the period of August 1, 2018 through January 31, 2019 provided a maximum of \$1,418,881.31 in funding for the HCCD. After SIM funding concluded, the 149<sup>th</sup> General Assembly passed Senate Bill 236 in June of 2018, which created a one-

<sup>37</sup> Analyst’s Note: TEFCA – Trusted Exchange Framework and Common Agreement; MACRA – The Medicare Access and CHIP Reauthorization Act of 2015; MIPS – Merit-based Incentive Payment System

<sup>38</sup> Strategic roadmap for fiscal years 2017 – 2021.

time appropriation of two million dollars in General Funds to further support the HCCD.

After several years of hard work in developing the HCCD, DHIN held an unveiling ceremony for the HCCD at the University of Delaware STAR Campus On May 1, 2019. DHIN is currently accepting research applications for data access and use. The HCCD now enters its maintenance and improvement phase and will continue the need for support. The HCCD will benefit from the support of Committee recommendations from this review, which include a task force to examine possible statutory amendments that will ensure the continued success of DHIN which include HCCD operations.



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## **APPENDIX A**

### **DHIN BY-LAWS**

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#### **BY-LAWS**

#### **OF**

#### **Delaware Health Information Network**

#### **ARTICLE I - NAME**

The name of the entity is: Delaware Health Information Network (DHIN)

#### **ARTICLE II - OFFICES**

The Board of Directors of the DHIN (the “Board”) shall establish the location of the principal executive office of the DHIN at any appropriate location within the State of Delaware, or at such other place as shall be lawfully designated by the Board of Directors as the affairs of the DHIN may require from time to time.

#### **ARTICLE III - CORPORATE PURPOSES**

The purposes of the DHIN shall be to facilitate the exchange of electronic health information among health care providers in Delaware; to improve the care received by consumers served by Delaware’s health care system; to reduce medical errors associated with incomplete information available to providers of medical care; to improve communication among healthcare providers and their patients; to reduce the number of duplicative tests; and to afford specialists a better understanding of the patient upon referral from his/her primary care physician. The purposes of the DHIN shall also include the administration, operation and maintenance of a Delaware Health Care Claims Database as set forth in 16 Del. C Ch. 103, Subch. II. The DHIN shall operate exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of any future federal tax code; and generally to engage in any other lawful endeavor or activity in furtherance of any of the foregoing purposes.

#### **ARTICLE IV - BOARD OF DIRECTORS**

1. General. The management and affairs of the DHIN shall be at all times under the direction of a Board of Directors to be elected from time to time as stated herein. Each Director shall be of legal age, and need not be a resident of the State of Delaware.

2. Number. The number of voting members of the Board shall be consistent with the requirements set forth in 16 Del. C. § 10302.

3. Qualifications: Consistent with the requirements of 16 Del. C. § 10302, Directors appointed to the Board ideally shall have experience in one of the following areas: clinical care, finance, health care/privacy law, information technology, and management/administration. The DHIN Executive Committee shall seek to establish a balance of these skill sets among appointed Directors. The Chief Executive Officer of DHIN shall develop a comprehensive training/orientation curriculum for new Directors.

4. Directors. The Directors of the DHIN shall be comprised of the following nineteen (19) members as specified in §10302(a), Title 16 of the Delaware Code:

1. The Director of the Office of Management and Budget or his/her designee;
2. The Chief Information Officer of the Department of Technology and Information or his/her designee;
3. The Secretary of the Department of Health and Social Services or his/her designee;
4. The Controller General or his or her designee;
5. Six (6) members, appointed by the Governor, including at least one person who shall represent the interests of medical consumers and at least three with experience and/or expertise in the healthcare industry;
6. Three (3) members appointed by the Governor representing hospitals or health systems;
7. Three (3) members appointed by the Governor representing physicians;
8. One (1) member appointed by the Governor representing businesses or employers; and
9. Two (2) members appointed by the Governor representing health insurers or health plans.

The Chief Executive Officer of the Delaware Health Information Network shall serve on the Board of Directors in a non-voting capacity.

5. Vacancies. Vacancies occurring in the Board by death, resignation, refusal to serve, or otherwise, shall be filled for the unexpired term by a Director appointed by the Governor.

6. Resignation. Any Director may resign at any time by giving written notice to the Chair and the Secretary of the Board of Directors. Such resignation shall take effect at the time specified or, if no time is specified, at the time of its acceptance as determined by the Chair or the Board.

7. Attendance Expectations. Directors are expected to attend all meetings of the Board whether regular or specially called meetings, either in person or by the electronically provided means set forth herein. As set forth in 16 Del. C. § 10302(a), a Director who is absent without adequate reason for three (3) consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, may be removed from the Board with the approval of the Governor upon a recommendation by the Board.

8. Restrictions. The Board may recommend to the Governor that, consistent with the requirements set forth in 16 Del. C. § 10302(a) and to the extent practicable, no more than one Director may serve from any one organization or agency from which that Director receives income or primary employment.

9. Terms. A Director may serve two (2) consecutive, three (3) year terms. Directors whose terms have ended or who have resigned from a term will not be eligible for re- appointment to the Board for a period of one (1) year

10. Right of Inspection. Each Director has the right, at any reasonable time, to inspect and copy any of the DHIN's books, records, and documents of every kind and to inspect the DHIN's physical properties.

11. Conflict of Interest. As a public instrumentality of the State of Delaware, DHIN and certain of its officers and employees are subject to the Laws Regulating the Conduct of Officers and Employees of the

State, as set forth in Chapter 58, Title 29 of the Delaware Code. All Directors, Officers, and committee members shall be required, upon their appointment and on an annual basis thereafter, to sign a conflict of interest statement on a form to be approved by the Executive Committee.

## **ARTICLE V - MEETINGS OF THE BOARD**

1. Place of Meeting. The meetings of the Board shall be held at the principal office of the DHIN or at any place within the State of Delaware that the Board may from time to time designate.

2. Annual Meeting. An annual meeting of the Board shall be held within four months of the close of the fiscal year each year, or at such other time as designated by the Chair. The notice of the meeting shall give the date, time and place and designate it as the annual meeting. The annual meeting shall be open to any citizen of the State of Delaware who has indicated an interest in the purpose and mission of the DHIN.

3. Regular and Special Meetings. Regular meetings of the Board shall be held at such frequency, time and place as may be specified by the Chair or his or her designee, or by resolution of the Board. Special meetings of the Board of Directors shall be held whenever called by the Chair, or by a majority of the Directors then in office. Special meetings of the Board of Directors shall be held at such place either within or without the State of Delaware, as shall be stated in the call of the meeting.

4. Board Meeting Attendance by Telephone, Webinar or Other Means: The Board shall conduct its business through in-person meetings, except that Directors may from time to time attend by telephone, or meetings may be convened by video-conference or other alternative means, as may be required under special circumstances as determined by the Chair and the Chief Executive Officer. Meetings conducted by videoconference, webinar or similar means, or board member participation in an in-person meeting by phone, shall be subject to the requirements of the Delaware Freedom of Information Act, 29 Del. Ch. 101.

5. Notice of Meetings. The Secretary or his/her authorized designee shall give notice to each Director of each annual, regular or special meeting by mailing the same at least seven (7) days before the meeting to his/her address as shown by the records of the DHIN or by e-mailing or faxing the same not less than seven (7) days before the meeting, which notice shall state the time and place of the meeting, including agenda items, and notification of actions expected to be taken. A Director may waive notice before, at or after any meeting by writing or by electronic means. Attendance by a Director at a meeting shall not constitute waiver of notice of such meeting if a Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

6. Quorum. As set forth in 16 Del. C. § 10302, the Board is authorized to conduct its business by a majority of a quorum. A quorum is a simple majority of the members appointed. Once a quorum is present to organize the meeting it shall continue in effect notwithstanding the subsequent withdrawal of any of those present unless the status of a quorum is questioned by a Director.

7. Organization. At all meetings of the Board of Directors, the Chair shall preside. The Secretary or the Secretary's designee shall keep a record of the proceedings of the meetings. The Chair and Secretary shall do and perform such other duties as may from time to time be assigned to each of them, respectively by the Board of Directors. At such time that the Chair is unable to preside over the meeting, the Vice Chair shall preside.

8. Order of Business. The order of business at all meetings of the Board of Directors, unless otherwise determined by the affirmative vote of a majority of the Directors present, shall be determined by the presiding officer.

## **ARTICLE VI - COMPENSATION OF DIRECTORS**

Directors acting as such shall not receive any compensation for their services as Directors, but the Board may, by resolution, authorize reimbursement of reasonable expenses incurred in the performance of their duties. Such authorization may prescribe the procedure for approval and payment of such expenses by designated officers of the DHIN. Nothing herein shall preclude Directors from serving the DHIN in any other capacity and receiving compensation for such services; provided, however, that any such compensation shall be subject to all applicable requirements concerning conflict of interest and disclosure.

## **ARTICLE VII – OFFICERS**

1. Election - Title - Term. The officers of the DHIN shall be a Chair, Vice Chair, Secretary and a Treasurer, and such other officers and assistant officers as may be appointed pursuant to these by-laws. Each officer shall be elected annually by and from the Board of Directors at or before the second regular meeting (which term is to include the annual meeting) following the close of the fiscal year. Such duly elected officers shall serve until the second regular meeting following the close of the fiscal year in which they were appointed, or until a successor shall have been duly elected and shall have qualified. At least thirty (30) days before the meeting at which such officer nominations are to be considered, the Secretary shall solicit from all members of the Board proposed nominations for individuals to serve as officers and for nominees to the three non-officer seats on the Executive Committee. Each Director shall be given a list of the nominees at least seven (7) days prior to the annual meeting. Each Director shall be entitled to one (1) vote for each officer and Executive Committee member position to be filled and the result will be determined by a vote equaling the number of the majority of the Directors present.

Any two or more offices may be held by the same person, except the same person may not hold the office of Chair and as Vice Chair, Secretary, or Treasurer simultaneously. All officers of the DHIN shall do and perform such other duties as may from time to time be assigned to each of them, respectively, by the Board of Directors.

The Chief Executive Officer of the DHIN shall be a non-voting member of the Board, Executive Committee and any other committee of the DHIN. The Chief Executive Officer shall have the authority to hire, fire and discipline employees and other personnel, oversee the allocation of financial resources within budget or under the constraints as set by the Board. The Chief Executive Officer may execute contracts and agreements up to a dollar limit approved by the Board. The Chief Executive Officer shall do and perform such other duties as may from time to time be assigned by the Board of Directors.

2. Tenure of Officers. All officers, employees and agents shall be subject to removal at any time by the affirmative vote of a majority of the members of the Board then present.

3. Chair. One Director shall be elected to perform the role of Chair of the Board by a majority of Directors then present. The Chair shall: preside over meetings of the Board; maintain good order; determine the agenda for meetings; appoint the membership of committees and work groups, except the Executive Committee; execute documents in the name of the Board; and perform such other matters as determined by the Board.

4. Vice Chair. One Director shall be elected to serve as Vice-Chair by a majority of the Directors then present. The Vice Chair shall perform the duties and exercise the powers of the Chair when the Chair is absent or unable to act, subject to the control of and to the extent authorized by the Board of Directors. The Vice Chair will serve until the next ensuing annual meeting (or at such time the Chair vacates his/her position), upon which time the Vice Chair shall assume the role of Chair of the Board unless otherwise determined by the affirmative vote of a majority of the members of the Board then present.

5. Treasurer. One Director shall be elected to serve as the Treasurer by the majority of Directors then present. The Treasurer shall oversee fiscal matters of the DHIN; provide an annual budget to the Board for approval; and ensure the development and board review of financial policies and procedures, except as otherwise provided by the Board. If required by the Board, he/she shall give bond for the faithful discharge of his/her duties in such sum and with such surety or sureties as the Board may require. The Board shall have authority to appoint an Assistant Treasurer if deemed necessary in the Board's discretion.

6. Secretary. One Director shall be elected to serve as Secretary by a majority of Directors then in service. The Secretary shall maintain the records of the Board and its members, and attest to the official matters of the Board, except as otherwise provided by the Board.

## **ARTICLE VIII – COMMITTEES OF THE BOARD**

1. Committee Composition. Members of DHIN committees shall be appointed by and serve at the pleasure of the Chair, unless otherwise set forth herein. The Chair's decisions with respect to committee membership can be modified at any time by a majority of a quorum of the Board of Directors. All committees of the DHIN Board shall be chaired by a Director. Non-Directors with an interest in the purpose and mission of the DHIN may serve by invitation and Board approval on any DHIN committee except the Executive Committee, however, the majority of each committee must be DHIN Directors. All committee members, both Directors and non-Directors, shall sign a conflict of interest statement annually. Any action taken by a Committee shall require a quorum of members present and be presented at the next meeting of the full Board of Directors.

2. Executive Committee. There shall be an Executive Committee, consisting of the officers of the Board, and three (3) additional members of the Board of Directors as desired by the Board. The Executive Committee shall have seven (7) members at all times and shall be representative of various stakeholder groups (consumers, employers, health plans, hospitals, physicians, and State government). The Executive Committee is empowered to act on behalf of the full Board when waiting for the next scheduled meeting of the full Board would jeopardize timely decision making or action. The Executive Committee shall have such other powers as the Board of Directors shall designate, except that the Executive Committee shall not have authority to adopt, amend or repeal the by-laws.

Each member of the Executive Committee shall serve at the pleasure of the Board. The designation of the Executive Committee and the delegation thereto of authority shall not relieve any Director of any responsibility imposed by law.

The Executive Committee shall be presided over by the Board Chair or his/her designee and shall oversee the operations of the DHIN and the Board of Directors. In addition to any responsibilities delegated to it by the Board of Directors, the Executive Committee shall have the following responsibilities:

- A. The Executive Committee shall evaluate the performance of the Chief Executive Officer and shall assist the Chief Executive Officer with leadership and management matters. The Executive Committee shall guide the development of and review and authorize personnel policies and procedures and is empowered to act on such personnel issues as may be brought forward by the Chief Executive Officer.
- B. The Executive Committee shall have responsibility for overseeing the development of the budget, ensuring accurate tracking/monitoring/accountability for funds, ensuring adequate financial controls, reviewing major grant awards and contracts and their associated terms, overseeing development and implementation of the DHIN's

sustainability and fundraising plans, identifying and soliciting funds from external sources for DHIN support, and planning and supporting audits of all major functions (e.g. finances, programs, or organization). The Executive Committee will work with the Chief Executive Officer or other DHIN employee(s) as determined appropriate by the Board to accomplish its objectives

- C. The Executive Committee shall be responsible for identifying needed board member expertise/skills; recommending potential members to the Governor for appointment; orienting and training new members; ensuring effective board processes, structures and roles, including retreat planning, committee development, and board evaluation; and monitoring the need for ongoing Board training, education and informational activities.

3. Delaware Health Care Claims Database Administrative Committee. There shall be a Delaware Health Care Claims Database Administrative Committee (the “HCCD Committee”) of members of the Board, which shall consist of a minimum of five (5) members and a maximum of eleven (11) members to be nominated by the Board Chair and elected by the Board. The HCCD Committee shall be representative of various stakeholder groups (consumers, employers, health plans, hospitals, physicians, and State government). No more than one Director may serve from any one organization or agency from which that Director receives income or primary employment. A quorum of the HCCD Committee shall consist of the greater of three (3) members present or a majority of members present at a particular meeting. The Chair of the HCCD Committee shall provide a summary report of any actions taken to the next Board meeting, subject to any applicable confidentiality or other restrictions imposed by statute or regulation.

The HCCD Committee is empowered to act on behalf of the full Board with respect to the following actions:

- A. Review of requests for Claims Data pursuant to the Health Care Claims Database statute, 16 Del. C. Ch. 103, Subch. II (the “HCCD statute”) and any regulations promulgated thereunder. The HCCD Committee shall authorize the release of Claims Data pursuant to the HCCD statute and regulations upon a determination by a majority vote of the HCCD that such release is appropriate to facilitate the purposes of the HCCD statute. Such determinations shall not be subject to the approval of the full Board.
- B. Such other actions as the Board of Directors may designate.

6. Term of Office. Each member of a committee continues as such until his or her successor is appointed, unless the committee is sooner terminated, or until his or her earlier death, resignation, or removal. All non-Director members of any committee may be removed by the Board Chair with the consent of a majority of the Board.

7. Rules. So far as applicable, the provisions of these by-laws relating to the conduct of meetings of the Board shall govern meetings of all committees. Each committee may adopt rules for its own governance provided that such rules are consistent with these by-laws and the DHIN’s authorizing statute, 16 Del. C. Ch. 103.

## **ARTICLE IX - CONTRACTS, CHECKS, DEPOSITS AND FUNDS**

1. Authorization. The Board of Directors may by resolution authorize any officer or officers, agent or agents or the Executive Committee, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the DHIN, and such authority may be general or confined to specific instances.

2. Loans. No loan shall be contracted on behalf of the DHIN and no negotiable papers shall be issued in its name unless authorized by the vote of the Board of Directors. When authorized by the Board of Directors so to do, any officer or agent of the DHIN may effect approved loans and advances at any time for the DHIN from any bank, trust company or other institution or from any firm or individual, and may make, execute and deliver promissory notes, bonds, or other certificates or evidence of indebtedness of the DHIN with respect thereto. Such authority shall be confined to specific instances. All bills, notes, checks, or other negotiable instruments of the DHIN shall be in the name of the DHIN and shall be signed by an officer of the DHIN or any other person duly authorized by the Board of Directors in such person's official representative capacity.

3. Checks, Drafts, Orders for Payment, Notes. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the DHIN and any and all securities owned by or held by the DHIN requiring signature for transfer shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by the Board of Directors.

4. Acceptance of Gifts. The Board of Directors or Executive Committee may accept on behalf of the DHIN any contribution, gift, bequest or devise for the general purposes or for any special purpose of the DHIN.

5. Audits. Upon affirmative vote of the Board of Directors, the accounts of the DHIN will be audited by a reputable independent accountant, whose report shall be submitted to each Director.

6. Bond. At the direction of the Board of Directors, any officer or employee of the DHIN shall be bonded. The expense of furnishing any such bond shall be paid by the DHIN.

## **ARTICLE X - NOTICE AND WAIVER**

1. Notice. Except as specified in Article V, Section 5, which allows notice of meetings by fax or email, any notice required to be given under these By-Laws may be given by mailing the same, addressed to the person entitled thereto at his/her address as shown on the books of the DHIN and such notice shall be deemed to have been given at the time of such mailing. When delivered personally or by hand, the notice shall be deemed delivered when actually received.

2. Waiver of Notice or Lapse of Time. Whenever under the provisions of law or these By-Laws, the Board or any committee is authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken submits a signed waiver of notice of such requirement, or submits such waiver by electronic means in the case of a notice of a meeting as specified in Article V, Section 5.



## **ARTICLE XI - MISCELLANEOUS**

1. Seal. The DHIN shall have no seal.
2. Fiscal Year. The fiscal year of the DHIN shall end on the 30th day of June in each calendar year or otherwise as the Board of Directors or Executive Committee may determine.
3. Annual Budget. The prospective, annual budget shall be provisionally approved by the Finance Committee prior to the end of each fiscal year and presented for approval by the full Board at the annual meeting.
4. Effective Date. These by-laws shall be effective as of January 25, 2017.

## **ARTICLE XII - INDEMNIFICATION**

1. Right to Indemnification of Officers and Directors. The Officers, Directors, non-Director Committee members and employees of the DHIN shall have the right to indemnification to the extent set forth under Delaware law.

## **ARTICLE XIII - AMENDMENT**

1. By-Laws. These by-laws may be altered, amended, or repealed by the Board at any regular meeting or at any special meeting called for that purpose; provided, however, that notice of the proposed amendment, alteration or repeal shall be given to each Director at least five (5) days prior to the date of the meeting at which the by-laws are to be altered, amended or repealed.

## APPENDIX B

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SPONSOR: Sen. Lockman  
Sens. Delcollo, Hansen, Lopez, Walsh

### DELAWARE STATE SENATE 150th GENERAL ASSEMBLY

#### SENATE RESOLUTION NO. 9

ESTABLISHING A TASK FORCE TO RESEARCH, DISCUSS, AND MAKE FINDINGS AND  
RECOMMENDATIONS REGARDING THE JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE'S  
REVIEW OF THE DELAWARE HEALTH INFORMATION NETWORK.

1 WHEREAS, the Joint Legislative Oversight and Sunset Committee ("JLOSC") reviewed the Delaware Health  
2 Information Network ("DHIN") in 2019; and

3 WHEREAS, DHIN's review resulted in 4 recommendations that relate to statutory changes to DHIN's governing  
4 statute, Chapter 103 of Title 16 being presented for JLOSC's consideration; and

5 WHEREAS, 3 of the 4 recommendations require additional research and discussion among interested agencies and  
6 citizens to assist JLOSC in making decisions whether to adopt the recommendations; and

7 WHEREAS, JLOSC expressed its desire to create a task force, comprised of JLOSC staff, relevant agencies, and  
8 members of the public, to address the implementation of the 3 recommendations and report back to JLOSC in January  
9 2020.

10 NOW, THEREFORE:

11 BE IT RESOLVED by the Senate of the 150th General Assembly of the State of Delaware that the Joint  
12 Legislative Oversight and Sunset Committee Task Force on the Delaware Health Information Network ("Task Force") is  
13 established.

14 BE IT FURTHER RESOLVED that the Task Force research, discuss, and make findings regarding  
15 Recommendations 2, 4, and 6 of the JLOSC's 2019 review of DHIN, and report its findings and recommendations to the  
16 JLOSC. The Task Force may find that the JLOSC should consider additional recommendations that the Task Force  
17 identifies.

18 BE IT FURTHER RESOLVED that the Task Force is composed of 11 members. A member who serves by virtue  
19 of position may appoint a designee to serve in that member's stead and at that member's pleasure. Membership is  
20 comprised as follows:

- 21 (1) One JLOSC Analyst.  
22 (2) One JLOSC Legislative Attorney.  
23 (3) The Chief Executive Officer of DHIN.

- 24 (4) General Counsel of DHIN.
- 25 (5) Chief Operating Officer of DHIN.
- 26 (6) The Chair of the DHIN Board of Directors.
- 27 (7) An individual who represents data senders, such as hospitals or labs, as designated by the DHIN Board of
- 28 Directors.
- 29 (8) The Lieutenant Governor, or the Lieutenant Governor may appoint a designee from the Behavioral Health
- 30 Consortium.
- 31 (9) The Dean of the University of Delaware's College of Health Sciences.
- 32 (10) The Secretary of the Department of Health and Social Services.
- 33 (11) The Director of the Division of Public Health.

34 BE IT FURTHER RESOLVED that at least 5 individuals serve as consultants to the Task Force. A consultant who

35 serves by virtue of position may appoint a designee to serve in that consultant's stead and at that consultant's pleasure. A

36 consultant does not vote or have any duties or powers reserved for a Task Force member. Consultants are comprised as

37 follows:

- 38 (1) One analyst from the Controller General's Office.
- 39 (2) The Chief Information Officer of the Department of Technology and Information.
- 40 (3) The Chief Executive Officer of the Gift of Life Program.
- 41 (4) The Bureau Chief of the Bureau of Correctional Healthcare Services.
- 42 (5) An individual who specializes in pharmacy data, selected by the Task Force members.
- 43 (6) Any other organization or individual that the Task Force may determine helpful in meeting its duties.

44 BE IT FURTHER RESOLVED that a member or consultant may appoint a designee. A member or consultant who

45 appoints a designee must provide the designation in writing to the chair. A designee has the same duties and rights as the

46 member or consultant the designee represents.

47 BE IT FURTHER RESOLVED that the JLOSC Analyst and JLOSC Legislative Attorney serve as co-chairs of the

48 Task Force.

49 BE IT FURTHER RESOLVED that the co-chairs of the Task Force are responsible for guiding the administration

50 of the Task Force by doing, at a minimum, all of the following:

- 51 (1) Notifying all Task Force members of their selection to serve on the Task Force and all consultants of their
- 52 selection to serve as consultants.
- 53 (2) Setting a date, time, and place for the initial organizational meeting.

(3) Supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Task Force.

(4) Sending, after the first meeting of the Task Force, a list of the members of the Task Force and the person who appointed them to the Joint Legislative Oversight and Sunset Committee and the Director of the Division of Research of Legislative Council.

(5) Providing meeting notices, agendas, and minutes to the Director of the Division of Research of Legislative Council.

(6) Ensuring that the final report of the Task Force is submitted to the Joint Legislative Oversight and Sunset Committee with a copy to DHIN, the Director and the Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives.

BE IT FURTHER RESOLVED that the Task Force must hold its first meeting no later than August 31, 2019.

BE IT FURTHER RESOLVED that a quorum of the Task Force is a majority of its members. A vacant position is not counted for quorum purposes.

BE IT FURTHER RESOLVED that:

(1) Official action by the Task Force, including making findings and recommendations, requires the approval of a majority of the members of the Task Force.

(2) The Task Force may adopt rules necessary for its operation. If the Task Force does not adopt rules or if the adopted rules do not govern a given situation, *Mason's Manual of Legislative Procedure* controls.

BE IT FURTHER RESOLVED that the Division of Research is responsible for providing reasonable and necessary support staff, materials, and meeting locations for the Task Force.

BE IT FURTHER RESOLVED that the co-chairs must compile a report containing a summary of the Task Force's work regarding the matters assigned to it in lines 14 through 17 of this Resolution, including any findings and recommendations adopted by the Task Force, and submit the report to the JLOSC and the Director and the Librarian of the Division of Research of Legislative Council no later than January 10, 2020.

BE IT FURTHER RESOLVED that this Resolution expires on the date the Task Force submits its findings and recommendations

#### SYNOPSIS

The Joint Legislative Oversight and Sunset Committee ("JLOSC") reviewed the Delaware Health Information Network ("DHIN") in 2019. As a result of that review, 4 recommendations relating to statutory changes to DHIN's governing statute were presented for JLOSC's consideration. JLOSC determined that a task force should be created to research, discuss, and report back to JLOSC its findings on the implementation of 3 of the 4 recommendations. JLOSC decided to form the task force through a simple resolution.



This Resolution establishes the Joint Legislative Oversight and Sunset Committee Task Force on the Delaware Health Information Network ("DHIN"). In addition to the 11 members of the Task Force, several consultants are also named, to share their expertise with the Task Force. The Task Force must hold its first meeting by August 31, 2019, and submit a final report of its findings and recommendations to JLOSC by January 10, 2020.

The Task force will not approve the implementation of a recommendation or authorize or require a change in any statute, policy, or practice. The Task Force is designed, authorized, and limited to do only the following:

- Research the background of and relevant information relating to JLOSC's Recommendations 2, 4, and 6.
- Discuss the merits and concerns of each recommendation.
- Report back to JLOSC on what the Task Force found in its research and discussions.

Consultants are specified to ensure their participation in the Task Force, while the number of members is kept limited in the interest of meeting quorum and scheduling requirements more easily.

Author: Senator Lockman



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# Joint Legislative Oversight & Sunset Committee 2019 Final Report



## Division for the Visually Impaired

*A Report to the Governor and the  
150<sup>th</sup> General Assembly of the State of Delaware.*

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June 2019

Final Report for the Division for the Visually Impaired completed by:  
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# 2019 Joint Legislative Oversight and Sunset Committee Members

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Representative David Bentz,  
Vice-Chair

Representative Andria L. Bennett

Representative Sherry Dorsey Walker

Representative Jeffrey N. Spiegelman

Representative Lyndon D. Yearick

Senator Anthony Delcollo

Senator Stephanie L. Hansen

Senator Ernesto Lopez

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## ***Final Report Prepared By:***

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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## **2019 Final Recommendations: Division for the Visually Impaired**

The Joint Legislative Oversight and Sunset Committee (“Committee”) recommends that the Division for the Visually Impaired (“DVI”) be held over, and report before the Committee in January 2020.

**RECOMMENDATION 1:** DVI shall continue, subject to any further recommendations that JLOSC adopts.

**Status:** Approved

**RECOMMENDATION 2:** The Committee will sponsor a bill to make technical corrections to DVI’s entire governing statute, including Chapter 79, Title 29; Chapter 21, Title 31; and braille literacy rights and education in Chapter 2, Title 14, add standardize member removal provisions, and add language for resolving a tie when voting on the Council’s chair.

**Status:** Tabled

**RECOMMENDATION 3:** Based on DVI’s request, the Committee will sponsor a bill to amend § 206, Title 14 to reduce the teacher/student ratio and provide statutory updates to include digital formats.

**Status:** Tabled

**RECOMMENDATION 4:** DVI shall post on its website all by-laws for advisory councils and committees that serve DVI, specifically for the Independent Living Advisory Committee (“ILAC”) and Committee of Blind Vendors.

**Status:** Tabled

**RECOMMENDATION 5:** DVI shall direct the Council of the Blind to create and finalize Council by-laws.

**Status:** Tabled

**RECOMMENDATION 6:** DVI reported that operations for the Delaware Industries for the Blind (“DIB”) closed in March 2017. Based on DVI’s request the Committee will sponsor a bill to remove all references to the DIB from the Delaware Code, including § 7929, Title 29 and § 9605, Title 16. DVI will promulgate necessary amendments to remove all references to DIB from the Delaware Administrative Code, including § 9101, Title 16.

**Status:** Tabled

**RECOMMENDATION 7:** There currently are no regulations governing the Business Enterprise Program (“BEP”). DVI shall direct the BEP to promulgate regulations to implement and operate the program. The regulations shall include provisions related to all of the following:

- a. Participant eligibility.
- b. Personnel management.
- c. Fiscal controls.
- d. Marketing plans.
- e. Enforcement of production quality standards as stated under § 7929, Title 29.
- f. Set-aside requirements and procedures for Blind Operators.

**Status:** Tabled

**RECOMMENDATION 8:** DVI shall direct the BEP and Blind Vendors Committee to adopt member removal and conflict of interest provisions in the committee’s by-laws.

**Status:** Tabled

**RECOMMENDATION 9:** DVI shall offer training opportunities to Blind Vendors Committee members, and encourage the participation in the BEP, in order to support and expand the program.

**Status:** Tabled

**RECOMMENDATION 10:** DVI shall implement all recommendations that were included in the BEP audit completed by Cover & Rossiter. DVI shall provide JLOSC with implementation status updates.

**Status:** Tabled

**RECOMMENDATION 11:** DVI shall review current set-aside requirements, determine whether they are adequate, and pursue appropriate remedies for inadequacies.

**Status:** Tabled

**RECOMMENDATION 12:** DVI shall develop a BEP application and update the BEP section of its website to include BEP educational and outreach materials (including information on the Randolph-Sheppard Act), links for regulations, rules, policies, or by-laws affecting BEP, and access to the BEP application.

**Status:** Tabled

**RECOMMENDATION 13:**

Option 1: Remove the Blind Vendors of the BEP from the State's payroll and pension system.

- OR -

Option 2: DVI shall submit a detailed proposal to the JLOSC regarding the functionality of the BEP's business and accounting operations without the support of the State's payroll and pension system, including consideration of the impact to current and past BEP participants.

**Status:** Tabled

**RECOMMENDATION 14:** DVI shall submit a detailed proposal to the JLOSC regarding legislation and measures to be taken to strengthen the State's licensing authority under the Randolph-Sheppard Act and to expand vending opportunities in institutions of higher learning, Department of Corrections, and interstate rest areas.

**Status:** Tabled

**RECOMMENDATION 15:** The unemployment rate of those who are visually impaired is approximately 70%. DVI shall strengthen business programs and implement technology advances to provide training and employment for Delaware residents who are visually impaired.

**Status:** Tabled

**RECOMMENDATION 16:** DVI shall work to fill position vacancies.

**Status:** Tabled

**RECOMMENDATION 17:** DVI shall work to increase staff certifications. Only 5 DVI employees hold Academy for Certification of Vision Rehabilitation & Education Professionals ("ACVREP") certifications. There is no known DVI employee that holds a certification from Rehabilitation Engineering and Assistive Technology Society of North America ("RESNA") or a National Certification in Unified English Braille ("NCUEB") by the National Blindness Professional Certification Board ("NBPCB").

**Status:** Tabled

**RECOMMENDATION 18:** DVI shall increase braille resources for its consumers. The Hadley School for the Blind offers braille instruction courses by mail to sighted and visually impaired students. They offer braille courses tuition-free for visually impaired students. The National Federation of the Blind has free resources for braille certification.

**Status:** Tabled

**RECOMMENDATION 19:** DVI shall actively search and procure funding and grants for assistive technology to aid the DVI consumers.

**Status:** Tabled

**RECOMMENDATION 20:** DVI shall actively search and utilize training for DVI staff on the topic of Assistive Technology. Organizations such as RESNA offer resources.

**Status:** Tabled

**RECOMMENDATION 21:** DVI shall equip rapid ready rooms with meaningful resources and explore technology advances. DVI shall search for and apply for any available training grants available from Apple or Microsoft.

**Status:** Tabled

**RECOMMENDATION 22:** DVI shall work to expand public outreach and education programs for Teachers for the Visually Impaired (“TVI”) and include information on its website about the need for certified TVI instructors.

**Note:** Delaware does not have a college certification program for TVIs, and there is a national and state shortage of TVI certified professionals. Kutztown University in Pennsylvania is the closest known program and offers it online.

**Status:** Tabled

**RECOMMENDATION 23:** DVI shall partner with high schools and colleges and participate in recruitment events to highlight careers available with DVI and the need for certified professionals in the field of special education and explore offering internship programs to encourage students to pursue degrees and certifications in special education.

**Status:** Tabled

**RECOMMENDATION 24:** DVI shall incorporate the use of GPS technology in their Orientation and Mobility program.

**Status:** Tabled

**RECOMMENDATION 25:** DVI expressed a desire to improve communications between it and the Department of Education (DOE). DVI shall develop and implement communication and procedure guidelines regarding DVI services for students in local school districts and review its current MOU with the DOE and work to bring meaningful modifications to the agreement.

**Status:** Tabled



**RECOMMENDATION 26:** Based on DVI’s suggestion, DVI shall implement a fee model to ensure education services are adequately funded. The following is a DVI suggested model:

Level 1 (up to 8 consults/year) @ \$1,900 per student

Level 2 (1 meeting/week) @ \$4,500 per student

Level 3 (2-3 meetings/week) @ \$12,600 per student

Level 4 (4 meetings/week) @ \$14,300 per student

**Status:** Tabled

**RECOMMENDATION 27:** DVI shall provide braille instruction to all students unless assessment indicates otherwise inappropriate.

Option: Codify this recommendation in DVI’s governing statute.

**Status:** Tabled

**RECOMMENDATION 28:** DVI shall provide expertise to teachers, specialists, and counselors in the development of an Individualized Education Program (“IEP”).

Option: Codify this recommendation in DVI’s governing statute.

**Status:** Tabled

**RECOMMENDATION 29:** DVI shall report to the JLOSC on the implementation status of the recommendations made by the Blind and Visually Impaired Education Task Force, who submitted a final report to the 148<sup>th</sup> General Assembly in June of 2015. DVI shall implement the task force recommendations.

**Status:** Passed

**RECOMMENDATION 30:** DVI is held over and shall report to the Committee in January 2020.

**Status:** Passed

**RECOMMENDATION 31:** The JLOSC will sponsor a bill establishing a task force addressing the implementation of recommendations 2-29 and any other recommendation deemed appropriate. The task force will issue a report to the JLOSC in January 2020.

**Status:** Passed

## **A NOTE ABOUT THIS REPORT**

Much of the information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled “Additional Comment from the Committee Analyst.” It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the Joint Legislative Oversight and Sunset review processes.

## **AGENCY HISTORY**

Services for visually impaired Delawareans originated in 1906, through the Delaware Commission for the Blind (“Commission”). In 1909, the General Assembly codified the Commission, making it Delaware’s first state agency, to provide gainful employment for those without sight.

At least two federal acts had significant impact on the blind and visually impaired community. The Randolph-Sheppard Act, enacted in 1936 and updated significantly in 1974, provided opportunities for self-sufficiency and employment by mandating that blind and visually impaired persons have right of first refusal for all vending opportunities on federal property.<sup>1</sup> In 1943, Vocational Rehabilitation Amendments provided that any state with a legally-constituted commission or agency for the blind could assign to it the administration of the federal-state vocational rehabilitation program serving individuals who are blind or visually impaired.<sup>2</sup> Thereafter, the Commission established the Vocational Rehabilitation Program, for the sole purpose of assisting blind individuals obtain employment.

In 1970, the Commission became part of the Department of Health and Social Services, under the Division of Social Services. An itinerant education teacher was hired to provide services to blind students in public schools. This itinerant model is still in use today.

In 1978, § 7929, Title 29 was enacted, establishing DVI under the Department of Health and Social Services’ Chapter 79 of Title 29. Section 7929 gave DVI the “power to perform and be responsible for the performance of all powers, duties and functions” vested in the Commission under Chapters 21 and 23 of Title 31.<sup>3</sup> Until § 7929 was enacted, those powers, duties, and functions were vested in the Division of Social Services.<sup>4</sup>

DVI works in partnership with the consumer and the community to improve the safety, education, and employment of blind and visually impaired Delawareans. Today, DVI provides a continuum of services to over 2,800 residents with visual impairments. Services include itinerant education services, vocational rehabilitation, independent living, orientation and mobility, and assistive technology, and serves as the state licensing authority under the Randolph-Sheppard Act.

## **PURPOSE**

DVI was created to meet the growing need for specifically trained and educated instructors, counselors, and staff in visual impairments and blind services, and to provide specific individual services to the visually impaired and blind residents of Delaware.

The Commission and DVI have served tens of thousands of visually impaired individuals throughout their history of services. DVI provides a holistic, integrated service approach, serving individuals from birth to expiration through the cycle of life. DVI works in partnership with the consumer and the community to improve the safety, education, and employment of blind and visually impaired

<sup>1</sup> See 20 U.S.C. § 107, *et. seq.*

<sup>2</sup> See generally 29 U.S.C. §§ 701, *et. seq.*; see also <http://ncsab.org/>, last accessed March 27, 2019.

<sup>3</sup> See 29 *Del. C.* § 7929.

<sup>4</sup> See *id.* at § 7929(a).

Delawareans of all ages. Collectively, DVI serves more than 2,800 individuals annually in programs ranging from education, vocational rehabilitation, independent living, elderly, assistive technology training, travel training, and employment. DVI's Independent Living Program is recognized as a national model.

To promote health and wellbeing, DVI strives to reduce or eliminate all barriers to lifelong personal independence produced by a loss or lack of vision. DVI provides the following services:

- Early diagnosis and intervention.
- Education in the least restrictive environment.
- Transition services for youth with visual impairments.
- Family and individual counseling.
- Independent living skills, training, and provision of equipment.
- Vocational training and related job placement.
- Employment opportunities.
- Advocacy.
- Low vision evaluations and training.

These services are developed and provided for the three primary groups of consumers:

- Educational age (0 - 21).
- Primary employment age (21-65). The Transition Program begins at age 14.
- Older Delawareans (66 +). The older blind program begins at age 55.

DVI has made such an impact on Delawareans that many bequeath resources to the agency.

Vision loss is a growing health concern in the United States. Over 21 million Americans currently live with vision loss, and that number is on the rise.<sup>5</sup> DVI services are not duplicative, but comprehensive for a specific population. Blindness is one of the most feared and misunderstood disabilities. Consolidation of any portion of the programs and services delivered by the agency would have a negative impact on consumers. This assertion is accompanied by prior research and studies that provide strong arguments in support of DVI.

Any "one-size-fits-all" approach to vision services overlooks or ignores the proven benefits of specialized programs and services for people with vision loss. Although all-purpose disability and health service organizations claim to serve blind people as successfully as blindness agencies, too many people with visual impairments slip through the cracks when they do not have access to specialized services.

Many consumers report coping with vision loss can feel overwhelming at first. When armed with the right knowledge and skills, people with vision problems can face the future with confidence. People with vision loss learn necessary and life-changing skills because of the specialized services and dedicated staff that teach them the ways to maximize their fullest potential. DVI's services are designed to assist people who are blind or visually impaired seek employment, attain a proper education, and assist older adults with the adjustment to life with vision loss.

DVI provides a holistic approach to services. These services work in a continuum to meet the needs of Delaware's blind consumers. On a national level, arguments have surfaced to eliminate separate

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<sup>5</sup> See <https://www.afb.org/default.aspx>, last accessed March 27, 2019.

blind agencies. These arguments have not prevailed, because the visually impaired populations have very specific and specialized needs that are unlike those of individuals with other disabilities. Many studies that show that the visually impaired population is best served under a separate service delivery model. Separate service delivery models provide the strongest and most dynamic programs that help blind or visually impaired populations achieve more social, education, and economic success and can reduce more severe vision loss issues and other secondary disabilities. Separate agencies geared towards serving the visually impaired community also have the ability to serve more severe cases of blindness and provide a larger number of services with a longer duration to applicants and program members. Reports and studies have also found evidence that separate blind agencies have the ability to serve more minority, women, and elderly applicants, and that they are able to rehabilitate, meaning “close,” a higher percentage of applicants who are accepted for services.

Many organizations have concluded that the already-troubling figures regarding the high unemployment rates of visually impaired populations typically understate the severity of unemployment in the visually impaired community due to underreporting, underemployment, and other factors. The Cleveland Sight Center, the National Federation of the Blind, and the Braille Institute of America have estimated unemployment among the visually impaired at 70% or more.

DVI is needed because transitioning to a model focused on generalization would cause the loss of the comprehensive services that Delawareans who are blind need to deal with all facets of life, including employment training. A number of studies have compared blind service delivery in separate agencies to blind service delivery in general agencies, and all have affirmed the viability of a separate service delivery model. Case service data is reported annually to the United States Department of Education’s Rehabilitation Services Administration (“RSA”) by state program administrators and has been used in studies on the effects of agency structure on services to blind or visually impaired consumers.

Combining agencies would have an additional negative impact on Delawareans because the Department of Labor’s Division of Vocational Rehabilitation is on an Order of Selection, which is a waitlist.<sup>6</sup> Under the Vocational Rehabilitation Act, if a state vocational rehabilitation agency does not have enough fiscal or personnel resources to serve all eligible persons it must implement an order of selection and individuals with the most significant disabilities are given first priority for vocational rehabilitation services.<sup>7</sup> Once on an order of selection, an agency may not spend money on new applicants until the current wait list has been cleared. Therefore, a new applicant requiring minimal services would risk losing employment, if currently employed, or not having access to a quick employment turnaround while waiting for services or funding to become available, unless they have recently been closed in an employment status. Furthermore, people on the wait list with a minimal level of disability would continue to be pushed down the wait list as applicants with more severe impairments apply, effecting access to assistance regardless of the nature of the wait-listed individual’s disability. If DVI was combined with another agency, all current and active DVI consumers would continue to receive services, but new applicants or re-applicants would be subject to the conditions of the combined Order of Selection wait list.

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<sup>6</sup> Analyst’s Note: It is unclear whether DVI’s concerns about being combined with another state agency are based on an actual proposal to combine them with any other agency.

<sup>7</sup> See 29 U.S.C. § 721(a)(5)(C).

## **JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY**

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) has never reviewed DVI.

### **MISSION, GOALS, OBJECTIVES, AND AUTHORITY**

**Mission Statement:** To provide educational, vocational, and technical support to empower and foster independence for Delawareans with vision impairments.

**Vision Statement:** To become Delaware’s leader in providing services for people who are blind or visually impaired.

**Core Values:** Quality Customer Service, Teamwork, Respect, Innovation and Creativity, Fostering Independence and Integrity.

DVI’s enabling legislation, § 7929, Title 29, is accurately reflected in these statements.

#### **DVI Goals and Objectives, in order of priority:**

##### **Goal 1: Highest Client Achievement**

Objective: Coordinate and secure high quality training, education, work experiences, and partnerships that create opportunities for blind and visually impaired Delawareans to obtain and maintain independence, post-secondary education credentials, and successful employment outcomes.

##### **Goal 2: Seamless Articulation and Maximum Access**

Objective: Create a comprehensive service delivery system that fosters accessibility and provides positive experiences for blind and visually impaired Delawareans enabling them to matriculate from school/training to work.

##### **Goal 3: Skilled Workforce and Economic Development**

Objective: Assist blind and visually impaired Delawareans with obtaining, maintaining and advancing in competitive integrated employment.

##### **Goal 4: Quality Efficient Services**

Objective: Create an accountable and exemplary division workforce that ensures high quality.

- The Division for the Visually Impaired will streamline its procurement of Assistive Technology for individuals who are blind and visually impaired by reducing acquisition time to 14 days and limit barriers to education, employment, and independence.
- The Division for the Visually Impaired will identify three performance measures for each of its programs, increase data element collection by 20% and report annually the outcomes and effectiveness of its core services:
  - Business Enterprise Program.
  - Technology.
  - Vocational Rehabilitation.
  - Orientation and Mobility.

- Education.
- Instructional Resources and Materials Center.
- Independent Living Services.

**Business Enterprise Program:**

1. Implement practices that foster the true spirit of the Randolph Sheppard Act by ensuring operators are functioning as independent entrepreneurs.
2. Modernize Operations of the Business Enterprise Program.
3. Increase the number of operators by one each year.

**Technology:**

1. 90% of the consumer satisfaction results will express their satisfaction with services.
2. Six Workshops will be held annually on technology topics for the agency and community.
3. Technology Trainers will receive at least 30 hours annually of professional development.
4. Implement virtual training options for consumers, department, and agency.

**Vocational Rehabilitation:**

1. Ensure compliance with WIOA Performance Measures.
2. Increase employment outcomes by 10% annually.
3. Provide two business engagement activities annually.

**Orientation and Mobility:**

1. 90% of the consumer satisfaction results will express their satisfaction with services.
2. Monitor and ensure compliance with IEP goals and benchmarks.
3. Develop Service Plans for adults receiving O+M Services.

**Education:**

1. Fully implement all phases of Quality Programs for Students with Visual Impairments.
2. Monitor and ensure compliance with IEP goals.
3. Increase resources to the Education Program.

**Instructional Resources and Materials Center:**

1. Automate and streamline processes to improve efficiencies in the deployment of materials.
2. Procure training for team and the Men with a Message Program for the accurate production of accessible materials.
3. Explore feasibility of producing accessible materials for third parties to increase funding for the IRMC.

**Independent Living Services:**

1. Implement best practices provide by the Older Blind Technical Assistance Center.
2. 90% of consumer satisfaction results will express their satisfaction with services.
3. Provide Summer Academy and workshops throughout the year to students with visual impairments.

To ensure that DVI is attaining its goals and objectives, DVI leadership reviews and monitors the performance measures and objectives on a monthly basis, by reviewing monthly case reviews and consumer satisfaction survey results. DVI leadership makes adjustments based on monthly review findings to ensure an optimal customer experience.

**PUBLIC INFORMATION**

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DVI makes the following information and educational resources available to the public:

**Target Group 1 – Constituents with blindness or severe visual impairments**

DVI maintains a registry of over 3,000 people who meet the division eligibility requirements. Information is routinely sent in various formats, according to consumers' desired media preferences. This includes electronic, automated phone calls, Braille, and the US Postal Service. DVI has been using an electronic marketing system since 2016, to create fully accessible newsletters and announcements. DVI also contracted with an automated, robocall system to create customized, automated phone calls. All registrants receive information pertaining to DVI special events, workshops, and technology news and community resources at least monthly.

The automated phone system has proven to be the most efficient, effective, and accessible way to communicate with DVI consumers. From 2016-2018, DVI sent constituents eighty automated phone calls, totaling 131,536 times that the messages were received. This averages to 1,644 people per call and 26.6 calls per year. In addition to phone calls, DVI sent consumers forty-six newsletters, announcements, event invitations, job openings, community resources, and more during the past three years. This averages to 15.3 per year or 1.27 per month.

**Target Group 2 – Older adults, the public at large, and families**

DVI routinely facilitates cost-effective educational events designed to address constituent needs and expand outreach to underserved populations. DVI has hosted twelve large events (four per year) since 2016, collectively attended by more than 800 current constituents and members of the public. Examples include the DVI Biennial Technology and Community Resource Fair, the annual Healthy Vision Family Night at the Delaware Children's Museum, a Microsoft-taught Accessibility Workshop, and a special event at which three vendors demonstrated state-of-the-art smart glasses technology. Because of the smart glasses event, one vendor provided the DVI Technology Training Center with smart glasses, a tablet, and magnifier (value \$10,000) at no cost, to use for training purposes.

Common eye diseases such as macular degeneration, glaucoma, and diabetic retinopathy, often result in severe vision loss. As a result, a great deal of outreach and education efforts target older adults, who are losing or have lost their vision. DVI staff are frequent exhibitors at community events, health fairs, and local conferences such as the LIFE Conference, the Diabetes Wellness Expo, and the 55+ Expo. During the last three years, DVI has been a vendor



at or sponsor of more than 50 community outreach events, effectively providing vision-related information to hundreds of people.

A unique way by which DVI has educated the public is through blindness sensitivity workshops. In 2017, DVI Orientation & Mobility Specialists provided sensitivity training to city, state, and county police officers. Attendees wore various optical lenses as an introduction to different types of blindness, followed by mobility challenges, white canes, and sighted guide instruction. Officers were blindfolded and asked to perform simple tasks while seated, then difficult tasks while mobile. Two by two, sighted colleagues guided blindfolded officers through buildings and streets. After several classes, the O&M staff provided training to nearly 140 City of Wilmington police officers, thirty State Police cadets, and twenty New Castle County police recruits. Channel 6 ABC news and the News Journal covered the fourth and last workshop performed at the City of Wilmington. WHYI produced a seven-minute segment and released it a few days following the event.

Finally, DVI uses Facebook to connect with people who may need services. Building an organic Facebook following using page likes has proven to be an arduous process. The page likes grew at a slow and steady pace, increasing 14% from the end of 2016 through the end of 2017. The Facebook connection has grown, however; between January and August 2018, page likes increased by 25% and direct message inquiries from Facebook users grew by 14% over the previous year. In comparison to other divisions of the state with social media presences, the number of followers is relatively small but is comparable when considering DVI's size.

DVI uses its Facebook page to advertise workshops and events to the public. The page also hosts a closed group whose members are parents or families of children served by the education unit of DVI. The closed group is still in development; members will be able to privately create events and share information. The teachers who are coordinating the group intend to add regular blogs, specific to the education of children with blindness.

The purpose of DVI's Facebook page has been to reach underserved populations and the public at large. The uptick in page activity, increase in service-related inquiries, and innovative use of the site features prove this social media resource will continue to develop into a valuable outreach tool.

### **Target Group 3 - Healthcare professionals and community organizations**

Vision-related healthcare professionals are often the number one referral resource for people with severe vision loss. DVI participated as a vendor at the Delaware Optometric Association's annual conference for the last two years, a one-day event that provides an opportunity to speak with approximately fifty medical professionals who directly serve potential DVI consumers. In addition to the optometric conference, DVI has partnerships with several doctors throughout the state.

DVI staff are active members of six large community resource-sharing organizations. Each group offers an organized time to learn about services and all are well attended. For example, one statewide group has approximately 200 members, 125 in New Castle and 75 in Kent and Sussex counties, all of whom are professionals working in senior environments such as assisted living facilities, long-term care, and rehabilitation facilities. The monthly meetings are attended by at least 40% of the membership. Meeting locations alternate among the counties, include presentations, and offer time to discuss services with other members. Another group has over 250 members, all of whom are in the healthcare industry. The healthcare group

convenes quarterly and approximately 30% of their membership are usually in attendance. Since 2016, DVI outreach professionals have participated in or presented at nearly forty resource exchange opportunities throughout the state. The group environments have afforded DVI the opportunity to educate nearly 300 potential referral sources about DVI services annually.

DVI has used an electronic marketing system since 2016, to create fully accessible newsletters and announcements. DVI has developed a robust contact list that includes representatives from the Optometric Association, doctors, medical office staff, community organizations, key partners, and vendors.

In addition, DVI is part of the Delaware Library Community Partner Exchange (“CPE”). The CPE joins public libraries with government agencies, non-profit community organizations, social service agencies, and more across all disciplines to maximize resources and opportunities for Delawareans. Being a member allows access to all members using just one email address. Contacts receive e-news blasts, event announcements, and newsletters. As materials are developed, they are electronically sent to the DVI contact list (1,054 people), two of the aforementioned resource sharing organizations group liaisons who distribute to membership (450 people), and through the CPE listserv (250 people). Since developing the e-news system in 2016, our partner contact list received twenty-two various DVI educational or informational pieces. This equates to an average of 7.33 e-news distributions, each reaching 1,700+ people per year.

<b>Interest Groups</b> <b>(Groups affected by Division actions or represent others served by or affected by Division actions)</b>		
<b>Group or Association Name/Contact Person</b>	<b>Address</b>	<b>Phone Number</b> <b>Fax Number</b> <b>Internet Address</b>
National Federation of the Blind Kathryn Bottner	24 Monterry Dr. Newark, DE 19713	302-528-2621 NFBde.org
American Council for the Blind Suzanne Howell	saflutedcbvi@verizon.net	302-798-8192 acb.org/affiliate-delaware
State Council for Persons with Disabilities	Margaret O'Neill Building 410 Federal Street, Suite 1 Dover DE 19901	302-739-3621 scpd.delaware.gov/
Employment First Commission	Margaret O'Neill Building 410 Federal Street, Suite 1 Dover DE 19901	302-739-3621 https://scpd.delaware.gov/
Freedom Center for Independent Living	400 N Broad St. Middletown, De 19709	302-376-4399 Fcilde.org
Independent Resources	6 Denney Road Suite 101 Wilmington, DE 19809	302-765-0191 Iri-de.org

<b>National Organizations or Other Government Entities (that serve as an information clearinghouse or regularly interact with the Division)</b>		
<b>Group or Association Name/Contact Person</b>	<b>Address</b>	<b>Phone Number Fax Number Internet Address</b>
Corporation for National and Community Service	250 E. Street, SW Washington, DC 20525	Phone: (800) 942-2677 <a href="http://www.nationalservice.gov">http://www.nationalservice.gov</a>
American Foundation for the Blind	1401 South Clark Street Suite 730 Arlington, VA 22202	Phone: (202) 469-6831 Fax: (646) 478-9260 afb.gov@afb.net
National Federation of the Blind	200 E. Wells Street/Jernigan Place Baltimore, MD 21230	Phone: (410) 659-9314 Fax: (410) 685-5653
Association for Education and Rehabilitation of the Blind and Visually Impaired	1703 North Beauregard Street Suite 440 Alexandria, VA 22311	Phone: (703) 671-4500 Fax: (703) 671-6391 aer@aerbvi.org
American Council for the Blind	1703 N Beauregard Street Suite 420, Alexandria, VA 22311	Phone: (202) 467-5081 Fax: 703-465-5085
National Council of State Agencies for the Blind	2200 University Avenue #240 St. Paul, MN 55114,	Phone: (651) 539-2272
Council of State Administrators of Vocational Rehabilitation-	1 Research Court, Suite 450, Rockville, MD 20850,	Phone: (301)519-8023
National Council on Rehabilitation Education	1099 E. Champlain Drive Suite A, # 137 Fresno, CA 93720,	Phone: (559) 906-0797
RSA/OSERS/Department of Education	Lawrence.Vrooman@ed.gov	Phone: (202) 245-6523
WINTAC – Workforce Innovation Technical Assistance Center Maureen McGuire-Kuletz	mkuletz@gwu.edu	Phone: (202) 973-1558 Wintac.org
National Automatic Merchandising Association	20 N. Wacker Drive, Suite 3500 Chicago, IL 60606	Phone: (312) 346-0370 Fax: (312) 704-4140
Administration for Community Living Elizabeth Akinola	Elizabeth.Akinola@acl.hhs.gov	(202) 795-7292
National Prison Braille Network Jayma Hawkins	Jhawkins@aph.org	(502) 899-2302
American Printing House for the Blind Cindy Amback	CAmback@aph.org	(502) 899-2257
NFBEI Terry Smith	terrysmith@epbfi.com	(865) 599-7148

<b>Industry or Trade Publications</b>		
<b>Group or Association Name/Contact Person</b>	<b>Address</b>	<b>Phone Number Fax Number Internet Address</b>
Delaware State Chamber of Commerce	PO Box 671 Wilmington, DE 19899	Phone: (302) 655-7221 <a href="mailto:info@dsc.com">info@dsc.com</a>
Central Delaware Chamber of Commerce	435 N. DuPont Highway Dover, De 19901	Phone: (302) 734-7513 Fax: 302) 678-0189 <a href="mailto:info@cdcc.net">info@cdcc.net</a>
Journal of Blindness and Visual Impairment	AFB Press Customer Service 1000 Fifth Avenue, Suite 350 Huntington, WV 25701	304-710-3027
American Foundation for the Blind	1401 South Clark Street Suite 730 Arlington, VA 22202	Afb.org
New Castle County Chamber of Commerce	920 Justison Street Wilmington, DE 19801	Phone: (302) 737-4343 Fax: (302) 322-3593 <a href="mailto:chadwickb@ncccc.com">chadwickb@ncccc.com</a>
NAMA Magazine	20 N. Wacker Drive, Suite 3500 Chicago, IL 60606	Phone: (312) 346-0370 Fax: (312) 704-4140
Nutritional Magazine	131 West First Street Duluth, MN 55802	Phone: (866) 529-2922 Fax: (218) 740-7223

## **COMPOSITION AND STAFFING**

### **Boards, Committees, or Councils related to DVI:**

- Council on the Blind.
- Vocational Rehabilitation Advisory Council (aka State Rehabilitation Council).
- Independent Living Advisory Council.<sup>8</sup>
- Statewide Independent Living Council.<sup>9</sup>
- Business Enterprise Program/Blind Vendors Committee.
- Commission for Statewide Contracts to Support Employment for Individuals with Disabilities.<sup>10</sup>

### **Number of Members:**

- Council on the Blind, 7 members.
- Vocational Rehabilitation Advisory Council, 8 voting members and 1 non-voting member. There are 6 vacant positions.
- Independent Living Advisory Committee, 11 members.
- Business Enterprise Program/Blind Vendors Committee, 3 members and 2 alternate members.

<sup>8</sup> Public meeting calendar states that the DVI Director appoints members to this council. By-laws provided in Appendix B.

<sup>9</sup> Additional information on this council, including how it was created or where it is housed, was not provided. The Council's website is <https://dvr.delawareworks.com/silc.php>.

<sup>10</sup> See 16 Del. Code § 9603.

- Commission for Statewide Contracts to Support Employment for Individuals with Disabilities, 7 voting members and 2 non-voting members.

### **Current Vacancies:**

The Vocational Rehabilitation Advisory Council consists of 15 members, but has 6 vacancies. The Governor's Office has been working to fill these vacancies for some time. The following is a list of the type of member and the date the vacancy started.

Blind Disability Advocate	12/8/2017
Business	3/15/2018
Business	5/21/2018
Business	1/31/2013
Parent	8/23/2018
Parent Information Center Rep	12/8/2017

### **Length of Terms and Qualifications:**

- Council on the Blind.<sup>11</sup>
  - Under its statute, the Council on the Blind consists of 7 members who are appointed for 3-year terms. Members may serve multiple terms.
  - 3 to 4 members may be affiliated with one of the major political parties, and 2 to 3 of the newly-appointed members may be affiliated with the other major political party. There may be no more than a bare majority representation of one major political party over the other major political party. Any person who declines to announce their political affiliation is eligible for appointment as a member of the Council.
- Vocational Rehabilitation Advisory Council (aka State Rehabilitation Council)<sup>12</sup>
  - Members typically serve 3-year terms and are limited to serving 2 consecutive terms with the following exceptions:
    - A member appointed to fill a vacancy appointed for the remainder of the vacancy's term.
    - The terms of service of the member initially appointed is for such fewer number of years as will provide for the expiration of terms on a staggered basis.
  - The Vocational Rehabilitation Advisory Council consists of the following:
    - At least 1 representative of the Statewide Independent Living Council.
    - At least 1 representative of a parent training and information center established under the Individuals with Disabilities Education Act.
    - At least 1 representative of the client assistance program.
    - At least 1 qualified vocational rehabilitation counselor, with knowledge of and experience with vocational rehabilitation programs, who serves as an ex officio, nonvoting member if the counselor is an employee of the designated State agency.
    - At least 1 representative of community rehabilitation program service providers.
    - 4 representatives of business, industry, and labor.
    - Representatives of disability advocacy groups representing a cross section of:

<sup>11</sup> See 29 Del. Code § 7913.

<sup>12</sup> This council appears to be mandated by federal law. More information on this council can be found at <https://dvr.delawareworks.com/src-members.php> and <https://dvr.delawareworks.com/state-rehab-council.php>.

- Individuals with physical, cognitive, sensory, and mental disabilities.
    - Individuals’ representatives of individuals with disabilities who have difficulty in representing themselves or are unable due to their disabilities to represent themselves.
  - Current or former applicants for, or recipients of, vocational rehabilitation services.
  - In a State in which one or more projects are funded under section 741 of this title, at least 1 representative of the directors of the projects located in the State.
  - At least 1 representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services Individuals with Disabilities Education.
  - At least 1 representative of the State workforce development board.
  - The Director of the designated State unit is an ex officio, nonvoting member.
- The Independent Living Advisory Council has no term limits or restrictions. Members must include blind or visually impaired individuals, and may include parents and guardians of blind and visually impaired individuals, non-governmental agencies, or other groups of individuals who are concerned with services to the blind and visually impaired community. The majority of members must be blind and visually impaired individuals or parents or guardians of blind and visually impaired individuals.
  - Business Enterprise Program/Blind Vendors Committee
    - Under the Committee’s by-laws, a member’s term of office is two years or until a successor is elected. Any blind vendor that is operating a location on the date of the election is eligible to vote for 3 candidates for the committee. Each eligible voter may be a candidate for the committee.<sup>13</sup>
  - Commission For Statewide Contracts to Support Employment For Individuals with Disabilities<sup>14</sup>
    - Commission members do not have set terms. The members have 7 voting members and 3 non-voting members, made up of the following:
      - Voting members:
        - The Director of Government Support Services.
        - The Director of the Division of Vocational Rehabilitation.
        - The Secretary of Finance.
        - 4 public Governor-appointees.
      - 1 must be an individual with a disability or a family member of an individual with a disability, who is 14 years old or younger. Except for this member, no public member may be affiliated

<sup>13</sup> By-laws in Appendix B.

<sup>14</sup> See 16 *Del. Code* § 9603. JLOSC recently reviewed this commission, as summarized in the JLOSC 2016 Final Report: The Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals (“Commission”) was originally scheduled to be reviewed in 2014, however, severe storms led to the delay of the Sunset proceedings. The review was postponed until 2015. The Committee found that the Commission’s governing statute was in need of a significant update and that a perceived conflict of interest needed to be addressed. The Commission presented draft legislation to the Committee in January 2016, and after minor changes, House Bill 393 was approved and filed.

[HB 393, enacted in July 2016](#), modernized the commission’s name and made several other, significant updates to Delaware’s State Use Law, including renaming the law “Statewide Contracts to Support Employment for Individuals with Disabilities.”

with an entity or organization that has or is seeking to obtain a set-aside contract under this chapter.

- Non-voting members:
  - 1 representative of a CRP that employs individuals with disabilities.
  - The Director of the Ability Network of Delaware.
  - The Director of the Division for the Visually Impaired.

### **Member Removal Processes:**

- Council on the Blind - Has no removal process, either by statute or by-law.<sup>15</sup>
- Vocational Rehabilitation Advisory Council
  - A member who misses 3 or more meetings in the preceding 12 months without reasonable cause is considered to have failed to fulfill their commitment to the Council and expected to return to active participation or tender resignation. A member representing an agency who terminates employment with that agency is no longer on the Council, and the Council must notify the Governor and recommend a new representative.
- Independent Living Advisory Committee
  - If a member has more than 2 unexcused absences, the Social Services Administrator will discuss their desire to continue on the committee. Leaves of absence are granted on a case-by-case basis.
- Business Enterprise Program/Blind Vendors Committee
  - This Committee has no removal process, by either statute or by-law.<sup>16</sup>
- Commission for Statewide Contracts to Support Employment for Individuals with Disabilities<sup>17</sup>
  - The office of a member who fails to attend 3 successive meetings without good cause or excuse or without leave of absence from the Chair is declared vacant by the Commission, and the Chair must notify the Governor of a vacancy on the Commission and request that the Governor shall fill the same.

### **Compensation:**

- Council on the Blind
  - Members of the Council serve without compensation, but may be reimbursed for reasonable and necessary expenses incident to their duties as members.
- Vocational Rehabilitation Advisory Council (aka State Rehabilitation Council)
  - The Council may use funds allocated to the Council by the designated State unit under this subchapter (except for funds appropriated to carry out the client assistance program

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<sup>15</sup> By-laws were not provided.

<sup>16</sup> By-laws in Appendix B. Statutory definition of Blind Vendors Committee could not be located. The Blind Enterprise Program was created under 29 *Del. Code* § 7929(b).

<sup>17</sup> See § 9101-2.7, Title 16 of the Delaware Administrative Code.

under section 732 of this title and funds reserved pursuant to section 730(c) of this title to carry out part C of this subchapter) to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties (including child care and personal assistance services), and to pay compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing the duties of the Council.<sup>18</sup>

- Independent Living Advisory Council
  - Members are not compensated.
- Business Enterprise Program/Blind Vendors Committee
  - Expenses incurred or authorized by the committee in the carrying out of its purposes and its statutory duties and responsibilities are paid for as management services from set-a-side and matching federal funds, or from general revenue, or grants and donations in part or in whole.
  - Committee members and members of standing and other committees are entitled to per diem and travel expenses (as state law provides for state employees) while engaged in official activities of the committee unless otherwise agreed to by the committee and DVI.
- Commission for Statewide Contracts to Support Employment for Individuals with Disabilities<sup>19</sup>
  - Members of the Commission shall serve without compensation other than reimbursement for expenses actually incurred in connection with the work of the Commission, and for travel expenses when away from their homes or regular places of business.

### **Member Trainings:**

No specialized training is offered through the state, but DVI offers access to professional development. And, no training is required for the following:

- Council on the Blind.
- Vocational Rehabilitation Advisory Council (aka State Rehabilitation Council).
- Independent Living Advisory Council.
- Business Enterprise Program/Blind Vendors Committee.

New members of the Commission for Statewide Contracts to Support Employment for Individuals with Disabilities complete an orientation session and all members participate in training sessions.

### **Avoiding Conflicts of Interest:**

- Council on the Blind – Because this is an advisory council, conflict of interest is limited.<sup>20</sup>

<sup>18</sup> Analyst's Note: Citation to this language was not provided.

<sup>19</sup> See 16 *Del. Code* § 9603(g).

<sup>20</sup> Analyst's Note: It appears there is no process for guiding conflicts.



- Vocational Rehabilitation Advisory Council (aka State Rehabilitation Council)
  - Personal conflict of interest: While assisting the Council in carrying out its duties, staff and other personnel are not assigned duties by the Designated State Unit or any other agency or office of the State that would create a conflict of interest.
  - No member may vote on any matter that would provide direct financial benefit to the member or to a person or an organization with which the member is affiliated, or otherwise give the appearance of a conflict of interest. Each member is expected annually to sign and acknowledge that she or he has received notice of this requirement and agrees to abide by it.
- Independent Living Advisory Council - Because this is an advisory council, conflict of interest is limited.<sup>21</sup>
- Business Enterprise Program/Blind Vendors Committee
  - Blind Operators' bylaws do not include any reference to conflict of interest. As a matter of practice, members recuse themselves from votes that involve a conflict of interest.
- Commission for Statewide Contracts to Support Employment for Individuals with Disabilities
  - A Commission or subcommittee member with an interest in a matter presented to or considered by the commission or a subcommittee for recommendation, authorization, approval, or ratification must disclose their interest prior to its acting on the matter. A majority vote then determines whether the disclosure shows that a conflict of interest exists or can reasonably be construed to exist.<sup>22</sup>
  - If the Commission or subcommittee determines that a conflict exists, the conflicted member shall not vote on, use personal influence on, or participate (other than to present information or respond to questions) in the discussions or deliberations with respect to the matter. The member may not be counted in determining the existence of a quorum for the portion of the meeting where the matter that includes the conflict is under discussion or is voted upon. The minutes of the meeting shall reflect the disclosure made, the vote thereon, and where applicable, the abstention from voting and participation, and whether a quorum was present.<sup>23</sup>

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<sup>21</sup> Analyst's Note: It appears there is no process for guiding conflicts.

<sup>22</sup> See § 9101-3.1, Title 16 of the Delaware Administrative Code.

<sup>23</sup> See *id* at § 9101-3.2.

**Current Membership:****Council on the Blind**

<b>Individual</b>	<b>Appt. Date</b>	<b>Expiration Date</b>	<b>Position Held</b>	<b>Occupation</b>	<b>Professional/ Public Member</b>
Lloyd Schmitz	9/6/2006	4/27/2019	Chair	Retired BEP Operator	Public
Jillian Queen	12/3/2015	9/7/2020	Secretary	Educator	Public
Ken Rolph	9/3/2013	4/29/2019	Member	Consumer	Public
Patricia Addison	11/4/2016	11/4/2019	Member	Consumer	Public
Pat Carzo	9/7/2017	9/7/2020	Member	Board Member-Blindsight Delaware	Public
Kathryn Bottner	9/7/2017	9/7/2020	Member	Consumer	Public
Deidre Morris	12/3/2015	12/3/2018	Member	Administrative Specialist	Public

**Vocational Rehabilitation Advisory Council**

<b>Individual</b>	<b>Appt. Date</b>	<b>Expiration Date</b>	<b>Position Held</b>	<b>Occupation</b>	<b>Professional/ Public Member</b>
Pat Burrell	4/11/2018	4/11/2021	Member	VR Counselor	Professional
Alice Coleman	8/28/2018	8/28/2021	Member	Retired Social Worker	Public
Darryl Garner	12/2/2013	1/2/2021	Member	Not employed/Volunteer	Public
Suzanne Howell	12/2/2013	1/2/2021	Chair	Retired	Public
Dale Matusевич	4/18/2018	4/18/2021	Member	Education Associate, DE Dept. of Education	Professional
William McCafferty	3/28/2018	3/28/2021	Member	Not employed	Public
Thang Pham	8/28/2018	8/21/2021	Member	Tech employee	Public
Jacqueline Poquette	1/2/2018	8/28/2021	Member	HR Professional	Public
Blake Roberts	10/26/2007	1/2/2021	Member	CAP representative	Public

**Independent Living Advisory Committee**

<b>Individual</b>	<b>Appt. Date</b>	<b>Expiration Date</b>	<b>Position Held</b>	<b>Occupation</b>	<b>Professional/ Public Member</b>
Wayne Marsh	6/8/2016	N/A	Chairperson- expires 12/8/2019	BEP Operator	Public
Patricia Addison	12/2010	N/A	Vice Chairperson- expires 12/8/2019	Peer Support Manager	Public
William Bartlett	3/2011	N/A	Member	Retired	Public
Kathryn Bottner	12/13/2016	N/A	Member	Consumer	Public
August Hazeur	6/2000	N/A	Member	Retired	Public
Carol King-Reis	10/4/2017	N/A	Member	Consumer	Public
Blake Roberts	2/18/2017	N/A	Member	Client Assistance Program	Public
Lynn Schneider	3/23/2017	N/A	Member	Consumer	Public
Ken Rolph	9/3/2013	N/A	Member	Center for Independent Living	Public
Suzanne Howell	06/15/2017	N/A	Member	Consumer	Public
Carol Miller	10/04/2017	N/A	Member	Consumer	Public
Wayne Marsh	6/8/2016	N/A	Chairperson- expires 12/8/2019	BEP Operator	Public
Patricia Addison	12/2010	N/A	Vice Chairperson- expires 12/8/2019	Peer Support Manager	Public
William Bartlett	3/2011	N/A	Member	Retired	Public
Kathryn Bottner	12/13/2016	N/A	Member	Consumer	Public
August Hazeur	6/2000	N/A	Member	Retired	Public
Carol King-Reis	10/4/2017	N/A	Member	Consumer	Public
Blake Roberts	2/18/2017	N/A	Member	Client Assistance Program	Public
Lynn Schneider	3/23/2017	N/A	Member	Consumer	Public

**Independent Living Advisory Committee (continued)**

<b>Individual</b>	<b>Appt. Date</b>	<b>Expiration Date</b>	<b>Position Held</b>	<b>Occupation</b>	<b>Professional/ Public Member</b>
Ken Rolph	9/3/2013	N/A	Member	Center for Independent Living	Public
Suzanne Howell	06/15/2017	N/A	Member	Consumer	Public
Carol Miller	10/04/2017	N/A	Member	Consumer	Public

**Business Enterprise Program/Blind Vendors Committee**

<b>Individual</b>	<b>Appt. Date</b>	<b>Exp. Date</b>	<b>Position Held</b>	<b>Occupation</b>	<b>Professional/ Public Member</b>
Wayne Marsh	7/1/2017	6/20/2019	Chairperson	Blind Operator	N/A
Gary Pizzolo	7/1/2017	6/29/2019	Co-Chairperson	Blind Operator	N/A
Anthony K. Paolini	7/1/2017	6/29/2019	Member-	Blind Operator	N/A

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**Commission for Statewide Contracts to Support Employment for Individuals with Disabilities**

<b>Individual</b>	<b>Appt. Date</b>	<b>Expiration Date</b>	<b>Position Held</b>	<b>Occupation</b>	<b>Professional/Public Member</b>
Doyle Dobbins	6/6/2014	7/28/2016	Acting Chair	Retired	
Cindy Farmer	8/13/2018				
Carvella Jackson	6/27/2017				
Dean Stotler	n/a		State of Delaware-Government Support Services	Director	Professional
Cynthia Fairwell	n/a		Division of Vocational Rehabilitation	Administrator	Professional
Jamie Johnstone	n/a		State of Delaware Department of Finance	Deputy Principal Assistant	Professional
Elisha Jenkins	n/a		Division for the Visually Impaired	Director	Professional
Thomas Cook			Ability Network Of Delaware	A.N.D.	Professional
Julie Donoghue			Department of Justice-DAG	Counsel	Professional

**DVI Staff:**

DVI's list of authorized positions includes 69 budgeted positions. DVI also has 14 budgeted positions for the BEP Program, 5 appointed positions, and 3 casual/seasonal positions. DVI had 1 contractual worker in fiscal year 2018 and 1 temporary worker during fiscal year 2016.

Like other agencies and programs across the nation, DVI experiences personnel shortages for vision rehabilitation fields, including Teachers for the Visually Impaired ("TVI") and Orientation and Mobility ("O&M") Specialists. Personnel shortage is due to the specialized nature of this field and the low incidence of the population. DVI collaborates with university preparation programs, contracts with staffing agencies, and offers incentives such as tuition assistance including, most recently, student loan assistance offered by the State of Delaware.

DVI recruits and hires staff using the State of Delaware's Employment Link. DVI also works with professional organizations for recruitment opportunities at conferences and members' lists. All new employees receive orientation materials. DVI uses the Delaware Learning Center to track training opportunities.

DVI adheres to a Comprehensive System of Personnel Development as a best practice in the rehabilitation field. DVI supports team members in a variety of avenues to preserve and prepare direct service providers for this vulnerable population. DVI also supports participation in professional organizations such as the Association of Education and Rehabilitation of the Blind and Visually Impaired, National Rehabilitation Association, and the National Council of Rehabilitation Educators.

DVI supports professional development through distance learning webinars from the vision community, such as Hadley School for the Blind, American Foundation for the Blind, VR Development Group, the Workforce Innovation Technical Assistance Center (“WINTAC”), and various assistive technology vendors. Employees are required to obtain continuing education units to remain certified in various vision rehabilitation disciplines. Distance learning opportunities are advantageous to the field.

In fiscal year 2018, DVI employees attended 38 training events, including courses, trainings, conferences, and workshops, that contributing directly to professional development. DVI employees attended 41 training events in fiscal year 2017.

Each program manager actively monitors the annual professional development plans (training needs assessments) and seeks resources to foster continuous growth of the DVI team.

Staff Member Name & Title	Responsibilities	Percentage of Time Devoted to Responsibility
Elisha Jenkins	Director (Division operations)	100%
Sandra Miller	Deputy Director (Division operations)	100%
Jill Morrison	Special Projects	100%
Michele Hamilton	Administrative Specialist	100%
Olufonso Ogunsola	Fiscal Administrator	100%
Erin Weaver	Education Program Manager	100%
Matthew Tseronis	Information/Assistive Technology	100%
Shirley Bryson	VR Program Manager	100%
Melodye May	ILS Program Manager	100%
Andrew Kloepfer	Policy Administrator	100%
Deborah Talley	Division Communications	100%
Deborah Bradl	Contract Manager/ Administrations	100%
Rob Schmidlkofer	BEP Director	100%

#### **DVI Coordination of Services:**

DVI coordinates its services with other state entities sharing similar objectives as follows:

- DVI collaborates with the Delaware Division of Services for Aging and Adults with Physical Disabilities (“DSAAPD”) to provide referral information to consumers who may benefit from services from either agency. Cross training is planned, to increase services to the visually impaired

community through the Aging and Disability Resource Center. DSAAPD also cost shares expenses with DVI to provide agency information at outreach events.

- DVI representatives collaborate with the Division of State Service Centers to provide resources and agency information to all Delaware State Service Center locations. These resources are disseminated to State Service Center visitors to increase awareness of DVI services throughout Delaware.
- DVI collaborates with the Delaware Office of Volunteerism to develop an adapted fall prevention program, A Matter of Balance. This program combines physical exercise, home modification, and cognitive rethinking to decrease the incidents of falls in the visually impaired community.
- DVI and the Diabetes Prevention and Control Program provide information to Delawareans about their respective programs to ensure awareness at various levels. Both groups inform members of each organization about diabetes information and access to community services. DVI also assists with the planning of all of the Diabetes Wellness Expos.
- DVI has a long-standing partnership with the Division of Developmental Disabilities Services (“DDDS”) to provide supported employment services to youth and adults with the most significant disabilities. DVI also works in collaboration with DDDS, the Department of Education, local education agencies, community rehabilitation providers, families, and students who qualify for DDDS and who are blind or visually impaired so they can participate in the Early Start to Supported Employment program (“ESSE”). ESSE begins two years prior to high school exit and allows students to begin the employment process early. The objectives of the program are to connect students to adult services, allow them to participate in community-based work assessments and obtain employment upon exiting from high school or shortly thereafter.
- DVI works collaboratively with the Division of Vocational Rehabilitation (“DVR”) to provide a seamless referral process between the two agencies. Under the Workforce Innovation and Opportunity Act (“WIOA”) DVI and DVR work as partners to ensure comprehensive independent living services are provided to all Delawareans with disabilities. Other partners include the Workforce Development Board, Division of Employment and Training, Wagner-Peyser, and Dislocated Worker and Youth.
- The Delaware Department of Education (“DOE”) is developing a pilot program to support more students with disabilities to participate and succeed in career pathways during high school. The PIPEline to Career Success for Students with Disabilities is a collaboration with The National Alliance for Partnerships in Equity (“NAPE”), DOE Career and Technical Education (“CTE”), DOE Exceptional Children Resources, DVI, DVR, DDDS, Tilson & Diaz Solutions, Inc., and local education agencies.
- The Division works collaboratively with local education agencies; DOE; Statewide Programs for the Deaf, Hard of Hearing, and Deafblind; and Child Development Watch for early intervention and education services for individuals with vision loss.
- DVI also works collaboratively with the Center for Disabilities Studies’ Accessible Instructional Materials (“AIM”) Center and the Systematic Processes for Enhancing and Assessing Communication Supports (“SPEACS”) to enhance the lives of individuals with disabilities and their families through education, advocacy, service, and research.

- DVI's Orientation and Mobility team provides technical assistance and works collaboratively with the Department of Transportation to increase independence of individuals with disabilities through access to public transportation.
- The DVI Instructional Materials and Resource Center collaborated with the Department of Corrections to design the work program, Men with a Message Program. Residents of the James T. Vaughn Correctional Center in Smyrna spend hours each day transcribing written and visual material into formats that are accessible to readers with visual impairments, such as braille. Every participant that produces braille has earned a Literary Braille Certification and received a Letter of Proficiency in unified English Braille. Several have received advanced certifications to translate all academic materials for visually impaired students.

**Inter-agency agreements directly impacting DVI's functioning:**

Type of Agreement	Description
Interagency Agreement: DOE, LEAs, DVI	Written to delineate services provided to children and youth with visual impairments. DVI is authorized to provide services to children and youth with visual impairments, ages birth to 21, in accordance with the rules and regulations of DOE and Delaware Law, 29 <i>Del. C.</i> § 7929; Chapters 21 and 23 of Title 31; and 14 DE Admin C. section 900. III. The purpose is to ensure, through a cooperative effort, that a free, appropriate public education is provided to all children and youth with visual impairments who are served by DVI, and the LEAs under the general supervision and direction of the DOE manager (DRM). - <a href="http://www.aimdelawarc.org">www.aimdelawarc.org</a>
DVI/DOE/CDS MOU	DOE, with other AIM/AEM providers, furnish these resources to students with visual impairments. All AIM/AEM materials must be requested through the AIM/AEM centralized system in Delaware through a digital rights.
Unemployment Insurance-MOU	Allows DVI to access UI data to perform duties under WIOA.
WIOA-MOU	Establishing the design framework and partnerships of the State of Delaware's One Stop Delivery System.
DVI/DVR-MOU	Designating the scope of services for each agency providing vocational rehabilitation.



**Administrative guidelines, policies, and decisions directly affecting DVI's functioning:**

Federal Partner Guidance (Rehabilitation Services Administration)	NAME
Tac-18-02	Submission Procedures for Prior Written Approval Requests under the State Vocational Rehabilitation (VR) Services Program
TAC-18-01	Two-Year Modification Requirements for Workforce Innovation and Opportunity Act (WIOA) Unified and Combined State Plans
TAC-17-01	Performance Accountability Guidance for WIOA titles: I, II, III, and IV core Programs
PD 16-04	Case Service Records
TAC-15-02	Vision for VR in WIOA
PD-15-05	Completing Financial Reports( SF 425)
TAC-13-02	Designated State Entity
TAC 12-04	Dual Customers
TAC-12=03	Organizational Structure and Non-Delegable Duties
PD-18-02	Supported Employment Services Financial Reporting
PD 18-01	Supported Employment Financial Reporting

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## **COMPLAINT AND DISCIPLINARY PROCESS**

A DVI staff member handles constituent complaints received by DVI or the Secretary's Office. DVI receives few complaints, which are typically filed verbally and resolved within a day or two, whether it be a request for new equipment or additional services. No complaints have been filed with the Attorney General's Office.

	<b>Calendar Year 2016</b>	<b>Calendar Year 2017</b>	<b>Calendar Year 2018</b>
Total Number of Complaints Received	Not available	10	2
Total Number of Complaints Investigated	Not available	10	2
Total Number of Complaints found to be Valid	Not available	All complaints were resolved.	All complaints were resolved.
Total Number of Complaints Forwarded to the Attorney General	0	0	0
Total Number of Complaints Resulting in Disciplinary Action	0	0	0

### **Recent DVI Audit History:**

State of Delaware Auditor Report Fiscal Year 2017: The State Auditor audited DVI regarding the compensation of teachers for the Visually Impaired.<sup>24</sup> The following is a summary of the audit's findings:

In 2016, Reference Number:	2016-018
Federal Agency:	U.S. Department of Education State Department
Name:	Department of Health and Social Services
State Division Name:	Division for the Visually Impaired Federal Program: Vocational Rehabilitation Services
CFDA Number:	84.126
Compliance Requirement:	Allowable Cost and Activity – Time and Effort Reporting
Recommendation:	The Division should evaluate their procedures regarding time and effort reconciliations. The procedures should include (at least) quarterly reconciliations between budgeted and actual costs charged to the program. If actual costs will exceed the budget, the Division should request a waiver or approval from the grantor.

Explanation of disagreement  
with audit finding:

There is no disagreement with the audit finding.

<sup>24</sup> The full report can be reviewed at: <https://auditor.delaware.gov/wp-content/uploads/sites/40/2018/09/Department-of-Health-and-Social-Services-Division-of-the-Visually-Impaired-Salary-Calculations-for-Merit-Teachers-Employed-at-State-Agencies-Inspection.pdf>, last accessed on March 27, 2019.

Action taken in response  
to finding:

DHSS has reviewed and verified that the overall grant was not overcharged but in order to be compliant with Uniform Guidance, we will continue to update and strengthen our internal controls and procedures with the intent to provide reasonable assurance that the salary and wage charges are accurate, allowable and properly allocated. If it is found that actual costs exceed the budget, we will make the necessary adjustments and/or request a waiver or approval from the grantor in order to remain compliant. Time and effort reporting documentation for all staff outside of the Division for the Visually Impaired (grant owner) will be submitted to and approved by the Division for the Visually Impaired (grant owner) no less than quarterly.

Name(s) of the contact  
person(s) responsible for  
corrective action:

Dava Newnam & Kim Rachiele

Planned completion date for  
corrective action plan:

February 1, 2016<sup>25</sup>

#### **Business Enterprise Program Audit Completed by Cover & Rossiter:**

Cover & Rossiter<sup>26</sup> conducted an audit of “agreed upon procedures” in 2018 of DVI’s Business Enterprise Program (“BEP”). BEP’s goal is to provide self-employment opportunities, by creating snack bars, cafeterias, and vending route facilities on federal, state, and municipal properties, locations where, under law, DVI consumers are granted priority to operate vending facilities. Cover & Rossiter reviewed BEP’s accounting, recordkeeping, profit and loss reports, and bank accounts. The conclusions and recommendations are as follows:

- Cover & Rossiter was unable to cross reconcile DVI’s sample selection of Gross Revenue, Merchandise and Payroll expense from the semi-monthly Profit and Loss statements to the Annual Statement.
- Cover & Rossiter was unable to reconcile the bank statements to the cash on hand as reported on the Annual Report. The cash reported on hand as of 9/30/17 per the Annual Report was \$463,321. The bank statement balances for the same period was \$307,624.66, resulting in a variance of \$154,678.34. We are unable to ascertain why the variance exists.
- Excel is not suitable as the primary accounting system. Cover & Rossiter recommends the State shift recordkeeping to the State’s accounting system. If this is not an option then a stand-alone accounting software package such as QuickBooks (sic) or Peachtree is suggested. State-run programs that maintain processes outside of the States accounting system carry an off-books risk to the State that should be assessed.
- The State should assess the account reporting structure and staffing that the system will need to meet the needs of the BEP group overall. The Excel work that is prepared on BEP’s behalf is currently well maintained and is the only accounting system in place; it is important that due care on transition be taken ensure that an orderly transition takes place as to not disrupt the program overall. A team of accounting professions who are familiar with setting up accounting

<sup>25</sup> Analyst’s Note: DVI did not include in their responses to the JLOSC questionnaire if corrective action was put in place following the audit.

<sup>26</sup> Cover & Rossiter is an independent certified public accountant firm located in Wilmington, Delaware.

software and systems should be used. Additionally, longer term staffing will need to be considered as well.

Smyrna Rest Stop and Del-Tech sites:

- Too many individuals manage cash and it should be counted, reconciled to the sales reports and deposited as quickly as possible, at the closest bank near the rest stop instead of being carried by State employees to the New Castle office for processing and deposit.
- There is no inventory system in place that reconciles to a balance sheet account. This will need to be set up once an accounting system is selected.
- There is no integration of sales revenue into an accounting package. A point of sales system that can download data to QuickBooks or Peachtree would improve the linking of the two systems and provide better flow of data.

Set Aside Account:

- While performing our procedures we noted that a BEP owner inadvertently paid his set aside amount for two months in January and March of 2018. The State acknowledges that the overpayment exists and will make arrangements to refund the money back to the BEP owner.
- Cover & Rossiter noted that the State sends invoices to BEP owners on an inconsistent basis. This is a contributing factor as to why an owner over-paid their set-a-side. Cover & Rossiter suggested that, when the BEP owner sends in their profit and loss statements, they send a check at that time, instead of waiting for an invoice from the State. This would streamline the process, reduce work for the State, and fund the account sooner.

Agreed-Upon Procedures Related to Internal Audit of the Business Enterprise Program:

- The State's internal policies indicate that the State should audit internally each BEP owner's program report a minimum of once per year. As of the date of the audit, there were 4 internal audits performed and 5 enterprise owners. Cover & Rossiter obtained copies of three the internal audits and read the contents of the internal audit, which contained a summary report including the results of the internal audit signed by the State Internal Auditor, program director, or the BEP owner. It also contained the Enterprise Profit and Loss Statement, copies of accounts payable invoices, and reports to support gross revenue.
- Cover & Rossiter selected Internal Audit Report dated April 11, 2018, for the one month period ending October 31, 2018. It contained no findings. They traced the receipts to the profit and loss statement provided as part of the internal audit packet, and vouched the copies of invoices to the expenses reported on the profit and loss. Cover & Rossiter agreed with the Internal Audit Report of no findings.
- Cover & Rossiter selected Internal Audit Report dated February 6, 2018, for the one month period ending October 31, 2018. This report contained three findings; two pertained to timing of revenue recognition and the third related to lack of financial data with respect to gross revenues from Duncan Donuts.<sup>27</sup> Cover & Rossiter agrees that revenue being delayed by a month was a standard practice for the program, and those sales reports need to be provided to vouch the gross revenue for the Duncan Donuts site.

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<sup>27</sup> Analyst's Note: It is unclear from the materials provided to JLOSC staff, but this may be a spelling error and may have intended to be "Dunkin' Donuts."

- Cross & Rossiter traced the receipts to the profit and loss statement provided as part of the internal audit packet vouched the copies of invoices to the expenses reported on the profit and loss, and agreed with Mr. Mikhail's report of findings.
- Cross & Rossiter selected the Internal Audit Report dated May 2, 2018, for the one-month period ending January 31, 2018. It contained no findings. They traced the receipts to the profit and loss statement provided as part of the internal audit packet, vouched copies of the invoices to the expenses reported on the profit and loss, and agreed with the report of no findings.

Findings were as follows:

- The internal audits performed by the Internal Auditor are in order.
- We recommend that a follow up be made on the open items related to Duncan Donuts gross revenue reporting.
- We did not see a formal follow up process as part of the internal audit report findings.
- We recommend that when there are comments made by the internal auditor that there be a formal correction/action plan put in place and that the internal auditor work with program staff to monitor the plan and long-term resolution.

## **ENACTED LEGISLATION IMPACTING DVI**

### **State Legislation:**

A listing of all legislation that has made substantive amendments to the enabling legislation of DVI:

<b>Related Regulations</b>		
Delaware Code, Title 16 Chapter 96	6/23/1981	The purpose of this chapter is to further the policy of the State to encourage and assist individuals with visual impairment and other disabilities to achieve maximum personal independence through useful and gainful employment by ensuring an expanded and constant market for their products and services.
Delaware Code, Title 31 Chapters 21, 23	3/31/1909	To establish the Delaware Commission for the Blind and define the administration of assistance to the persons in need who are blind.
Delaware Code, Title 14 Chapter 2, 31/ C Section 900	7/14/1995	To establish Braille Literacy rights and education of students with visual impairments and blindness.

**Federal Legislation:**

<b>Related Statutes</b>		
Workforce Innovation and Opportunity Act	116 Part 677, 34 CFR Part 361, Part 388, 81 FR 55791	Ensures core partners programs are assisting job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy.
Rehabilitation Act of 1973 as amended- The Workforce Innovation and Opportunity Act	Title 1 Part A & B, Sec 100-111; USC 720-73; 34 CFR 361	Assists states to meet the current and future needs of handicapped individuals, so that individuals may prepare for and engage in gainful employment to the extent of their capabilities and assist states in meeting costs of vocational rehabilitation services.
Rehabilitation Act of 1973 as amended	Title VI Part B, 29 USC 795; 34 CFR Part 367 45 CFR 1329	Ensures any individual, including a youth with a disability, is eligible to receive employment services if the individual meets eligibility criteria.
Randolph Sheppard Act	P.L. 74-732 as amended by PL 83-565 and PL 93-516; 20 USC Sec 107	Mandates a priority to blind persons to operate vending facilities on federal property.
Rehabilitation Act of 1973 as amended	Title VII Chapter 1 as amended by WIOA 2014	Promotes a philosophy of independent living including consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, to maximize leadership, empowerment, independence and productivity of individuals with disabilities, and the integration of full inclusion of individuals with disabilities into the mainstream of American society.
Rehabilitation Act of 1973 as amended	Title VII Chapter 2 Sec 751-753; 29 USC 796j-796i	Provides independent living services to older individuals who are blind, activities to improve or expand services, and activities to help improve public understanding of the problems of such individuals.
Education Department General Administrative Regulations (EDGAR)	34 CFR EDGAR	Provides vocational rehabilitation services guidance, including state plan and reporting.
US Department of Education IDEA	Part B and C	Assists states in providing special education and related services to children with disabilities.

## **PENDING AND PROPOSED LEGISLATION**

There is no pending legislation that would affect DVI.

DVI proposes legislation as follows:

- § 206(e), Title 14 – DVI will continue to pursue the reduction of the student/teacher ratio, as this practice has shown decreased long term costs to states while improving educational, employment, and independent living outcomes. This ratio would be consistent with the national student/teacher ratio, which has proven to increase literacy and academic achievement among visually impaired students.
- § 7929(b), Title 29 – Legislation is needed to facilitate the official closing of Delaware Industries for the Blind.
- § 7929(1), Title 29 – Under the Randolph Sheppard Act, blind operators are self-employed and independent. Delaware’s BEP is the only program that requires the operators to use the state’s payroll and pension services.

## **ADMINISTRATIVE PROCEDURES ACT COMPLIANCE**

The only regulations that DVI promulgated relate to the Commission for Statewide Contracts to Support Employment of Individuals with Disabilities. Although the regulations are technically under DVI, they also relate to the work of other statewide agencies, such as set aside contracts and the Department of Labor. DVI’s Deputy Attorney General John Taylor reviews current rules and regulations to ensure adherence with governing statutes. There are no planned changes to the rules and regulations.

## **FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE**

As required by law, DVI responds to all FOIA requests as quickly and fully as possible. DVI has not received any FOIA violation complaints. DHSS leadership offers annual Public Integrity Act training to its leadership.

Meeting agendas are posted on the state’s calendar in accordance with Delaware’s Public Meetings Guidelines. Minutes are transcribed for all public meetings and posted on the public meetings calendar. Draft minutes are posted within 20 days of the meeting. Final minutes are posted upon approval.<sup>28</sup>

DVI has not conducted any executive sessions or closed meetings. The Vocational Rehabilitation Advisory Council had two closed meetings on March 11 and 12, 2016, during its retreat, to discuss their concerns with the DHSS leadership regarding education and transition services. Action items from the meeting were used as next steps for division leadership.

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<sup>28</sup> Analyst’s Note: It is unclear which committee or council DVI is referring to in this section.

**FISCAL INFORMATION****Actual Revenue:**

<b>Division Actual Revenue for FY 17, FY 18, FY 19</b>				
	APPR	SFY 2019	SFY 2018	SFY 2017
<b>General Funds allocated</b>		Budgeted	Actual	Actual
Personnel Costs	00137	\$3,667,700.00	\$3,667,639.95	\$3,175,356.56
Travel	00140	\$1,500.00	\$1,013.54	\$623.15
Contractual Services	00150	\$602,200.00	\$398,800.00	\$564,978.99
Energy	00159	\$67,400.00	\$70,630.00	\$64,625.09
Supplies and Materials	00160	\$67,300.00	\$67,300.00	\$67,300.00
Capital Outlay	00170	\$39,100.00	\$39,100.00	\$39,099.99
Technology Assistance	00176			\$32,500.00
<b>Total General Funds</b>		\$4,445,200.00	\$4,244,483.49	\$3,944,483.78
<b>Special Funds Revenue</b>		Actual	Actual	Actual
Ability to pay	20032	\$1,080.80	\$5,288.13	\$3,410.26
DIB Investment	20369	\$0.05	\$1.09	\$76,207.31
Donations	20384	\$8,779.37	\$84,346.88	\$39,356.05
Webber Trust	20581	-	-	-
Lions Club	20601	-	-	-
Social Security	20809	-	-	-
Anniversary Fund	21067	-	-	-
<b>Total Special Funds</b>		\$9,860.22	\$89,636.10	\$118,973.62
<b>Federal Funds</b>		Anticipated	Actual	Actual
VR Basic Grant	40292	\$1,492,000.00	\$1,486,263.00	\$1,500,257.00
Supported Employment	40293	\$42,000.00	\$42,000.00	\$42,000.00
Independent Living	40294/40595	\$49,807.00	\$49,807.00	\$45,803.00
Older Blind Independent Living	40609	\$225,000.00	\$225,000.00	\$225,000.00
Education	40564	\$150,000.00	\$150,000.00	\$205,030.00
<b>Total Federal Funds</b>		\$1,958,807.00	\$1,953,070.00	\$2,018,090.00



**Actual Expenditures:**

<b>Division Actual Expense for FY 17, FY 18</b>				
	APPR	SFY 2019	SFY 2018	SFY 2017
<b>General Funds allocated</b>		Budgeted	Actual	Actual
Personnel Costs	00137	\$721,296.03	\$3,667,639.95	\$3,175,356.56
Travel	00140	-	\$1,013.54	\$623.15
Contractual Services	00150	\$12,407.68	\$373,705.63	\$564,978.99
Energy	00159	\$4,608.95	\$63,699.60	\$64,625.09
Supplies and Materials	00160	\$6,286.49	\$65,976.00	\$67,300.00
Capital Outlay	00170	-	\$37,601.00	\$39,099.99
Technology Assistance	00176			\$32,500.00
<b>Total General Funds</b>		\$744,599.15	\$4,209,635.72	\$3,944,483.78
<b>Special Funds Revenue</b>		Actual	Actual	Actual
Ability to pay	20032	\$494.19	\$5,203.84	\$3,423.21
DIB Investment	20369	-	-	\$76,190.15
Donations	20384	\$8,583.52	\$94,030.80	\$32,396.76
Webber Trust	20581	-	-	-
Lions Club	20601	-	-	-
Social Security	20809	-	-	-
Anniversary Fund	21067	-	-	-
<b>Total Special Funds</b>		\$9,077.71	\$99,234.64	\$112,010.12
<b>Federal Funds</b>		Anticipated	Actual	Actual
VR Basic Grant	40292	\$1,492,000.00	\$1,226,166.45	\$1,357,242.50
Supported Employment	40293	\$42,000.00	-	\$13,913.85
Independent Living	40294/40595	\$49,807.00	\$38,528.62	\$45,803.00
Older Blind Independent Living	40609	\$225,000.00	\$215,777.57	\$224,974.21
Education	40564	\$150,000.00	\$141,567.69	\$203,111.60
<b>Total Federal Funds</b>		\$1,958,807.00	\$1,622,040.33	\$1,845,045.16

**DVI Business Enterprise Program  
Profit and Loss Statement  
Combined BEP Manager and SLA**

**PERIOD***Federal Fiscal Year 2018**(Only covers 10/1/17 thru 7/31/2018)***SALES**

Café Sales	\$532,717.08	33.53%
Vending Contract Sales	\$853,097.69	53.69%
Other /HDC	\$203,204.34	12.79%
Discount	(\$77.69)	
<b>TOTAL GROSS SALES</b>	<b>\$1,588,941.42</b>	<b>100.00%</b>

Register - Over/(Short)	(\$1,330.13)	-0.08%
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**GROSS PROFITS** **\$1,587,611.29** **99.92%**

**DIRECT PAYMENTS**

SALARY FOOD SERVICE	\$90,536.14	5.70%
FRINGE BENEFITS	\$41,771.37	2.63%
OPERATING EXPENSE	\$183,713.95	11.57%
REPAIR & REPLACEMENTS	\$0.00	0.00%
VENDING CONTRACT EXPENSE	\$604,415.29	38.07%
CAFÉ CONTRACT EXPENSE	\$406,810.08	
MERCHANDISE PURCHASED	\$110,989.63	6.99%

**TOTAL PAYMENTS** **\$1,438,236.46** **90.59%**

BALANCE (INCOME)	\$149,374.83	9.41%
Other Income	\$0.00	0.00%

**AMOUNT FOR SET ASIDE %** **\$149,374.83** **9.41%**

**SET ASIDE** (\$9,135.88)

**TOTAL SET ASIDE** (\$9,135.88)

**NET INCOME** **\$140,238.95** **8.83%**

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**DVI Business Enterprise Program  
Profit and Loss Statement  
Combined BEP Manager and SLA**

**PERIOD** *Federal Fiscal Year 2017*

**SALES**

Café Contract Sales	\$710,039.90	36.25%
Vending Contract Sales	\$941,280.18	48.06%
Other/HDC/Store	\$307,747.04	15.71%
Discount	(\$597.03)	
<b>TOTAL GROSS SALES</b>	<b>\$1,958,470.09</b>	<b>100.03%</b>

Register - Over/(Short)	(\$9,524.26)	-0.49%
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**GROSS PROFITS** **\$1,948,945.83** **99.54%**

**DIRECT PAYMENTS**

SALARY FOOD SERVICE	\$100,100.89	5.14%	
FRINGE BENEFITS	\$51,228.57	2.63%	
OPERATING EXPENSE		\$258,968.21	13.29%
REPAIR & REPLACEMENTS	\$0.00	0.00%	
VENDING CONTRACT EXPENSE		\$673,455.94	34.55%
DUNKIN CONTRACT EXPENSE	\$501,189.49	25.72%	
MERCHANDISE PURCHASED	\$138,405.83	7.10%	

**TOTAL PAYMENTS** **\$1,723,348.93** **88.42%**

BALANCE (INCOME)	\$225,596.90	11.58%
Other Income	\$0.00	0.00%

**AMOUNT FOR SET ASIDE %** **\$225,596.90** **11.58%**  
**SET ASIDE** **-10.00%** (\$20,173.90)

**TOTAL SET ASIDE** (\$20,173.90)

**NET INCOME** **\$205,423.00** **10.54%**

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**DVI Business Enterprise Program  
Profit and Loss Statement  
Combined BEP Manager and SLA**

Period Federal Fiscal Year 2016

**SALES**

Café Contract Sales	\$591,204.94	33.62%
Vending Contract Sales	\$912,963.95	51.91%
Other/HDC/Store	\$254,505.18	14.47%
Discount	\$0.00	
<b>TOTAL GROSS SALES</b>	<b>\$1,758,674.07</b>	<b>100.00%</b>

Register – Over / (Short) (54.95)

**GROSS PROFITS \$1,758,619.12 100.00%**

**DIRECT PAYMENTS**

Salary Food Service	\$29,111.00	1.66%
Fringe Benefits	\$44,221.52	2.51%
Operating Expense	\$120,348.89	6.84%
Repair & Replacement	\$0.00	0.00%
Vending Contract Expense	\$652,876.88	37.12%
Café Contract Expense	\$497,769.25	28.30%
Merchandise Purchased	\$160,803.65	9.14%
<b>TOTAL PAYMENTS</b>	<b>\$1,505,131.19</b>	<b>85.59%</b>

BALANCE (INCOME) \$253,487.93 14.41%

AMOUNT FOR SET AT SIDE \$221,706.66

Set A Side \$22,118.42

**NET INCOME \$231,369.51**

**Financial Statements for Delaware Industries for the Blind (DIB):**

DVI supplied combined income statements for the Delaware Industries for the Blind (DIB) for fiscal years 2016 – 2018 and they are located in Appendix B.

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**Federal Funds Received:**

<b>Federal Funds</b>		<b>Anticipated</b>	<b>Actual</b>	<b>Actual</b>	<b>State Match</b>
VR Basic Grant	40292	\$1,492,000.00	\$1,226,166.45	\$1,357,242.50	21.3%
Supported Employment	40293	\$42,000.00	-	\$13,913.85	10%
Independent Living	40294/40595	\$49,807.00	\$38,528.62	\$45,803.00	10%
Older Blind Independent Living	40609	\$225,000.00	\$215,777.57	\$224,974.21	10%
Education	40564	\$150,000.00	\$141,567.69	\$203,111.60	
<b>Total Federal Funds</b>		<b>\$1,958,807.00</b>	<b>\$1,622,040.33</b>	<b>\$1,845,045.16</b>	

Over the last three years, the following external factors negatively affected revenue or expenditures:

- Under the Workforce Innovation and Opportunity Act, vocational rehabilitation agencies are required to reserve 15% of their grant award for pre-employment transition services. This unfunded mandate affected DVI's resources for adults and any services that do not align with the 5 required and 9 authorized services.
- Delaware Industries for the Blind ("DIB") closed as of March 10, 2017 due to:
  - Economic recession.
  - Reduction of resources allowed by state agencies for employee recognition rewards.
  - Classification of being a sheltered workshop.
  - Ineffective and inefficient business model that ultimately resulted in cash flow issues.
- DVI's funding from federal partners and DOE has remained stagnant without any cost of living adjustments. Especially with the increased needs of students with visual impairments, DVI does not receive the same level of funding as school districts to provide a free and appropriate education.

**The Governor's Recommended Budget for fiscal year 2020 includes:**

- \$100,000 for Educational and Instructional Materials: Obtaining accessible versions of instructional materials is critical for student success. With the long standing partnership with the Department of Correction's Men with a Message Program, the Instructional Resources and Materials Center transcribes, produces, or purchases braille, large print, graphics or digital pages.
- \$200,000 for Assistive Technology: Students with visual impairments face unique challenges in the educational environment. Not only must they be able to access text information across all curricular areas, but they also must be able to participate fully in instruction that is often rich with visual content. A student's need for assistive technology will likely change and evolve throughout his or her education, and in most cases, no single tool meets all students' needs.
- \$65,000 for Expanded Core Curriculum ("ECC"): The ECC which is the body of skills needed by students with visual impairments to participate fully in school, work and

daily life is not an optional part of a student's educational program but, perhaps, the most essential part. Without these critically important skills, students who are visually impaired cannot access the standard core curriculum or engage in many of the activities that are basic to their own well-being. Expanding DVI's ability to systematically incorporate the nine domains of the ECC into programs currently offered dramatically affects the preparation of students with visual impairments.

## **ACCOMPLISHMENTS**

- In 2016, DVI hired an education administrator to fill a position that had frequent turnover and vacancies for almost 15 years. The current education administrator has 25 years of experience, is a certified TVI, has a literacy degree, and has training in O&M. She is providing consistency and structure for the DVI Education and O&M units by assisting with recruiting, hiring, and mentoring new staff. With her leadership and the support of DHSS and DVI, the education administrator is supporting new teachers to obtain their TVI certification through tuition assistance and has increased the number of TVIs hired by DVI from 8 to 13. In addition, she has enhanced communication to families and students, the DOE, and local education agencies throughout Delaware, strengthening the collaboration and improving services to students who are blind or visually impaired.
- DVI continues to develop and expand the activities offered to students related to the Expanded Core Curriculum ("ECC"), to provide students who are blind or visually impaired specific instruction in a specialized set of vision-related skills. These include compensatory skills, orientation & mobility, social interaction, independent living, recreation and leisure, sensory efficiency, assistive technology, career education, and self-determination. Examples of programs that DVI offers include Children's Beach House, Mission Transition, and Summer Academy.
- Education reform: DVI participates in the Quality Programs for Students with Visual Impairments initiative designed to enhance services for students with visual impairments through establishing standards of practice, uniformity of practice and program accountability. In less than one year, there has been a 48% increase in the number of Functional Vision Assessments and Learning Media Assessments being present and timely.
- DVI's Vocational Rehabilitation Unit ("DVI/VR"), despite major legislative and funding changes, has continued to provide services to Delawareans who are seeking employment and who are blind or visually impaired with no waiting list. In addition, DVI/VR accepts referrals for students with visual impairments as early as the age of 14, the age at which transition services start in Delaware. This allows students to meet well before leaving high school with adult service providers participate in transition activities and develop Individualized Plans for Employment ("IPE") identifying services needed in order to achieve employment. It also allows for more collaboration among DVI and education staff in order to share information, align services, and expand opportunities without duplicating efforts.
- Through the Independent Living Services unit at DVI, older adults are afforded the opportunity to "age in place" and maintain an independent lifestyle by learning to manage activities of daily living with adaptive techniques and devices.

- DVI has expanded outreach efforts by utilizing an automated calling system and electronic email application to ensure consumers are aware of events and kept informed.
- DVI has procured a variety of assistive technology devices in order to increase access to education, employment and independence for its consumers. The devices are available to explore through individual appointments as well as through group workshops.
- DVI's Men with a Message Program was awarded the Library of Congress Literacy Award (2015) - Best Practices.

## **CHALLENGES**

- **Agency Size and Limited Resources:** DVI is one of the state's smallest agencies, yet is the primary agency serving Delawareans who are blind or visually impaired. DVI has an impact on the lives of many, offering a continuum of critical services. DVI is continually challenged by limitations of resources, both personnel and financial.
  - There is a national shortage of TVIs and Certified O&M Specialists ("COMS"). And, Delaware has no programs offering training and certification for a TVI, COMS, certified vision rehabilitation therapist ("CVRT"), or vocational rehabilitation counselor. Given the lack of training offered locally and the lack of certified providers nationally, DVI is challenged with recruiting and adequately staffing its programs, resulting in higher caseloads, increased risk of accruing compensatory time, and turnover.
  - The recent expansion of the eligibility criteria for students who are blind or visually impaired has increased the number of referrals DVI has received for education services. This increase means more students receiving evaluation, direct services, and consultative services. DVI is receiving more requests for accessible materials and low vision and assistive technology devices, and there is an increase in the need for orientation and mobility services.
  - The increase in the senior population and their need for vision services is quickly outnumbering the availability of trained professionals. Federal, state, and local funding is not adequate to cover the required services and related devices. Medicare does not cover all specialized service professionals and assistive technology and low vision devices are not consistently covered by funding sources, including insurance and Medicare.
- **Education Funding:** DVI's education program provides itinerant services to children who are visually impaired, which includes assessment, direct instruction, or consultation. These services are provided to families and personnel in Delaware school districts, charter schools, and private schools where there are students who are visually impaired in the classroom. TVIs work in every Delaware school district and with every local education agency to ensure that students with visual impairments are able to access education programs equal to that of their peers. This program also assists with the provision and instruction on use of appropriately formatted educational materials such as braille and large print, and assistive technology to students who are visually impaired. Vision specific aids and equipment that will assist the student in the classroom are also provided. DVI's challenge in this category is due to being housed within DHSS. DVI receives State funds

to cover the salaries of visually impaired teachers and DOE uses this amount as a match to draw down federal Individuals with Disabilities Education Act (“IDEA”) dollars, approximately \$41,000,000.00. Each year, DVI completes a sub-grant application to submit to DOE for funding. This sub grant goes toward educator training required to maintain credentials, assistive technology for students and teachers, and the development of accessible materials. Over the past few years, DVI has received IDEA sub grant funding, averaging about \$155,000 per school year. For fiscal year 2019, DVI requested additional funding, however, DOE denied the request.

- **Varied Stakeholders:** DVI is often challenged by varying priorities of stakeholders and the need to maintain the daily operations of the agency. Given the specialized nature of the services DVI offers and the staffing challenges mentioned above, it is difficult to maintain services and prioritize time for strategic planning and developing innovative programs to address the needs of all Delawareans who are blind or visually impaired.

## **OPPORTUNITIES FOR IMPROVEMENT**

Opportunities for improved operational efficiency under the topics of education and the Business Enterprise Program are as follows:

### **Education:**

- **Better Communication:** DVI provides mandated, itinerant educational services, in conjunction with local school districts, to students who are blind or visually impaired. DVI provides assessments, educational services, educational materials, assistive technology, vocational rehabilitation services for transition-aged students, and orientation and mobility services. DVI is organized under DHSS. The stakeholders’ preference varies on the placement of education services for students with visual impairments between DHSS and the State of Delaware Merit TVIs and O&M Specialists. There is opportunity for better communication between the two organizations and DVI.
- **Extending Education Program Services:** DVI’s Education Program continues to see growth realizing an 11% growth over fiscal year 2017 to fiscal year 2018. On August 25, 2017, the United States Department of Education issued guidance to local education agencies regarding eligibility determinations of students with visual impairments. The requirement, federal IDEA regulations 34 CFR §300.8(c) (13), has increased the number of referrals, assessments, and services under the IEPs provided by TVIs. Any impairment in vision, regardless of severity, is covered, if such impairment, even with correction, adversely affects a child’s educational performance. This rate of growth (averaging 8.5%) is projected to continue in fiscal year 2020 and fiscal year 2021 due to the interpretation and the assessments required for students. The referral growth will average 52 new students being served. This presents an area of opportunity for DVI to extend their education program services.
- **Funding:** Historically, DVI receives about \$155,000 from the DOE in the form of a sub grant. Due to DVI not being a local education agency, there are limited resources to support the extensive needs of students with visual impairments. Below are a few examples of service models throughout the region:
  - The New Jersey Commission for the Blind (“Commission”) contracts with local school districts to provide services to children in school. The



Commission identifies the level of service needed for students with visual impairments by administering evaluations and assessments. Once determined, local education agencies pay the Commission an annual fee based on the level of service recommended and provided for each student. The following is an example of an assessed fee schedule for education services:

- Level 1: (4-8 visits): \$1,900.
  - Level 2: (9-30 visits): \$4,500.
  - Level 3: (3 sessions per week): \$12,600.
  - Level 4: (4 sessions per week): \$14,300.
- Pennsylvania's DVI-equivalent agency does not provide direct educational services.
- Maryland's DVI-equivalent agency does not provide direct educational services. The Maryland School for the Blind offers statewide educational outreach services once referred from the student's local educational agency.
- Instructional Resources and Materials: More funding is needed to support the production of instructional resources and materials. DVI does not receive funding to produce instructional resources and materials. Although DVI typically produces a majority of the requested materials, due to the number and nature of the requests this school year, DVI purchased 26 books and paid vendors \$80-\$120 per page of material to be transcribed. One recently-purchased chemistry book cost the agency \$5,544 for one student. To date, the Instructional Resources and Materials Center ("IRMC") received 431 requests. Of the 431, the IRMC produced 276 of these requests, 41 requests were retrieved from inventory, 59 electronically accessed from an on-line library, and 29 requests are in process.
- Provision of Educational Services: Lack of adequate funding for the current and future school years creates delays in assessments, services and the development or purchase of accessible materials or equipment. This puts the school district at risk for being out of compliance with a student's IEP and with providing a Free Appropriate Public Education exposing DVI to possible litigation.

#### **Business Enterprise Program:**

- Adding Priority Areas: DVI is the state licensing authority for purposes of the Randolph-Sheppard Act, a federal law that mandates a priority to individuals who are blind or visually impaired to operate vending facilities on federal property. DVI's Business Enterprise Program is designed to meet this mandate and provide enumerate business opportunities for legally blind Delawareans. Institutions of higher learning, the Department of Corrections, and interstate rest areas are not included in the mandate, but could improve opportunities for those who qualify for the BEP program.<sup>29</sup>
- Public Education: Equally important is the lack of knowledge of the BEP program and legislation related to it, making it difficult to implement, enforce, and expand to create the entrepreneurial opportunities intended by the Randolph-Sheppard Act.

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<sup>29</sup> Analyst's Note: Under the Surface Transportation Assistance Act, blind vendors are given priority in the operation of vending facilities in rest areas along interstate highways.

- **Vending Facility Program Operations:** The Blind Operators are currently on the state's payroll system. The blind vendors, although independent business owners, are provided with a W-2 at the end of the year, unemployment insurance is paid on the vendor and deductions such as income taxes or Social Security are withheld for the facility employees, but not the vendors. However, the income received by the Blind Operator is based on the profits from their vending facilities. For example, if the vendors are state employees, they could be bound by state procurement policies. They would not have the freedom to choose their subcontractors and there would have to be a competitive process. Historically, this also poses a serious problem with the Social Security Administration for the Blind Operator jeopardizing benefits and face six figure overpayments. No other state has their vendors on state payroll. However, there are a few states, most notably Michigan where blind vendors are treated as employees for retirement purposes only. Even so, the vendors are not on state payroll. The Randolph-Sheppard Act allows DVI to contract with a private nonprofit to perform functions related to the day-to-operation of the vending facility program.

### **ADDITIONAL COMMENT FROM THE COMMITTEE ANALYST**

The DVI request for review came from a citizen letter written to the JLOSC. After reviewing DVI's responses to the JLOSC questionnaire, questions remain regarding the following topics:

#### **Business Enterprise Program:**

There is concern from a member of public regarding BEP operations. After an outside auditing firm, Cover & Rossiter, conducted an audit the Blind Vendors Committee and DVI began research and discussions regarding the movement of BEP funds to the State system or utilizing auditor recommended accounting software such as QuickBooks. At the April 25, 2019 meeting of the Blind Vendors Committee, a subcommittee formed to discuss the financial structure of the BEP and implementing the auditor's recommendations.

It is unclear how DVI would like to change or update BEP, how changes should be made, or why DVI has not used all available avenues to make them. In DVI's responses to the JLOSC questionnaire, DVI recommended legislative changes and included opportunities for improvement for BEP, but the agency did not address that current law authorizes DVI to promulgate regulations to update BEP operations.<sup>30</sup> Additionally, DVI identified areas that could be added to the vending facilities mandate, however, it did not propose legislative changes to expand BEP's priority over vending facilities in institutions of higher learning, the Department of Corrections, or interstate rest areas.

DVI did propose the following legislative change: "29 DE Code §7929(1) – Under the Randolph-Sheppard Act blind operators are self-employed and independent. Delaware's BEP is the only program that requires the operators to use the state's payroll and pension services." BEP members are, however, covered under the State Employees' Pension Plan:

Any other provisions of this chapter notwithstanding, the blind and sighted employees of the concession stands which are operated by and under the control of the Bureau for the Visually Impaired, if otherwise qualified under this chapter and regardless of the source from which their respective salaries were heretofore paid, shall be considered in covered employment under this chapter, and the time from which their period of service shall be deemed to have commenced shall be the time when they began their respective service starting in 1948.<sup>31</sup>

<sup>30</sup> See 29 Del. C. § 7929 (b)(1).

<sup>31</sup> See 29 Del. C. § 5501(m).

This provision was not addressed in DVI’s legislation proposal. It is unclear how the proposed legislative change would impact or be impacted by § 5501(m).

### **Delaware Industries for the Blind:**

DIB closed as of March 10, 2017 and all equipment was surplus according to State policy and procedures in conjunction with Delaware Office of Management and Budget and Government Support Services. In the years leading up to closure, 2012-2017, DIB employed between 18 and 38 individuals.<sup>32</sup> As DVI reported in their JLOSC questionnaire responses, unemployment rates are typically very high with the visually impaired population. There was no mention of additional opportunities or plans to replace employment opportunities that DIB once offered. It is unclear if private companies such as The Precisionists, Inc. have now expanded business operations to employ visually impaired individuals.

### **Education:**

Under Opportunities for Improvement, DVI outlines service models used throughout the region for contracting with school districts to supply visually impaired students with services. In their responses, DVI also outlined that the growth of students in need of DVI services would continue to grow with an average referral growth of 52 new students receiving services each year. The shortage of certified specialists was discussed under Challenges, however, no proposals to address these challenges were offered. DVI recommended the adoption of a service model outline to help offset the cost of providing services.

In addition, DVI noted in their JLOSC questionnaire responses that they face challenges with their current housing within the DHSS and, as a result, they are receiving IDEA funding in the form of a sub grant, averaging about \$155,000 per school year. DVI is also facing challenges with varying priorities of multiple stakeholders for the daily maintenance of agency operations, however, no solutions were suggested to alleviate these challenges.

### **Vocational Rehabilitation (“VR”):**

DVI reported that the unemployment rate of those who are visually impaired is extremely high, approximately 70%. A member of the public is concerned about DVI VR programs underserving visually impaired Delawareans. It is unknown how DVI is implementing technology advances into the VR program to assist in obtaining employment opportunities for the visually impaired.

### **Orientation and Mobility (“O&M”):**

There is a concern that not all of DVI’s instructors are capable of unitizing and teaching GPS technology applications. The public concern is that visually impaired Delawareans are not receiving adequate training that will allow them to be truly independent and not reliant on public transportation routes as a sole mode of transportation. It is unknown how DVI is implementing technology advances into orientation and mobility education.

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<sup>32</sup> As reported in the annual reports to the Governor from the Commission for Statewide Contracts to Support Employment for Individuals with Disabilities.

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**APPENDIX A****FINANCIAL STATEMENTS FOR DELAWARE INDUSTRIES FOR THE BLIND (DIB)****Combined Income Statement  
For The 12 Periods Ended 6/30/2016**

<b>DELAWARE INDUSTRIES F/T BLIND (DIB)</b>				
	<u>Period to Date</u>	<u>% of Revenue</u>	<u>Year to Date</u>	<u>% of Revenue</u>
<b>Revenue</b>	<b>(8.14</b>			
FEDERAL GOVT SALES - JWOOD	11,539.62	8.71	112,896.17	11.05
FEDERAL GOVT SALES	3,314.81	2.50	151,600.09	14.83
STATE MERCHANDISE SALES	104,880.76	79.16	646,669.27	63.28
STATE SERVICE SALES	3,128.03	2.36	75,296.98	7.37
COMMERCIAL SALES	9,630.29	7.27	35,528.96	3.48
<b>Total Revenue:</b>	<b>132,493.51</b>	<b>100.00</b>	<b>1,021,991.47</b>	<b>100.00</b>
<b>Cost Of Sales</b>				
MATERIALS	59,973.13	45.26	462,386.04	45.24
SHIPPING	5,503.56	4.15	39,173.87	3.83
<b>Total Cost Of Sales:</b>	<b>65,476.69</b>	<b>49.42</b>	<b>501,559.91</b>	<b>49.08</b>
<b>Gross Profit:</b>	<b>67,016.82</b>	<b>50.58</b>	<b>520,431.56</b>	<b>50.92</b>
<b>Expenses</b>				
GENERAL & ADMIN EXPENSES	0.00	0.00	87,481.66	8.56
ADMIN SALARY EXPENSE	0.00	0.00	21,748.13	2.13
WAGES	36,279.98	27.38	486,388.14	47.59
PAYROLL TAXES	2,775.46	2.09	37,209.28	3.64
UNEMPL REIMB. EXPENSE	0.00	0.00	0.00	0.00
COMMISSIONS & BONUS	0.00	0.00	500.00	0.05
WORKERS COMP	2,823.00	2.13	(10,986.38)	(1.07)
TRAINING EXPENSE	0.00	0.00	2,288.00	0.22
TRAVEL & ENTERTAINMENT	(1,296.53)	(0.98)	(73,188.88)	(7.16)
CREDIT CARD CHARGES	27.21	0.02	30.75	0.00
INSURANCE EXPENSE	0.00	0.00	8,504.00	0.83
SOFTWARE & LICENSING	440.00	0.33	16,357.67	1.60
TOOLS & SUPPLIES	0.00	0.00	1,445.80	0.14
JANITORIAL SERVICE CONTRACTS	0.00	0.00	19,568.44	1.91
CLEANING SUPPLIES	0.00	0.00	(75.56)	(0.01)
OFFICE SUPPLIES	585.44	0.44	4,805.82	0.47
POSTAGE	94.00	0.07	198.28	0.02
DUES & SUBSCRIPTIONS	0.00	0.00	500.00	0.05
FEES AND LICENSES	0.00	0.00	345.00	0.03
MISC EXPENSE	0.00	0.00	519.20	0.05
<b>Total Expenses:</b>	<b>41,728.56</b>	<b>31.49</b>	<b>603,639.35</b>	<b>59.07</b>
<b>Net Income From Operations:</b>	<b>25,288.26</b>	<b>19.09</b>	<b>(83,207.79)</b>	<b>(8.14)</b>
<b>Other Income and Expense</b>				
INTEREST INCOME	0.00	0.00	0.98	0.00
<b>Total Other Income and</b>	<b>0.00</b>	<b>0.00</b>	<b>0.98</b>	<b>0.00</b>
<b>Earnings Before Income Tax:</b>	<b>25,288.26</b>	<b>19.09</b>	<b>(83,206.81)</b>	<b>(8.14)</b>
<b>Net Income (Loss):</b>		<b>19.09</b>		

Combined Income Statement  
For The 12 Periods Ended 6/30/2017

DELAWARE INDUSTRIES F/T BLIND (DIB)				
	Period to Date	% of Revenue	Year to Date	% of Revenue
<b>Revenue</b>				
FEDERAL GOVT SALES - JWOD	17,346.18	95.61	195,067.54	28.59
FEDERAL GOVT SALES	(27.50)	(0.15)	71,679.33	10.50
STATE MERCHANDISE SALES	809.05	4.46	366,756.22	53.75
STATE SERVICE SALES	0.00	0.00	25,326.40	3.71
COMMERCIAL SALES	14.00	0.08	23,563.87	3.45
<b>Total Revenue:</b>	<b>18,141.73</b>	<b>100.00</b>	<b>682,393.36</b>	<b>100.00</b>
<b>Cost Of Sales</b>				
MATERIALS	2,931.65	16.16	290,320.44	42.54
SHIPPING	526.36	2.90	20,858.37	3.06
<b>Total Cost Of Sales:</b>	<b>3,458.01</b>	<b>19.06</b>	<b>311,178.81</b>	<b>45.60</b>
<b>Gross Profit:</b>	<b>14,683.72</b>	<b>80.94</b>	<b>371,214.55</b>	<b>54.40</b>
<b>Expenses</b>				
WAGES	6,931.84	38.21	351,466.38	51.50
PAYROLL TAXES	530.26	2.92	26,887.34	3.94
UNEMPL REIMB. EXPENSE	0.00	0.00	0.00	0.00
COMMISSIONS & BONUS	0.00	0.00	500.00	0.07
WORKERS COMP	2,929.00	16.15	33,062.00	4.85
TRAVEL & ENTERTAINMENT	0.00	0.00	(10,583.06)	(1.55)
CREDIT CARD CHARGES	0.00	0.00	19.36	0.00
FURNITURE & EQUIPMENT	0.00	0.00	240.96	0.04
SOFTWARE & LICENSING	0.00	0.00	620.00	0.09
TOOLS & SUPPLIES	0.00	0.00	1,097.94	0.16
REPAIRS & MAINT. - EQUIPMENT	0.00	0.00	592.35	0.09
OFFICE SUPPLIES	0.00	0.00	5,600.43	0.82
POSTAGE	0.00	0.00	286.41	0.04
DUES & SUBSCRIPTIONS	0.00	0.00	991.00	0.15
FEES AND LICENSES	0.00	0.00	545.00	0.08
MISC EXPENSE	8,443.00	46.54	8,443.00	1.24
<b>Total Expenses:</b>	<b>18,834.10</b>	<b>103.82</b>	<b>419,769.11</b>	<b>61.51</b>
<b>Net Income From Operations:</b>	<b>(4,150.38)</b>	<b>(22.88)</b>	<b>(48,554.56)</b>	<b>(7.12)</b>
<b>Earnings Before Income Tax:</b>	<b>(4,150.38)</b>	<b>(22.88)</b>	<b>(48,554.56)</b>	<b>(7.12)</b>
<b>Net Income (Loss):</b>		<b>(22.88)</b>		

Combined Income Statement  
For The 12 Periods Ended 6/30/2018

## DELAWARE INDUSTRIES F/T BLIND (DIB)

	Period to Date	% of Revenue	Year to Date	% of Revenue
Revenue	34.48			
FEDERAL GOVT SALES - JWOD	0.00	0.00	108,355.61	92.59
STATE MERCHANDISE SALES	0.00	0.00	7,216.95	6.17
COMMERCIAL SALES	0.00	0.00	1,451.48	1.24
Total Revenue:	0.00	0.00	117,024.04	100.00
Cost Of Sales				
MATERIALS	0.00	0.00	21,377.47	18.27
SHIPPING	0.00	0.00	4,315.57	3.69
Total Cost Of Sales:	0.00	0.00	25,693.04	21.96
Gross Profit:	0.00	0.00	91,331.00	78.04
Expenses				
WAGES	0.00	0.00	39,238.35	33.53
PAYROLL TAXES	0.00	0.00	3,001.61	2.56
UNEMPL REIMB. EXPENSE	0.00	0.00	0.00	0.00
WORKERS COMP	0.00	0.00	8,749.00	7.48
TRAVEL & ENTERTAINMENT	0.00	0.00	(681.50)	(0.58)
CREDIT CARD CHARGES	0.00	0.00	461.98	0.39
SOFTWARE & LICENSING	0.00	0.00	225.00	0.19
POSTAGE	0.00	0.00	4.20	0.00
Total Expenses:	0.00	0.00	50,998.64	43.58
Net Income From Operations:	0.00	0.00	40,332.36	34.47
Other Income and Expense				
INTEREST INCOME	0.00	0.00	15.09	0.01
Total Other Income and	0.00	0.00	15.09	0.01
Earnings Before Income Tax:	0.00	0.00	40,347.45	34.48
Net Income (Loss):		0.00		

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## **APPENDIX B**

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### **BY-LAWS FOR INDEPENDENT LIVING ADVISORY COMMITTEE (ILAC) AND COMMITTEE OF BLIND VENDORS**

#### **BY-LAWS INDEPENDENT LIVING ADVISORY COMMITTEE (ILAC) OF THE DIVISION FOR THE VISUALLY IMPAIRED (DVI)**

##### **PURPOSE:**

To provide guidance in the development and expansion of the Independent Living Services program on a statewide basis to DVI, as well as to the State Independent Living Council (SILC), through DVI.

##### **MEMBERSHIP:**

1. The Independent Living Advisory Committee, hereby known as the “Committee” shall be comprised of a minimum of a minimum of seven and the maximum of eleven members “Committee” representation shall include blind and visually impaired individuals and representatives of the Division for the Visually Impaired. Committee members may also represent parents and guardians of blind and visually impaired individuals, non-governmental agencies and/or other groups of individuals who are concerned with services to the blind and visually impaired community.

2. The majority of the “Committee” membership shall be blind and visually impaired individuals and parents or guardians of blind and visually impaired individuals.

3. All members of the “Committee” will be appointed by the Director of the Division for the Visually Impaired from recommendations provided by the “Committee” and may include reappointment(s)

4. The Chairperson, elected by the “Committee”, will serve a three (3) year term with a Vice-Chairperson who is also elected by the “Committee”. Every three (3) years the “Committee” will elect a new Chairperson and Vice-Chairperson at the December meeting of the third (3rd) calendar year.

6. The Social Services Administrator will be an ex-officio member of the Committee.

##### **MEETINGS:**

1. The “Committee” will hold regularly scheduled meetings once per quarter or more frequently by request of the Chairperson or the Director of the Division for the Visually Impaired. Attendance by five (5) of the “Committee” members will be considered a quorum and will be necessary to hold an official meeting. Participation by telephone will be acceptable to meet the need of a quorum.

2. Meeting agenda items will be coordinated through the Chairperson.

3. Meetings will be conducted according to Robert’s Rules of Order.

4. The appointed Secretary of the “Committee” will be responsible for recording and transcribing minutes of business transacted at the meeting. Minutes will note the members in attendance, as well as those appointed members who are absent. The Minutes will reflect the date and location of the meeting, as well as include the date and location of the next scheduled meeting. Copies will be distributed in the preferred media format to each member, as well as the Director and Deputy Director of the Division for the Visually Impaired. Minutes will be distribute prior to the next scheduled meeting.

##### **ATTENDANCE:**

1. Members are expected to attend all meetings. If a member misses more than two (2) unexcused absences the Social Services Administrator will discuss their desire to continue on the committee. A leave of absence will be granted on a case by case basis.

## **SUB COMMITTEES:**

1. Sub committees may be established by the chairperson and will report their updates and findings to the “Committee”. Non committee members may be appointed to serve on sub committees.

## **REVISIONS:**

The “Committee”, as needed, may review and make recommendations for changes of the By-Laws to the Director of the Division for the Visually Impaired. Any revisions of the bylaws will be voted and approved by the committee. The approved changes will be provided to the Director and Deputy Director.

## **BY-LAWS FOR DELAWARE COMMITTEE OF BLIND VENDORS**

### **Article I, Name.**

The name of this committee shall be the Delaware Committee of Blind Vendors.

### **Article II, Purpose.**

This committee shall represent all of the blind vendors within the state. Its functions and responsibilities shall include but not be limited to:

- A. Receiving grievances of blind vendors and acting as advocates for such vendors;
- B. Participation with the Delaware Division for the Visually Impaired in the development and administration of policies and procedures for a transfer and promotion system for blind vendors;
- C. Participation with the Delaware Division for the Visually Impaired in the development of training and retraining and upward mobility programs;
- D. Sponsoring, with the assistance of the Delaware Division for the Visually Impaired, meetings and conferences for blind vendors;
- E. Joint participation with the Delaware Division for the Visually Impaired in all major administrative decisions and in all policy and program development affecting the operation or administration of the vending facility program, including any state rules and regulations which may be promulgated and any contracts or agreements, and do all other lawful and desirable things to promote the vending facility program in accordance with decisions of a majority of blind vendors or of the committee itself.
- F. It shall be provided, that the State licensing agency has the ultimate responsibility for the administration of the State vending facilities program and that if the agency does not adopt the views and positions of the State Committee of Blind Vendors it will notify the Committee in writing of the decision reached or the action taken and the reasons therefor.

### **Article III, Duties and Responsibilities.**

Duties and authority of this committee shall include but not be limited to:

- A. Calling meetings and formulating agendas;
- B. Reviewing all material relevant to the vending facility program;
- C. Providing a secretary-treasurer of the committee and maintaining all records of the activities of the committee.

- D. Accepting grievances from blind vendors, acting as advocates for such vendors, and informing vendors of procedures for submitting and hearing grievances;
- E. Reviewing, preparing and acting upon specifications and procedures for supervision and promotional activities for the program;
- F. Receiving and voting upon major administrative proposals and proposals to establish or change policies or program development;
- G. Initiating and submitting to the state agency for concurrence or rejection major administrative proposals and proposals to establish or change policies or program development; and,
- H. Communicating regularly with all blind vendors.

#### **Article IV, Elections.**

##### **Section A.**

- 1. Elections shall be conducted by the Delaware Division for the Visually Impaired biennially, at a time, which will enable each newly elected committee member to take office on the first day of the state's new fiscal year.
- 2. The committee shall, with the Delaware Division for the Visually Impaired, develop a procedural plan for the holding of such election which shall include: eligibility to vote, eligibility for candidacy, time limitation, time and place of vote counting and method voting.

##### **Section B.**

- 1. The number comprising the committee of blind vendors shall be three.
- 2. The chairperson of the committee shall be appointed by the blind committee members.
- 3. The term of office for a member of the committee shall be for two years or until their successors are elected. Chairman will service for 2 years, Co-Chairman will serve for 2 years, and other committee members for two years.

##### **Section C.**

- 1. Any blind vendor that is operating a location on the date of the election shall be eligible to vote for three candidates for the committee.
- 2. Each eligible voter may be a candidate for the committee.

#### **Article V, Standing Committees.**

- A. Standing committees (if needed) shall include but not be limited to:
  - 1. Grievance;
  - 2. Promotion and transfer;
  - 3. Training and retraining;
  - 4. Retirement and fringe benefits; and
  - 5. Public relations.
- B. The chairperson may appoint chairpersons of standing committees with the concurrence of a majority of the elected committee.
- C. The chairpersons of a standing or other committee must be a committee member or a blind licensee within the state program.

- D. Standing and other committees may utilize consultants upon prior approval of the elected committee.

**Article VI, Expenses.**

- A. Expenses incurred or authorized by the committee in the carrying out of its purposes and its statutory duties and responsibilities shall be paid for as management services from set-a-side and matching federal funds, or from general revenue, or grants and donations in part or in whole.
- B. Committee members and members of standing and other committees shall be entitled to per diem and travel expenses (as state law provides for state employees) while engaged in official activities of the committee unless otherwise agreed to by the committee and the Delaware Division for the Visually Impaired.

**Article VII, Meetings.**

- A. Statewide meetings shall be called not less than once every two years.
- B. Committee meetings shall be held once every quarter during the months of: March, June, September, and December.
  - 1. Special meetings may be called by:
    - a. The Delaware Division for the Visually Impaired, or
    - b. The majority of the committee
  - 2. Standing committee meetings may be called as required.

**Article VIII, By-Laws Adoption.**

- A. Initial adoption of by-laws shall be by majority vote of the committee. The committee shall (when necessary) mail a written notice to each blind vendor announcing the time and place of the statewide meeting and stating that by-laws may be amended at statewide meetings by two-thirds of the blind vendors present and voting at any such meeting provided that the committee shall mail written notice to each blind vendor more than thirty days prior to the meeting announcing its time and place and state the proposed change or changes to the by-laws.

**Article IX, Election Procedures.**

- A. Duties and obligations of Delaware Division for the Visually Impaired.
  - 1. The Delaware Division for the Visually Impaired shall call a biennial meeting for all blind vendors to elect their blind committee for the ensuing two years.
  - 2. The biennial meeting shall be called in March or April.
  - 3. The Delaware Division for the Visually Impaired shall notify all blind vendors thirty days prior to the meeting date.
  - 4. The Recorder of the committee shall be responsible for conducting the business of the meeting.
  - 5. The Recorder of the committee shall allow every blind vendor who is interested in serving on the committee to state his/her reasons for wanting to serve on the committee.

6. The Recorder of the committee shall call each blind vendor present by name to give a voice vote for three candidates and two alternates for the committee.

B. Duties of the Blind vendor.

1. Every blind vendor in Delaware has the obligation and duty to attend the biennial meeting and to aid in the election of committee members.
2. All blind vendors present shall by voice vote for their candidate as their names are called. They will also vote for two alternates.
3. Each committee member shall be responsible for hearing grievances from blind vendors, for settling policy, and performing other duties necessary to upgrade and improve benefits for the blind.
4. Every blind vendor who is elected to the committee shall take office on the first day of July following the meeting.

AMENDMENT #1

Date: 11/12/03

Signature: \_\_\_\_\_  
Michael P. Williams, Sr.

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## APPENDIX C



SPONSOR: Sen. Lockman  
Sens. Delcollo, Hansen, Lopez, Walsh

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE RESOLUTION NO. 8

ESTABLISHING A TASK FORCE TO RESEARCH, DISCUSS, AND MAKE FINDINGS AND  
RECOMMENDATIONS REGARDING THE JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE'S  
REVIEW OF THE DIVISION FOR THE VISUALLY IMPAIRED.

1 WHEREAS, the Joint Legislative Oversight and Sunset Committee ("JLOSC") reviewed the Division for the  
2 Visually Impaired ("DVI") in 2019; and

3 WHEREAS, DVI's review resulted in 31 recommendations for JLOSC to consider, 28 of which require additional  
4 research and discussion among interested agencies and citizens to assist JLOSC in making decisions whether to adopt them;  
5 and

6 WHEREAS, JLOSC expressed its desire to create a task force, comprised of JLOSC staff, relevant agencies, and  
7 members of the public, to address the implementation of the 28 recommendations and any other recommendations the task  
8 force deems appropriate and report back to JLOSC in January 2020.

9 NOW, THEREFORE:

10 BE IT RESOLVED by the Senate of the 150th General Assembly of the State of Delaware that the Joint  
11 Legislative Oversight and Sunset Committee Task Force on the Division for the Visually Impaired ("Task Force") is  
12 established.

13 BE IT FURTHER RESOLVED that the Task Force research, discuss, and make findings regarding  
14 Recommendations 2 through 29 of the JLOSC's 2019 review of the Division for the Visually Impaired, and report its  
15 findings and recommendations to the JLOSC. The Task Force may find that the JLOSC should consider additional  
16 recommendations that the Task Force identifies.

17 BE IT FURTHER RESOLVED that the Task Force is composed of 9 members. A member who serves by virtue of  
18 position may appoint a designee to serve in that member's stead and at that member's pleasure. Membership is comprised  
19 as follows:

- 20 (1) One JLOSC Analyst.  
21 (2) One JLOSC Legislative Attorney.  
22 (3) The Director of DVI.  
23 (4) The Secretary of Education.

- (5) The Chair of the Blind Vendors Committee.
- (6) The Executive Director of BlindSight Delaware.
- (7) Kevin McAllister, to represent individuals who are visually impaired.
- (8) Sonya Lawrence, to represent parents of children who are blind or visually impaired.
- (9) Dr. Debbie Harrington, to represent higher education.

BE IT FURTHER RESOLVED that at least 14 individuals serve as consultants to the Task Force. A consultant who serves by virtue of position may appoint a designee to serve in that consultant's stead and at that consultant's pleasure. A consultant does not vote or have any duties or powers reserved for a Task Force member. Consultants are comprised as follows:

- (1) One analyst from the Controller General's Office.
- (2) The Chair of the Governor's Advisory Council for Exceptional Citizens.
- (3) The Director of Government Support Services.
- (4) The Director of the Department of Labor, Division of Vocational Rehabilitation Services.
- (5) A representative from the National Council of State Agencies for the Blind.
- (6) Individuals specifically requested to serve as consultants:
  - a. Dr. Karen Blakenship.
  - b. Darlene A. Cole.
  - c. Wayne Marsh.
  - d. William McCafferty.
  - e. Dr. Jerry Petroff.
  - f. Jillian H. Queen.
  - g. Lloyd Schmitz.
  - h. Dr. Fred Schroeder.
  - i. Terry Smith.
- (7) Any other organization or individual that the Task Force may determine helpful in meeting its duties.

BE IT FURTHER RESOLVED that a member or consultant may appoint a designee. A member or consultant who appoints a designee must provide the designation in writing to the chair. A designee has the same duties and rights as the member or consultant the designee represents.

BE IT FURTHER RESOLVED that the JLOSC Analyst and JLOSC Legislative Attorney serve as co-chairs of the Task Force.



54 BE IT FURTHER RESOLVED that the co-chairs of the Task Force are responsible for guiding the administration  
55 of the Task Force by doing, at a minimum, all of the following:

56 (1) Notifying all Task Force members of their selection to serve on the Task Force and all consultants of their  
57 selection to serve as consultants.

58 (2) Setting a date, time, and place for the initial organizational meeting.

59 (3) Supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and  
60 reports of the Task Force.

61 (4) Sending, after the first meeting of the Task Force, a list of the members of the Task Force and the person  
62 who appointed them to the Joint Legislative Oversight and Sunset Committee and the Director of the Division of  
63 Research of Legislative Council.

64 (5) Providing meeting notices, agendas, and minutes to the Director of the Division of Research of Legislative  
65 Council.

66 (6) Ensuring that the final report of the Task Force is submitted to the Joint Legislative Oversight and Sunset  
67 Committee with a copy to the Division for the Visually Impaired, the Director and the Librarian of the Division of  
68 Research of Legislative Council, and the Delaware Public Archives.

69 BE IT FURTHER RESOLVED that the Task Force must hold its first meeting no later than August 15, 2019.

70 BE IT FURTHER RESOLVED that a quorum of the Task Force is a majority of its members. A vacant position is  
71 not counted for quorum purposes.

72 BE IT FURTHER RESOLVED that:

73 (1) Official action by the Task Force, including making findings and recommendations, requires the approval  
74 of a majority of the members of the Task Force.

75 (2) The Task Force may adopt rules necessary for its operation. If the Task Force does not adopt rules or if the  
76 adopted rules do not govern a given situation, *Mason's Manual of Legislative Procedure* controls.

77 BE IT FURTHER RESOLVED that the Division of Research is responsible for providing reasonable and  
78 necessary support staff, materials, and meeting locations for the Task Force.

79 BE IT FURTHER RESOLVED that the co-chairs must compile a report containing a summary of the Task Force's  
80 work regarding the matters assigned to it in lines 13 through 16 of this Resolution, including any findings and  
81 recommendations adopted by the Task Force, and submit the report to the JLOSC and the Director and the Librarian of the  
82 Division of Research of Legislative Council no later than January 3, 2020.

83 BE IT FURTHER RESOLVED that this Resolution expires on the date the Task Force submits its findings and  
84 recommendations.

SYNOPSIS

The Joint Legislative Oversight and Sunset Committee ("JLOSC") reviewed the Division for the Visually Impaired ("DVI") in 2019. As a result of that review, 31 recommendations for changes affecting DVI were presented for JLOSC's consideration. JLOSC determined that, to properly consider and decide whether to adopt 28 of the recommendations, a task force should be created to research, discuss, and report back to JLOSC its findings on the implementation of the 28 recommendations. JLOSC decided to form the task force through a simple resolution.

This Resolution establishes the Joint Legislative Oversight and Sunset Committee Task Force ("Task Force") on the Division for the Visually Impaired. In addition to the 9 members of the Task Force, several consultants are also named, either individually or by organization, to share their expertise with the Task Force. The Task Force must hold its first meeting by August 15, 2019, and submit a final report of its findings and recommendations to JLOSC by January 3, 2020.

The Task force will not approve the implementation of a recommendation or authorize or require a change in any statute, policy, or practice. The Task Force is designed, authorized, and limited to do only the following:

- Research the background of and relevant information relating to JLOSC's Recommendations 2 through 29.
- Discuss the merits and concerns of each recommendation.
- Report back to JLOSC on what the Task Force found in its research and discussions.

Consultants are specified to ensure their participation in the Task Force, while the number of members is kept limited in the interest of meeting quorum and scheduling requirements more easily.

Author: Senator Lockman





SPONSOR: Sen. Lockman & Rep. Bentz  
Sens. Delcollo, Hansen, Lopez, Walsh; Reps. Bennett,  
Dorsey Walker, Spiegelman, Yearick

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 109  
AS AMENDED BY  
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE COMMON INTEREST  
COMMUNITY ADVISORY COUNCIL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2546, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2546. Common Interest Community Advisory Council.

(a) ~~There is established the~~ The Common Interest Community Advisory Council ("Council"), ~~which shall consist of the following members:~~ Council, referred to as "the Council" throughout this section, consists of 18 members. A member who is on the Council by virtue position may appoint a designee to serve in their stead and at their pleasure. Membership is comprised as follows:

(1) ~~Three members of the public who are members of the executive board of a common interest community, 1 from each county, appointed by the Governor;~~ The Governor shall appoint 3 members of the public who are unit owners, as defined under § 81-103 of Title 25, of common interest communities in this State, 1 from each county.

(2) ~~The Mayor of the City of Wilmington or a designee appointed by the Mayor;~~ Wilmington.

(3) ~~The County Executive of New Castle County or a designee appointed by the County Executive;~~ County.

(4) ~~The President of the Kent County Levy Court or a designee appointed by the President;~~ Court.

(5) ~~The President of the Sussex County Council or a designee appointed by the President;~~ Council.

(6) ~~Three members appointed by the Speaker of the House;~~ The Speaker of the House shall appoint 3 members.

(7) ~~Three members appointed by the President pro tempore of the Senate;~~ The President Pro Tempore of the Senate shall appoint 3 members.

(8) ~~The Secretary of State or a designee appointed by the Secretary of State;~~ State.

(9) ~~Two~~ The President of the Delaware Bar Association shall appoint 2 members from the Real Property

Section of the Delaware State Bar Association whose practice involves the creation of, or the handling of disputes

arising from, common interest ~~communities, appointed by the President of the Delaware State Bar Association;~~  
communities.

(10) The President of the Home Builders Association of ~~Delaware or a designee appointed by the President;~~  
Delaware.

(11) The Chief Executive Officer of Community Associations ~~Institute or a designee appointed by the Chief~~  
Executive Officer Institute.

(b) ~~The members of the Council shall serve~~ A member serves until a replacement is appointed pursuant to under  
the same process as the member's appointment.

(c) ~~The members of the Council shall~~ Members serve without compensation, ~~except that they~~ but may be  
reimbursed for reasonable necessary expenses incident to ~~their duties as members~~ the member's duties and in accordance  
with State law.

(d) ~~The Chairperson of the Council shall be designated by the Attorney General~~ shall appoint the Council's Chair  
from among the members of the Council.

(e) ~~The powers of the Council shall be exercised by a majority vote of all members present. A quorum of 9 shall~~  
~~be necessary to hold a meeting of the Council. The number of members who must be present at a Council meeting in order~~  
~~to have a quorum and conduct official business is the majority of members. Counting for quorum does not include member~~  
positions that are vacant.

(f) The Council shall do all of the following:

(1) Advise the Ombudsperson regarding issues related to common interest communities, including any of the  
following:

a. Mechanisms to increase the collection rate for common interest community ~~assessments;~~ assessments.

b. The development of conflict resolution procedures within common interest ~~communities;~~  
communities.

c. The feasibility of mandatory mediation, arbitration, or ~~other forms~~ another form of alternative dispute  
resolution for disputes not able to be resolved within common interest communities and, if deemed feasible, how  
to implement such a ~~process;~~ process.

d. The development of mechanisms for the registration of common interest communities with the State or  
other political ~~subdivision;~~ subdivision.

e. Any other topic the Council deems necessary to advise the Ombudsperson on related to common  
interest communities.

(2) Advise the Ombudsperson in the operation of the Office.

(3) Study and recommend to the Ombudsperson the adoption, amendment, or rescission of Delaware law or ~~rules~~ rule of court procedure designed to improve the regulation and operation of common interest communities.

(4) Assist the Ombudsperson in the preparation of the annual report required of the Ombudsperson ~~by~~ under § 2544(16) of this title.

(g) The Ombudsperson shall provide support ~~as requested by the Council~~ that the Council requests. At a minimum, the Ombudsperson shall prepare the agenda for and minutes of Council meetings and shall post the agenda and minutes as required by the Freedom of Information Act, Chapter 100 of this title.

(h) The Council shall meet at least 4 times each year. The Chairperson, the Ombudsperson, or a majority of the members may call a special meeting of the Council.



SPONSOR: Sen. Lockman & Rep. Bentz  
Sens. Delcollo, Hansen, Lopez, Walsh; Reps. Bennett,  
Dorsey Walker, Spiegelman, Yearick

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 110

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE ARCHITECTURAL  
ACCESSIBILITY BOARD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 7304, Title 29 of the Delaware Code by making deletions as shown by strike through and  
2       insertions as shown by underline as follows:

3           § 7304. Architectural Accessibility Board — Created; composition; terms; vacancies; compensation.

4           (a) ~~There is hereby created an~~ The Architectural Accessibility Board ~~which is created as~~ is an agency of the State for  
5       carrying out the purpose of this chapter. The Board, for administrative purposes, ~~shall be~~ is within the Office of  
6       Management and Budget.

7           (b) (1) The Board ~~shall be~~ is composed of 9 ~~voting~~ members who ~~shall be responsible for carrying out the duties~~  
8       ~~of the Board, and non-voting, ex officio members, who shall serve in an advisory capacity.~~ are appointed by the Governor  
9       as follows:

10          (c) ~~The voting members of the Board shall be:~~

11               (1) ~~(a)~~ (a) One architect registered in ~~the State;~~ this State.

12               (2) ~~(b)~~ (b) One registered professional engineer in the field of structural ~~engineering;~~ engineering.

13               (3) ~~(c)~~ (c) One general contractor with experience in commercial ~~construction;~~ construction.

14               (4) ~~(d)~~ (d) One attorney licensed in ~~the State;~~ this State.

15               (5) ~~(e)~~ (e) Four ~~persons~~ individuals with disabilities, at least 1 of whom ~~shall use a wheelchair;~~ uses a  
16       wheelchair.

17               (6) ~~(f)~~ (f) One member of the general public who is a parent, ~~guardian~~ guardian, or representative of a  
18       ~~person~~ an individual with a ~~disability or persons with disabilities, or who~~ disability; provides services to ~~persons~~  
19       individuals with ~~disabilities~~ disabilities; or ~~who~~ has a demonstrated involvement in programs for ~~persons~~  
20       individuals with disabilities.

21               (2) The Governor may appoint a member for a term of less than 4 years to ensure no more than 3 members'  
22       terms expire in a year.

23 ~~(3) Provided, nothing herein shall be~~ Nothing in this section may be construed to prevent or disfavor a person  
24 an individual with a disability from serving in any of the positions described in paragraphs ~~(e)(1) through (4)~~  
25 paragraphs (c)(1)a. through d. of this section. ~~It is the~~ The intent of paragraphs ~~(e)(5) and (6) (c)(1)e. and f.~~ of this  
26 section is to provide for representatives of various types of disabilities and ~~those persons~~ individuals with disabilities  
27 who cannot effectively represent themselves on the Board.

28 ~~(d)(1) The following persons, or persons designated by 1 of the following, shall be ex officio, or nonvoting~~  
29 ~~members of the Board: The chair may request that any of the following individuals, or their designees, attend a scheduled~~  
30 ~~meeting as needed to conduct business within the individual's area of expertise:~~

- 31 (1) Secretary of the Department of Health and Social ~~Services;~~ Services.
- 32 (2) Secretary of the Department of ~~Labor;~~ Labor.
- 33 (3) Secretary of the Department of ~~Transportation;~~ Transportation.
- 34 (4) Director of the Office of Management and ~~Budget;~~ Budget.
- 35 (5) Secretary of the Department of ~~Education;~~ Education.
- 36 ~~(6) Director of the Office of Management, Budget and Planning;~~
- 37 (7) Chairperson of the Governor's Commission of Employment of the ~~Handicapped;~~ Handicapped.
- 38 (8) Chairperson of the Developmental Disabilities Planning ~~Council;~~ Council.
- 39 (9) Chairperson of the Human Relations ~~Commission;~~ Commission.
- 40 (10) Chief building inspectors of each of the counties of the this State and of the City of Wilmington, or ~~in~~  
41 ~~the event that if~~ no such position exists, then a ~~person~~ an individual designated by the governing body of the  
42 ~~jurisdiction;~~ jurisdiction.

43 ~~provided, nothing herein shall limit the persons from whom the Board may seek advice in the exercise of its~~  
44 ~~duties.~~

45 ~~(e) Voting members of the Board shall be appointed by the Governor for terms of 4 years, except that the terms of~~  
46 ~~those initially appointed shall be as follows:~~

- 47 ~~(1) The general contractor and 1 specified person with a disability shall be appointed for a term of 1 year;~~
- 48 ~~(2) The professional engineer and 1 specified person with a disability shall be appointed for a term of 2 years;~~
- 49 ~~(3) The architect and 1 specified person with a disability shall be appointed for a term of 3 years;~~
- 50 ~~(4) The attorney and 1 specified person with a disability shall be appointed for a term of 4 years.~~

51 ~~(f) (e) The Chairperson shall be appointed by the Governor~~ shall appoint a chair from among the voting members  
52 of the Board. The chair serves as the chair at the pleasure of the Governor.

53 ~~(g) Any vacancy among the voting members of the Board shall be filled by the Governor for the balance of the~~  
54 ~~unexpired term. The missing of either 3 consecutive meetings or of any 4 out of any 12 consecutive meetings shall~~



constitute an executed resignation from the Board by a voting member. The Governor has the authority to remove a voting member of the Board for good cause. (f) The Governor may remove a member for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty in office. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular Board meetings or attends less than 50% of Board meetings in a calendar year. The Governor may consider the member to have resigned, and may accept the member's resignation.

(h) (g) ~~Voting members of the Board shall~~ Members must receive a compensation of \$25 per day when ~~they the~~ members are engaged in their duties as members of the Board. ~~The members shall~~ Members must be reimbursed for their actual travel and other necessary expenses incurred in carrying out their duties.

Section 2. Amend § 7305, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly: :

§ 7305. Architectural Accessibility Board — Procedures.

(a) ~~The Board shall meet as often as deemed necessary by a majority of the Board, but in no event shall the Board meet less frequently than once every 2 calendar months. The Board shall meet at least once every 2 months, and may meet more frequently as determined by a majority of the Board.~~

(b) ~~Five voting members of the Board shall constitute a quorum, which shall be necessary to vote on any issue must be present at a Board meeting in order to have a quorum and conduct official business unless otherwise provided in this chapter. Counting for quorum does not include member positions that are vacant.~~

(c) ~~Except as otherwise provided by this chapter, the Board shall not take any action without a majority vote of a quorum of the voting members at a duly called meeting.~~

(d) (c) ~~The Board shall~~ may adopt other procedures as it deems appropriate.

Section 3. Amend § 7306, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7306. Architectural Accessibility Board — Duties and powers.

(a) In addition to the other duties expressly conferred by this chapter, the Board ~~shall have~~ has the following duties and responsibilities:

(1) ~~Promulgate~~ Through the approval of a majority of the voting Board members following a public hearing, promulgate rules and regulations which ~~shall contain~~ establishing standards for the design and construction of facilities covered by this chapter to assure that ~~such facilities covered by this chapter are safely accessible to and usable by persons individuals~~ with disabilities can safely access and use the facilities. ~~Such standards shall be adopted by a majority vote of the Board following public hearings and shall~~ The standards must take into account the requirements and standards that are either of the following:

86                   a. ~~requirements and standards recommended~~ Recommended or amended by the American National  
87 Standards Institute (ANSI) and the Building Officials and Code Administrators (BOCA) ~~and any amendments~~  
88 ~~thereto; (BOCA).~~

89                   b. ~~and standards and requirements set out in applicable guidelines of the federal government; provided,~~  
90 ~~that until such time as the regulations containing standards as required by this paragraph are formally adopted by~~  
91 ~~the Board, the standards contained in § 6917(a) (n) [repealed] of this title shall remain in force and effect and shall~~  
92 ~~be applied by the Board; Required under applicable federal law.~~

93                   (2) ~~Promulgate~~ Through the approval of a majority of the voting Board members following a public hearing,  
94 promulgate rules and regulations for the granting of waivers from the requirements of this chapter and the Board's  
95 standards. ~~Such rules and regulations shall be adopted by a majority vote of the Board after public hearings and~~ The  
96 rules and regulations may provide for conditional or temporary waivers where appropriate, and ~~shall~~ must take into  
97 account such factors as the availability of acceptable alternatives to the Board's standards, ~~and whether or not standards~~  
98 ~~and whether~~ compliance with the standards will produce extreme economic hardship without substantial benefit to  
99 ~~persons with disabilities; individuals with disabilities.~~

100                   (3) Publish the standards and regulations adopted ~~pursuant to~~ under paragraphs (a)(1) and (2) of this section  
101 and make copies available to architects, engineers, contractors, state and local building ~~inspectors and~~ inspectors,  
102 public works ~~officials~~ officials, and other interested persons and ~~groups; groups.~~

103                   (4) Review all submissions to the Board ~~pursuant to the requirements of~~ under § 7308 of this title to  
104 determine if the requirements of this chapter and the standards of the Board are met and, upon a determination that the  
105 pertinent requirements are met, issue a letter of approval for such ~~construction; construction.~~

106                   (5) Monitor compliance with pertinent standards during construction of a facility for which a letter of  
107 approval has been ~~issued; issued.~~

108                   (6) ~~Upon written application setting forth good and sufficient reason therefor, grant written waivers from this~~  
109 ~~chapter and the standards of the Board, pursuant to § 7309 of this title; Grant a waiver under § 7309 of this title.~~

110                   (7) Receive and act upon complaints concerning alleged noncompliance with this chapter and the standards of  
111 the Board; Board.

112                   (8) Conduct a polling place accessibility assessment upon referral from ~~a department of election in~~  
113 ~~implementation of § 4512 of Title 15; the Department of Elections under § 4512 of Title 15.~~

114                   (9) Survey existing facilities which ~~have been~~ the State has constructed, ~~leased~~ leased, or financed ~~by the~~  
115 ~~State prior to~~ before July 13, 1979, and recommend to the Director of the Office of Management and Budget steps to  
116 eliminate existing architectural ~~barriers; barriers.~~

117 (10) Formulate educational and training courses to assist in the accomplishment of the purpose of this  
118 ~~chapter;~~ chapter.

119 (11) Make studies and collect and retain data relative to the purpose of this ~~chapter;~~ chapter.

120 (12) Provide for public awareness of architectural accessibility and of the requirements ~~relative thereto~~  
121 related to architectural accessibility.

122 (b) ~~For the effectuation of the purposes of this chapter, the Board, in addition to such other powers expressly~~  
123 ~~granted to it by this chapter, shall have~~ To achieve the purposes of this chapter and in addition to other responsibilities and  
124 duties under this chapter, the Board has the following powers:

125 (1) To make and promulgate rules and regulations, ~~not inconsistent~~ consistent with this chapter, that are  
126 necessary and proper for the Board's administration and ~~operation of the Board~~ operation, and for the conduct of the  
127 ~~business of the Board;~~ Board's business.

128 (2) ~~To appoint, in~~ In conjunction with the Director of the Office of Management and Budget, to appoint a  
129 Chief Administrator, who ~~shall serve~~ serves as the Board's Chief Executive Officer ~~for the Board and who shall~~  
130 ~~supervise such~~ and supervises clerical and other staff as ~~may be provided by~~ the Director of the Office of Management  
131 and Budget; Budget may provide.

132 (3) To hold ~~hearings, inspect construction or to provide for inspection by the Chief Administrator, by other~~  
133 ~~staff of the Office of Management and Budget as may be made available by the Director, or by purchase of services,~~  
134 ~~request information~~ hearings; inspect construction; provide for inspection by the Chief Administrator, other staff of the  
135 Office of Management and Budget as the Director may make available, or through purchase of services; request  
136 information; and perform other acts which are necessary and proper for effectuating the purpose of this chapter.

#### SYNOPSIS

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. The Architectural Accessibility Board was identified as needing updates to make it easier to fill vacancies and generally update language to modern legislative drafting standards.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Lockman



SPONSOR: Sen. Lockman & Rep. Bentz  
Sens. Delcollo, Hansen, Lopez, Walsh; Reps. Bennett,  
Dorsey Walker, Spiegelman, Yearick

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 111

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE ADVISORY COUNCIL TO THE  
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 7910, Title 29 of the Delaware Code by making deletions as shown by strike through and  
2           insertions as shown by underline as follows:

3           § 7910. Advisory Council to the Division of Developmental Disabilities Services.

4           (a) There is established the Advisory Council to the Division of Developmental Disabilities Services.

5           (b) The Advisory Council to the Division of Developmental Disabilities Services ~~shall serve~~ serves in an advisory  
6           capacity to the Director of the Division of Developmental Disabilities ~~Services and shall consider~~ Services, to considers  
7           matters relating to ~~persons~~ individuals diagnosed with intellectual disabilities or specific developmental disabilities in ~~the~~  
8           State this State and ~~such matters as may be referred to it by the Governor, Secretary of the Department~~ other matters that  
9           the Governor, Secretary of the Department, or Director of the Division of Developmental Disabilities Services may refer to  
10          it. The Council may study, research, ~~plan~~ plan, and advise the Director, the ~~Secretary~~ Secretary, and the Governor on  
11          matters it deems appropriate to enable the Division to function in the best possible manner.

12          (c) The Advisory Council to the Division of Developmental Disabilities Services ~~shall be~~ is composed of 7  
13          members who ~~shall be~~ are appointed ~~for 3-year terms~~ by the Governor.

14          (d) ~~At least 3, but no more than 4, of the members of the Council shall be affiliated with 1 of the major political~~  
15          ~~parties and at least 2, but no more than 3, of the members shall be affiliated with the other major political party; provided,~~  
16          ~~however, that there shall be no more than a bare majority representation of 1 major political party over the other major~~  
17          ~~political party. Any person who declines to announce such person's political affiliation shall also be eligible for~~  
18          ~~appointment as a member of the Council.~~ [Repealed.]

19          (e) Members of the Council ~~shall serve without~~ receive no compensation, ~~except that they~~ but may be reimbursed  
20          for reasonable and necessary expenses incident to their duties as members of the Council.

21 (f) ~~A Chairperson of the Council shall be chosen by the members of the Council from among its members and~~  
22 ~~shall serve in that capacity for a term of 1 year and shall be eligible for reelection.~~ The Council shall annually elect a chair  
23 from among its members.

24 (g) ~~Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall be filled~~  
25 ~~only for the remainder of the term.~~ The Governor may appoint a member for a term of up to 3 years to ensure that no more  
26 than 3 members' terms expire in a year.

27 (h) The number of members who must be present at a Council meeting in order to have a quorum and conduct  
28 official business is a majority of the appointed members. Counting for quorum does not include member positions that are  
29 vacant.

30 (i) The Governor may remove a member for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect  
31 of duty in office. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular Council  
32 meetings or attends less than 50% of Council meetings in a calendar year. The Governor may consider the member to have  
33 resigned, and may accept the member's resignation.

#### SYNOPSIS

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. The Advisory Council to the Division of Developmental Disabilities Services was identified as needing updates to change terms to "up to" 3 years, remove political party balance, and make it easier to fill vacancies.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Lockman



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DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 114

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF SOCIAL WORK EXAMINERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 3903, Title 24 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 3903. License required. [Effective June 11, 2019]

4           (c) *Exemptions.* —

5           (3) Licensure of social workers employed on June 11, ~~2018~~, 2019, by a state agency or private or nonprofit  
6     agency is voluntary. However, an individual who is newly employed or employed in a new position by a state agency  
7     or private or nonprofit agency on or after June 11, ~~2023~~, 2024, must be licensed under this chapter if the individual  
8     provides services as a social worker. Individuals to whom this paragraph applies and who choose to seek licensure  
9     must do so under the grandfathering provisions of § 3907B of this title.

10          Section 2. Amend § 3907B, Title 24 of the Delaware Code by making deletions as shown by strike through and  
11     insertions as shown by underline as follows:

12          § 3907B. Qualifications of applicant; grandfathering. [Effective June 11, 2019]

13          (a) Grandfathering period.

14           (1) The Board shall issue a license to an applicant who meets all the applicable requirements under this  
15     section and has submitted a completed, signed application and the applicable fee by June 11, ~~2020~~ 2021.

16           (2) If the applicant does not provide all of the information that the Board has requested by June 11, ~~2020~~  
17     2021, the application for licensure is considered ineligible for grandfathering and is closed.

SYNOPSIS

This Act corrects a technical error in House Bill No. 311 of the 149th General Assembly. HB 311 was intended to allow the grandfathering of licenses under Chapter 39, Title 24 to occur up to 2 years after HB 311 was enacted. In fact, however, HB 311's effective date allowed for only 1 year. Under this Act, the grandfathering period will be for the intended period of 2 years.

Author: Senator Lockman



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DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 135

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE GOVERNOR'S COUNCIL ON AGRICULTURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8108, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8108. Governor's Council on Agriculture.

(a)(1) There is established the Governor's Council on Agriculture.

(2) For the purposes of this section:

a. "Council" means the Governor's Council on Agriculture.

b. "Department" means the Department of Agriculture.

c. "Secretary" means the Secretary of the Department of Agriculture.

~~(b) The Governor's Council on Agriculture shall be composed of not more than 7 members who shall be appointed by the Governor for 3 year terms. The Governor shall designate 1 member as Chairperson to serve at the pleasure of the Governor. The Council is composed of 7 members who are appointed by the Governor for 3-year terms. The Governor shall appoint the chair, who serves as the chair at the pleasure of the Governor, from among the members.~~

~~(c)(1) The Governor's Council on Agriculture shall advise, recommend~~ recommend, and refer to the Secretary of the Department matters which, in its opinion, are of departmental concern and shall consider ~~such~~ other matters ~~as may be referred to it by the Governor or the Secretary of the Department~~ that the Secretary or the Governor refer to it.

(2) The Council may study, research, plan ~~plan~~, and advise the Secretary and the Governor on matters it deems appropriate to enable the Department to function in the best possible manner.

~~(d) At least 3, but no more than 4, members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3, of the members shall be affiliated with the other major political party; provided, however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a~~

22 ~~member of the Council. The Governor shall consider geographical and other diversities when appointing a member to the~~  
23 ~~Council.~~

24 (e) ~~Members of the Council shall serve without compensation except that they may be reimbursed for reasonable~~  
25 ~~and necessary expenses incident to their duties as members of the Council. Members receive no compensation, but may be~~  
26 ~~reimbursed for their actual and necessary expenses incurred in the performance of their official duties.~~

27 (f) ~~After the Council has been reduced to 7, any appointment, pursuant to the provisions hereof, to replace a~~  
28 ~~member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder~~  
29 ~~of that term. The Governor may appoint a member for a term less than 3 years to ensure that no more than 3 members'~~  
30 ~~terms expire in a year.~~

31 (g) A majority of members must be present at a Council meeting in order to have a quorum and conduct official  
32 business is the majority of members. A vacant position is not counted for purposes of quorum.

#### SYNOPSIS

The Joint Legislative Oversight and Sunset Committee approved a project to work with the Governor's Office throughout 2018 and 2019 to identify antiquated boards, commissions, and councils that need statutory updates or outright repeals. The Governor's Council on Agriculture was identified as needing updates to require 7 members rather than "up to" 7 members, and to remove the party balance requirement to make it easier to fill vacancies. Consideration must given to geographical and other diversities when appointing members.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Lockman







SPONSOR: Sen. Lockman & Rep. Bentz  
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Dorsey Walker, Spiegelman, Yearick

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 113  
AS AMENDED BY  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE HAZARDOUS SUBSTANCE  
CLEANUP ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 9113, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9113. Hazardous Substance Cleanup Fund.

(d) No greater than 15 ~~percent~~ % of the average of moneys deposited into the Fund ~~shall over the previous 10~~  
fiscal years may be used for administering this chapter without approval of the Joint Finance Committee.

Section 2. Amend § 9115, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9114. Tax assessment.

(a)(1) With regard to gross receipts received after December 31, 1990, and before July 1, 1993, there shall be added to the tax provided in §§ 2902(c)(3) and 2905(b)(1) of Title 30 an additional tax of .6% on all taxable gross receipts determined under §§ 2902 and 2905 of Title 30 derived from the sale of petroleum or petroleum products.

(3) With regard to gross receipts received after December 31, 2018, and before January 1, ~~2022~~, 2029, the rate of additional tax under this subsection is subject to annual adjustment based upon the total of moneys deposited into the Hazardous Substance Cleanup Fund ("Fund") during the lookback period, as that term is defined in § 2122 of Title 30. The Division of Finance shall calculate the annual adjustment under this paragraph (a)(3) in conjunction with the determination of gross receipts tax filing frequencies.

Section 3. Section 1 of this Act takes effect on January 1, 2021.





SPONSOR: Sen. Lockman & Rep. Bentz  
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DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 115

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE JOINT LEGISLATIVE  
OVERSIGHT AND SUNSET COMMITTEE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 10201, Title 29 of the Delaware Code by making deletions as shown by strike through and  
2           insertions as shown by underline as follows and by redesignating accordingly:

3           § 10201. Definitions.

4           ~~For purposes of this chapter, unless the context otherwise requires~~ As used in this chapter:

5           (3) "Highest administrative officer" means an official who is appointed by the Governor as a member of the  
6           Governor's cabinet.

7           Section 2. Amend § 10207, Title 29 of the Delaware Code by making deletions as shown by strike through and  
8           insertions as shown by underline as follows:

9           § 10207. Agency reports to the Committee.

10          (b) ~~Each year on or before January 15, In October of the year immediately before an agency is reviewed, unless~~  
11          the agency has requested and been granted an extension that may not extend past December 31, each agency under review  
12          by the Committee shall forward all of the following to the Committee:

13               (1) The last 5 budget reports relating to all program priorities, activities, and accomplishments, if the agency  
14               is subject to zero-based budgeting requirements.

15               (2) A concise and specific statement setting forth the performance or achievement of the agency relating to  
16               the criteria for review set forth in § 10211 of this title, and addressing no other subject except the criteria for review.

17               (3) Any additional information requested by the Committee, including any record, document, or file over  
18               which the agency has custody or jurisdiction, if the additional information is available.

19          Section 3. Amend § 10209, Title 29 of the Delaware Code by making deletions as shown by strike through and  
20          insertions as shown by underline as follows:

21          § 10209. Committee responsibilities and duties.

22          (b) ~~Each year on or before February 7, To review an agency,~~ the Committee shall do all of the following:

(1) Direct staff to prepare a draft report to be used in public hearings.

a. Following review and comment by the Committee, the draft report must be made available to the public.

b. The draft report must contain information that assists the Committee in conducting a review of the agency and meeting its requirements under this section, including background information on and an introductory analysis of the information submitted by the agency under review, together with any preliminary evaluations or recommendations arising from the information in the draft report.

(4) (2) Conduct a thorough review of all information furnished to the Committee by the agency under review.

(2) (3) Obtain, verify, and review any reports, audits, or actions taken by other state agencies concerning the agency under review.

(3) (4) Conduct a performance evaluation of the agency under review based, at least in part, on the following criteria:

~~(4) Direct staff to prepare a draft report to be used in public hearings. Following review and comment by the Committee, the draft report must be made available to the public. The draft report must contain information that assists the Committee in conducting a review of the agency, including background information on, and an introductory analysis of, the information submitted by the agency under review, together with any preliminary evaluations or recommendations arising from the information in the draft report.~~

(5) Review the implementation of recommendations contained in the final reports presented, pursuant to under § 10213 of this title, to the General Assembly and the Governor during previous legislative sessions.

Section 4. Amend § 1210, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 10210. Public hearings.

(a)(1) ~~Between February 7 and the second Tuesday of March~~ From January through March of each year, unless the needs of the General Assembly require otherwise, the Committee shall regularly and uniformly convene initial public hearings scheduled by the Chairperson, in order to provide an opportunity for the Committee to meet with the agencies under review and to help formalize a timetable for the reviews.

(2) Following an initial public hearing for an agency, the Committee may, at the call of the Chairperson, meet to discuss and consider actions and recommendations relating to the agency, with or without the staff of the agency under review.

52           ~~(3) The Committee may, at the call of the Chairperson, hold a public hearing for an agency prior to February~~  
53    ~~7, if the draft report of the agency is complete.~~

54           (4) To encourage participation by the general public, hearings and meetings convened ~~pursuant to~~ under this  
55    subsection must occasionally be held ~~occasionally~~ in the early evening hours.

56           (b)(1) The highest administrative officer of an agency under review must be present at each public hearing or  
57    meeting relating to the agency and convened ~~pursuant to~~ under this chapter, unless excused by the Chairperson, and at any  
58    Committee meeting where the officer's attendance is requested. The officer must be prepared to answer questions from  
59    members of the Committee and members of the general public.

60           (2) The highest administrative officer of an agency under review may, with the Chairperson's approval,  
61    appoint a designee to meet the officer's obligations under paragraph (b)(1) of this section.

62           (3) The Committee may designate a person other than the highest administrative officer of an agency under  
63    review to meet the officer's obligations under paragraph (b)(1) of this section.

#### SYNOPSIS

        This Act makes updates to the Joint Legislative Oversight and Sunset Act ("JLOSC Act") to meet modern-day needs and practices.

        First, this Act defines "highest administrative officer" to clarify that the executive branch, cabinet-level officer of an entity under review must be present at public hearings under the JLOSC Act. Other states have an equal mix of requiring the presence of the cabinet-level official, requiring the presence of the division-level leader, or not clarifying which of the 2 positions must be present. This Act contemplates circumstances under which a person other than the cabinet-level officer may be more appropriate to appear at JLOSC hearings, and therefore authorizes the officer, with the JLOSC Chair's approval, to appoint a designee to meet the officer's obligations, or the JLOSC Committee to designate a person other than the officer.

        This Act also makes changes to specific deadlines that are out-of-step with JLOSC's practices and needs. In doing so, this Act also clarifies language regarding JLOSC staffs' duties and requirements for the JLOSC's draft report.

        Finally, this Act makes technical changes to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Lockman