

Protection and Advocacy Advisory Board
Meeting Minutes
March 31, 2010

Present: Eileen Furey (Chairperson), Arthur Quirk, John Clausen, and Rachel Bogartz, Phyllis Zlotnick and Walter Pelensky attended via telephone.

Absent: Margarita Torres, Heidi Mark, Sheila Mulvey, Suzanne Liquermann, Peter Tyrrell, and Christopher Knapp.

Staff Members: James McGaughey, Executive Director; Gretchen Knauff, Assistant Director; Beth Leslie, Legislative Regulations Specialist, and Peter Hughes, AID Program Director

- 1) **Call to Order:** 4:05 p.m.
- 2) **Abuse Investigation Division (AID) Report** by Peter Hughes, AID Program Director
 - a) The Nurse investigator resigned and we have been unable to refill the position. Without the Nurse Investigator, we lack the medical expertise in reviewing the medical records for death cases. Jim requested permission to refill this crucial and necessary position. Permission was given to refill. However we will have to hire one of the nurses slated for layoff, if the Community College LPN program was closed as proposed.
 - b) AID presented their Results Based Accountability (RBA) report before the Appropriations Committee. It was interesting to try and quantify investigation data into RBA criteria.
 - c) Open cases are approximately 500, would like to see it down to about 450.

- 3) **Conflict of Interest Policy** – Any feedback on the two possible definitions of “conflict of interest”?

Eileen agrees with John that the definition identified as “Option A”, from Black’s law dictionary is simpler. However, she favors the definition in “Option B”, which was suggested by Boardsource, a consulting organization.

Initially, Phyllis favored Option A, except for the term “clash”, which she would like changed to “discord or disagreement”. However, during the discussion, she came to support option B.

Gretchen suggested that the language in Option B be modified slightly to include “...any situation in which a Board Member is or may be influenced in an organizational decision...”

With that change, Phyllis, Wally, Eileen and Art support Option B; John favors Option A.

Because there is no quorum, Jim will put the policy out to all members again, including only the slightly modified Option B language, and say it has been “tentatively approved”, and asking for a response that will count as a vote. Before doing so, Jim will review rules for Board member voting to make sure that procedure is in compliance with the By-Laws. If not, the issue will be voted on at the next meeting.

3) Attendance letters and Board vacancies. The by-laws state that after three (3) in a row unexcused absences by a member the Board Chair sends a letter and then you are dropped from the Board. We contact the governor's office, and are interested in coming on the Board. Jim will prepare letters for Eileen to sign.

4) PAIMI Counsel Report – Salina had a previous commitment teaching a class, but will be available to provide the PAIMI report at future meetings. PAIMI Council has developed a survey instrument and Council Members are going to the hospitals surveying how respectfully the residents are treated. Congratulations from the Board to Walt Wetmore on his new job

5) Executive Director Report.

- a. State budget is still in limbo and, as a result, our financial future continues to remain somewhat unclear. For the current fiscal year we will basically be okay - just barely. We achieved some of the mandated "savings" all agencies were instructed to achieve because of voluntary leave and the vacant nurse investigator position. However, we will require release of approximately \$65,000 in "hold-back" funds by OPM in order to meet all our payroll costs. We really don't have any control over payroll costs. Ironically, we have achieved considerable savings in our "Other Expenses" account – the part of the budget that pays for everything except personnel costs. We did this by taking the Governor's instructions to heart, and just not purchasing things – even if we could justify them. But we don't get any "credit" for doing so. The proposed budget for next year again under-funds us in personal services account (payroll)..
- b. Jim attended the NDRN CEO meeting in D.C. last month (as his vacation).
 - i. Various advocacy groups are talking with the Wage and Hour Division of the federal DOL, and with Rehabilitation Services Administration about scrutinizing sheltered workshops from a civil rights perspective, and trying to get the P&As to do that too. There is little doubt that new models of supported employment and supports for competitive employment are desirable, but we have to be careful what we ask for, We might get it. Is society ready to invest in those alternatives? The economy is hard pressed right now. Workshops can hold people with disabilities back and pay less. But where is the support for alternatives?
 - ii. During Jim's hill visits he discussed federal legislation limiting the use of restraints and seclusion in schools has passed the house, and parallel legislation has been introduced in the Senate. Senator Dodd really wants to move this through the Senate this summer, but it isn't clear whether the Education Reauthorization will move quickly, or even if it is a good vehicle for this.
- c. On the legal front we have filed an Amicus brief in the State v. Fourtin appeal and we are looking to intervene in the Blick case.
- d. We are currently conducting investigations into allegations that schools in Plainfield and in Hartford have abused or neglected students with emotionally disturbed labels, and are monitoring the DCF investigation into the High

Roads school incident where a student was pretty seriously injured in a restraint episode.

- e. Three of our staff advocates testified in the Messier v. O'Meara (Southbury) case. They were able to testify to the effect that community placement is almost never discussed at individual client planning meetings at STS, and that case managers routinely report that they have talked to the guardian and he/she objects to placement and, therefore there is no discussion.

5) **Legislative** website and bill tracking report are up-to-date. Tomorrow is the deadline to take action by the Appropriations Committee, the only other committee is the Finance Committee. We are working with prosecutors in re-writing language regarding sexual assault under criminal law.

Couple of bills still out there about the budget, clearly the state is running out of money. Many ideas have been proposed, desperate times seem to call for desperate actions. The Health and Human Services steering committee had proposed combining: DDS, DMHAS, DSS and DCF into one agency, a very scary situation.

Democrats voted last week but failed to put procedural safeguards in place for teens who turn 18, who would no longer be eligible for assistance until they turned 19.

If you are in residential care and receive a dissatisfactory discharge plan, you can submit an appeal within seven calendar days to DPH. As presently written, you need a lawyer to advocate for you before the DPH in the appeal hearing. OPA supported legislation that would have allowed a non-attorney to advocate for an individual, and the legislation would also have lengthened the amount of time available to appeal a discharge. Many good ideas are not going forward, anything that costs money is dying in committee. Even if we show it was not going to cost money, our advocates could show that a DPH hearing officer found that a residential care home falsified a discharge document.

Another bill would require a study of the privatization of group homes. Group homes, your guardian would not be able to represent on your behalf. You can represent themselves or an attorney, they cannot object or raise question. What if they have a hard time speaking or their guardian. If we could pass the law, not under this state statute very specific in your rights to appeal. DPH decision is final, a person could have an advocate come and help them.

The problem is really a practical one. Phyllis wants to know if this is a denial of due process, when you only have 7 calendar days to appeal a discharge from a board and care home. She said when this happens individuals think they are going to be homeless, and are not empowered to take care of issue. Will P&A submit this next year? Phyllis committed to coming to the Capitol and getting people to come and talk to their Senators and Representatives.

Four bills still alive:

- Handicapped parking.
- Accessibility of voting – phone used to cast ballots would be set up one hour prior to election.
- Definition of “medical necessity”.

- Put the Traumatic Brain Injury Council in state statute.

Phyllis had questions about the sexual assault bill. Is the issue that they are being too restrictive, what about when it is consensual? The Judiciary attorney, Rick Taft sat in on a meeting with representatives from OPA, DMHAS, DDS and the State Prosecutor's office and they worked to create language in the bill that would balance personal autonomy and yet clearly allow for prosecution of non-consensual relations. The bill was supported by the State Senate and awaits action in the House of Representatives.

Public Forums for Priority Setting – every two years P&A holds a series of public forums throughout different parts of the state, P&A advertises them, gathers the results and then develops priorities in the form of Objects and Priorities to be presented to the Board for approval. The June Board Meeting will be public forum. They are then posted for 90 days and are adopted as the P&A focus for the next two years.

Remaining Board meetings for 2010: June 17, Sept 16, and December 16.

Discussion – John informed the Board that State Medicaid has instituted the 90% attendance rule for attendance at day programs; if an agency is to get full funding they have to be 90% of the time, when you have individuals who have chronic conditions this is not realistic and it is really not fair to the agency. You have staff providing for that person who still have to be compensated. An immediate problem, you are in a transition, they can't be here 90% of the time, they are not allowed to be there. Purely financial, aware of it as a major blood spill. DDS is taking the lead on this. There are all sorts of rational; other states are at 75%. You can infer from that that they can't be there all the time. This situation discourages the provider from providing services to them. The way that DDS looks at this, the legislative told them to look at it and DDS implemented it anyway.

We have to have someone who has been squeezed by this to potentially litigate on the matter. The way that you have it funded is impacted; exceptions can be made under limited circumstances.

Adjourned 6:10 P.M.