

***DAIL Advisory Board
February 9, 2012
Comfort Inn, Berlin***

Attendees:

Board Members: Susan Gordon, John Pierce, Diane Novak, Harriet Goodwin, Steve Pouliot, Sarah Launderville, Nancy Breidan, Robert Borden, Janet Cramer, Nancy Lang (via phone),

Guests: Ed Paquin, Marlys Waller, Jeff Coy, Barry Michaels (via phone), Laura Pelosi, Gini Milkey, Amy Caffrey (via phone), Barb Prine

State Employees: Marybeth McCaffrey, Chuck Bruder, Linda Lambert, Lisa Parro, Camille George, Jackie Rogers, Hugh Pritchard, Michele Pheeny, Susan Wehry

Notes from the December board meeting were approved as amended:

- Page 4 – Should be Chuck Bruder not Bradley.

Notes from the January Board conference call were approved as amended:

- Change by Commissioner Wehry – Fran Keeler is not working with DMH on mental health issues; she will be supporting their licensing efforts as they seek alternative sites for treating state hospital patients displaced as a result of Irene.
- Bottom of second page – “Members who are affiliated with the plaintiffs...” This was the wording that was sent out after the meeting. For the minutes from the meeting, it should read “Members who are plaintiffs or the attorney for the plaintiffs...”

Division of Disability and Aging Services (DDAS) – *Marybeth McCaffrey, Division Director; Chuck Bruder, DDAS Assistant Director; and Jackie Rogers, Director of the Office of Public Guardian*

It has been a very dynamic year for DDAS staff, with a lot of staff changes: Since every division in DAIL is working to support the aging population and persons with disabilities, some staff who previously worked in DDAS (Mary Woodruff, Marie Bean, and Janet Merrill), now work out of the Commissioner’s office to support DAIL operations as the State Unit on Aging; two staff in the Data and Planning Unit, Bard Hill and Dale Brooks, are currently dedicated for a significant amount of time to the AHS Dual Eligibles Project; April Green’s and Jennifer Garabedian’s positions and the Childrens Personal Care Program were moved to the Vermont Department of Health as part of the Integrated Family Services initiative (IFS); Amy Roth is 100% dedicated to the IFS initiative and is located at the Department of Health; however, she remains part of DDAS; and about half of the Money Follows the Person grant team has been hired. In addition, there were several retirements, and resignations due to promotions outside of state government; and there continues to be some settling into the new office space on Harvest Lane in Williston, above Sears. Currently there are 70-80 staff in the Division.

Some of the staff changes in services are: Chuck Bruder is covering the Equity Funding Committee; Paula Black and Karen Graham are responsible for quality management for Choices for Care; Kathy Rainville is overseeing Long Term Care Clinical Coordinator (LTCCC) Operations; Sarah Lane oversees the clinical focus of the LTCCC; and David O'Vitt (who is a nurse) is working with services for people with seriously functional impairment (SFI) who have unique needs but don't fit into one category or existing program, supports the LTCCC peer reviews, high-technology nursing services for adults, and is involved with making adjustments to certain nursing home facility rates when necessary.

Jackie Rogers, Director of the Office of Public Guardian (OPG)

For elders over age 60 and people with disabilities, who have a cognitive impairment and are unable to make decisions in critical areas, the court appoints a public guardian. If it is an elder, or if it is an emergency case, this is done in the probate court; for people with disabilities (unless it is an emergency), this is done in the family court. Elders may also be appointed financial guardians.

There is a public guardian office in all areas of the state, except the Northeast Kingdom; however, staff from other regions cover this area. All of the staff are full-time, with some having additional duties. For example, Mike Attley spends about half of his time working with divisions and helping to find guardians. The guardians are really more than full-time as they are on call 24/7, unless they are out of state or are doing something that cannot be interrupted, and they may be called out on weekends. All of the guardians carry phones and pagers. After hour calls go into a call center, which has a list of numbers to contact the guardians, and they will usually get a response within 15-20 minutes.

The total caseload for OPG is 691, which is higher than it has ever been in the past, and pressure for the guardians is increasing. Caseloads are growing as people are coming into the program faster than the people leaving the program. Each person under guardianship has a different level of acuity, which causes some variation in caseloads, and the demographics vary in the different areas. Currently there are individual caseloads above 30.

Act 248 is the civil commitment by the criminal justice center of someone who is not competent to go to trial and is a risk to reoffend; they are put under the care of the DAIL Commissioner. All participants in Act 248 are in the custody of the Commissioner; however, not all participants are assigned a guardian. There are around 30 people on this caseload. In the past the data included information for all of the Act 248 participants, even those without guardianship, so it is difficult to compare the data to determine the impact of these cases in the guardian program.

Chuck Bruder, Assistant Director for Adult Services (Developmental Services, Choices for Care, Traumatic Brain Injury Program)

Waivers are awarded to a state, not to individuals. There are two types of waivers: home-based waiver, 1915 c of the Social Security Act; and an 1115c state innovative waiver. Vermont has transformed from the 1915c waiver to the 1115c waiver and involved global commitment, an

allocation of money with a lot of flexibility. There are 2539 individuals being served on the developmental services waiver program (federally matched services) in one form of support or another. Approximately 65% of these individuals receive assistance supports, and about 70% of the individuals live in natural settings.

Vermont is in the forefront of the field, with hearts, minds and spirit to help people live in their communities and allow them to fully participate in the community. Vermont is highly regarded nationally due to its success in providing supported employment. About 35% of waiver participants are gainfully employed.

Disability Rights Vermont (DRVT) formally Vermont Protection and Advocacy – Ed Paquin (Public Comment)

Disability Rights Vermont, Inc. (DRVT) is part of the National Protection and Advocacy (P&A) system. This national system was created by Congress in response to concerns that States were not doing enough to protect people with disabilities against abuse, neglect and serious rights violations. Each state has a P&A system; some are part of state government and some are private, but in most states it is a private, non-profit organization designated by the Governor to be part of the protection and advocacy system.

DRVT is federally funded, with many other funding streams. Some new funding DRVT has received is from FEMA, for access to emergency shelters for people with disabilities. On rare occasions, if a settlement is made, DRVT may recoup some of the settlement costs to cover expenses, however, this is very rare.

DRVT has the authority to protect and advocate, and they have the authority to monitor institutions and settings where people with disabilities get services. If it is believed that abuse or neglect has occurred, DRVT has the authority to review patient records, and public institutional records. If an individual wants help with a civil rights issue, and gives permission to DRVT, they also have that ability. DRVT also visits the state prisons, and does a lot of work with special education and guardianship issues. Services provided by DRVT are free.

There is 4 DRVT staff (*they are looking for someone in the Brattleboro area*). DRVT contracts with the Disability Law Project, Vermont Legal Aid, who does most of the work with people with developmental disabilities who have a major life limitation that occurred prior to age 22. There are about 22-23 people doing this work. DRVT has a person trained to work with people with communication deficits or anxiety which would make participation in court proceedings virtually impossible. DRVT works with a lot of different groups, Vermont Center for Independent Living, Vermont Coalition for Disability Rights, Association of the Blind and Visually Impaired, Vermont Psychiatric Survivors, and until recently, Adult Protective Services.

What DRVT does for whom depends on who they are working with and who may be doing other kinds of advocacy; they look at the strengths of the different organizations and if there are complimentary structures or systems. DRVT does not visit nursing homes, unless the

Ombudsman thinks they need them there. If DRVT can not help an individual, they help find someone who can.

DRVT is working on legislation to change policies in the state prisons system to help get treatment for individuals who are seriously functionally impaired. The P&A system has made a significant difference, steering the direction state government.

Choices for Care Audit – *Linda Lambert, Office of the State Auditor*

An audit of the Choices for Care (CFC) program is required for last year's big bill. Linda came to the Board to get input for an evaluation about how DAIL is doing with the CFC waiver. Linda's goal is to have a report out by the end of March.

The 2008 evaluation plan for CFC continues forward with the extension. In the past, UMASS did an evaluation of the program. Linda would like to know if the nine outcomes from this original UMASS plan are still relevant.

The Board had many questions about the evaluation process, past survey questions, and the basis of the 9 outcomes and results. The Board felt that some of the survey questions posed are not applicable to an institutional setting. Without the survey questions, the categories were too broad to be able to discuss fully.

The Nursing Home association does a regular, comprehensive evaluation. The Board felt it would make sense to compare the different surveys and find the commonalities.

Based on the discussion, Linda will e-mail the DAIL Advisory Board a new set of questions for consideration and comment.

Tentative Agenda Items for 2012:

- Richard Giddings, DCF – ESD Modernization (Camille did tentatively ask him to hold March)
- *DAIL budget – time understanding the changes and does the Board support it
- Legislative priorities (legislature itself) vs. DAIL's priorities
- OPG – It is so complex and important, would like more time
- *Update on Duals project
- SILC
- Reimbursement for provider for Choices for Care and how it will happen (case rates?) & Choices for Care – nonmedical folks
- Nonmedical providers
- Advisory board APS subcommittee reports back to board
- Subcommittees - DS Standing committee
- *Money Follows the Person
- Update by UMASS

- Center on Aging (done last December, do again end of this year?)
- Green Mountain Self Advocates
- LTC Ombudsman (Jackie Majoros did last year, do again sometime this year?)
- *DAIL Division updates (DBVI, DLP, VR) – any big changes is what want to know about most
- Alzheimer’s Disease Demonstration Grant, and ADRC (Aging and Disabilities Resource Connections grant)
- Single payer and long term care – if it is ready
- Quality assurance activities in DAIL
- Attendant Services Program
- TBI
- Long Term Care insurance - ways people who own houses can get long term insurance. Be sure people have adequate information for exploitation - differential insurance, permitted to go into LTC Medicaid with different condition. Long Term Care Partnership has been put on hold.
- COVE Senior Program – fraud prevention and securities division. Gini can send information. Have a board member that can speak on kinship care (parent a grandchild or niece/nephew)
- Operations manual – Sarah Launderville volunteered to work on the DAIL Operations manual. If she can be given a month of when it should be presented to the board, it would help her with the planning.

Board members are encouraged to bring forth any additional issues that may be raised at the monthly meetings to try to fit into further agendas.

The DAIL Advisory Board members are ambassadors and advisory for DAIL. Presenters should be urged to have one or two questions for the board, or key issues to discuss, when they come to present. This would be very helpful.

Due to the amount of time available for the agenda items, it is suggested to not repeat topics that have been discussed last year, unless it is felt necessary.

DAIL Advisory Board Operating Procedures

Last month, the board approved the DAIL Advisory Board Operating Procedures. However, as the final touches were being made on this document, a few additional changes were felt necessary. Lisa will send the Board the operating procedures and information about the additional input/changes for a final review. (One of these changes was allowing public comment at meetings. While the Board usually allows time for guests to speak, this should be added to the monthly agendas.)

Commissioner Updates

Yesterday, Commissioner Wehry presented the budget at House Appropriations. She is not sure when she will present it to Senate Appropriations. Yesterday afternoon, the Commissioner also testified before the House of Human Services.

There is a proposed additional 6.5 million dollars in the caseload in Developmental Services - some of this will be used for new people and some will be used for people already on the caseload that need additional funding.

Within the proposed budget, there is a sub section for the public safety program – people with developmental disabilities who are at risk to offend (sexual or violent). There are concerns that this program is growing due to the young people coming in. The Challenges for Change initiative required that a risk assessment be completed for all the people in this program. The DAIL team worked with Bob McGrath on the use of a standardized tool to measure outcomes. As a result, a few people were taken out of the program. More importantly, some people in the program had a reduction in services as they did not need to have what they had. The DAIL team is working with providers on the new tool, which is a great step forward.

The Developmental Services budget also proposes a reduction due to a change in policy. Since 2004, as a result of a waiver from CMS, DAIL permitted designated agencies to continue to bill for services when someone was taken to the hospital. This makes sense if someone from the agency had to go to the hospital to help with the person, but it was not good policy sense to have the agencies billing for employment supports, therapy, or services that people were not receiving during that time. The data does not support that the cessation of these payments to the providers will cause budgetary issues resulting in employee layoffs. It was recommended to the Legislature to discontinue payment for certain services, but to continue to pay for services that will still be provided when someone is in the hospital (such as service coordination) and to maintain a person's living arrangement for a specified period of time.

DAIL is proposing to bring the long-term care world as part of health care reform, and move away from a fee for service to paying a monthly rate for case management to home health agencies and area agencies on aging. Peter Cobb indicated that VAHHA, supports this move from fee for service to a set rate per month, however, he feels that the \$110.00/month is too low. The current fee for services the agencies charge is \$67/hour, the highest case management rate in the state. Some of the other case rates in the state are \$48/hour, and \$27/hour.

Commissioner Wehry stated that DAIL needs to revisit how to do case management in the Choices for Care program. DAIL eliminated the high needs waiting list, lifting the freeze in moderate needs – which has never been put back. Mechanics of this did not catch up until June, and currently things are pretty good with enrollment. Case management for people in the Moderate Needs Group can be more challenging because of the limited services provided through the MNG and the need to find other resources to meet some needs. There are a lot of request for variance requests to increase case management time for people in the moderate needs

group, with 25% of variance requests being denied. It may make more sense to have one flat fee per month instead, but there are a host of factors involved in what would seem to be a fair rate. This would result in less income for the agencies. DAIL needs to make sure our policies don't have an incentive, or disincentive, for people and will be working with the AAA's and home health agencies on this. Commissioner Wehry would like to get the Board's input on this.

The Centers for Medicare and Medicaid (CMMI) Innovations Grant

In Vermont, there were 6 submissions for the CMMI Innovations Grant - from informatics about health care reform to new design, memory care, new ways to deliver services to people with dementia who have a low income. CMMI will make an announcement at the end of March. Commissioner Wehry is quite hopeful.

Adult Protective Services (APS) Update

APS currently has 11 full-time investigators, with 1 of the investigators acting as Program Chief. Fran Keeler became the Assistant Director and will give her full attention to survey and certification. Suzanne Leavitt has become the Director of the Division of Licensing and Protection. Liz Manfredi has returned to an APS Investigator position. A second Program Specialist position has been approved, and the recruitment list has just been received.

The average caseload for an APS Investigator is 33 cases. However, Shawna Agel is currently acting chief so she is only carrying 4 or 5 cases; and caseloads for new staff are lower; and caseloads in the Financial Exploitation Unit, on average, are higher.

Vermont Legal Aid - Barbara Prine (Public Comment)

Barbara Prine addressed the Board and opined as follows: Vermont Legal Aid (VLA) and DAIL have different perceptions about what is happening in APS, and that is why the lawsuit is commencing. When caseloads are so high they cannot be worked on, it is felt that an investigation has not commenced. VLA does not find a Level 3 case or a financial exploitation case as a low level case. VLA is hearing from community again and again, that it is taking 3-4 months to complete an investigation, while DAIL says it is taking 30 days.

The Department for Children and Family Services (DCF) staff answer the phones during the evenings and on weekends. The staff only have 1 hour together, and VLA does not feel DAIL is supervising the staff that they are contracting with. For emergency cases, staff needs additional training besides calling 911. People continue to call VLA with problems.

APS is a stressful place to work with high caseloads, so it is difficult to keep staff. The lawsuit also questions if the system we have has some systematic flaws that should be looked at instead of just beefing up staffing, recruitment, and salaries. DCF does a lot of investigations as well, that may be comparable to APS.

Barbara stated that it was not an easy decision to sue DAIL; however, the action was taken because the litigants did not feel that progress had been made in the last year, and they did not feel they could sign a new APS corrective plan. To resolve the litigation, DAIL has to address all the complaints; there has to be adequate response time for emergencies with possibly more proper training and attention for the staff that is there, or perhaps it is a management problem; cases need to be closed in 30 days, exploitation cases closed in 60 days unless there is a good reason, not because there is too much work; and the system needs to improve enough so there are no complaints. The litigants are asking for the system to be fixed, they are not asking for money or attorney fees.

Barbara heard the APS Advisory Committee was disbanded, and felt that the group was really positive and working well together. She wonders what the role of the DAIL Advisory Board Sub-Committee will have, and pointed out that there are no public members on this committee. It was noted that the Sub-committee is a public meeting, so anyone may attend.

Due to the pending litigation, Commissioner Wehry was unable to respond to the truth or accuracy of any of the statements or concerns raised at the meeting. Commissioner Wehry looks forward to working with the APS subcommittee to address the issues of abuse and neglect in Vermont.