

DAIL Advisory Board Meeting Minutes

November 12, 2015

Comfort Inn, Berlin, VT

ATTENDEES:

Board Members Linda Berger, Robert Borden, Nancy Breiden, Peter Cobb, James Coutts, Nancy Lang, Nancy Metz, Virginia Milkey, Diane Novak, John Pierce, Steve Pouliot, Beth Stern

Guests: Ethan Latour, Marlys Waller

State Employees: Camille George, DAIL, Joanne Fleurrey, DAIL, Sara Lane, DAIL, Clare McFadden, DAIL, Kirsten Murphy, DDC, Karen Schwartz, DDC, Danielle Fuocu, AHS, Selina Hickman, AHS

Motion to Approve Minutes: 09/08/15 minutes:

Moved: Diane Novak

Seconded: Steve Pouliot

Review and Approval of Meeting Minutes

Stakeholder Input Meetings: There are stakeholder input meetings being planned to get input about what is working and what is important during the challenging times that we have been in. The first meeting will focus on the systems of care for people with developmental disabilities and mental health needs. This meeting is convened by DAIL and the Department of Mental Health in collaboration with Vermont Care Partners on November 18 at the Vermont College for Fine Arts in Montpelier. A second stakeholder meeting will focus on aging and disabilities services and will be convened by DAIL. This meeting is still being planned and a date has not yet been confirmed.

- Developmental Services and Mental Health: Robert Borden will try to be there.
- Aging and Disabilities: details will follow and it is hoped that a few DAIL Advisory Board members will be available to attend.

I. Meet and Greet

Roy Gerstenberger, Developmental Disabilities Services Division (DDSD) Director

Roy introduced himself to the group. He has been on the job for 3 weeks and is still in the orientation process. He has been very impressed with the dedication and competency of people working in the field. He is very impressed with the cohesive, goals and visions within our department. DDSD has been well tended to and he is glad to join and bring it into the future. Although a native of New Hampshire, Roy has worked previously in Vermont, including Brandon Training School, and has vast experience in the field of developmental disabilities in Vermont and New Hampshire. He spoke of the transformation that has occurred in the field of Developmental

Disabilities Services over the years and our commitment to creating a better world for all. Roy feels a sense of urgency to pass along the valuable lessons we have learned to the next generation of people working in this field. Roy wants to pass on principles that stand the test of time; principles and values that keep us going forward and not to return to ways of the past. One of the most important lessons is that we are building whole communities where everyone is included. Everyone has gifts to share and our primary goal is to help everyone to find those gifts and share them. Communities are stronger when everyone is included.

Some of the priorities that Roy envisions for the immediate future include:

1. Outcomes: focus our attention on outcomes that are measurable and that demonstrate our achievements.
2. Person-centered thinking: highlighting the importance of putting people at the center of what we are doing. Person-centered planning is not enough, we have to look at what happens the day after the plan is developed.
3. Maximizing the capacity of people to make decisions about their own lives. Supported Decision Making requires a system-wide attention to how we can think about the capacity of people with disabilities and who are aging to have role in making decisions that impact their lives.

The conversation evolved into a discussion of "congregate settings" and that we need to think about what is important to people as individuals and maximizing individual choice in their setting. Roy feels that it is important not to group people just based on their disability, but on what is important to them in their lives.

When asked what the people supported by DS and their caregivers say the individual needs the most, Roy responded that loneliness and disconnection are two of the greatest challenges. These are things that we have not tended to enough as we design services. Housing is also a major concern.

Camille thanked Clare McFadden, who served as Interim DDS Director for a long period of time while recruitment for the new DDS Director.

II. Department of Labor (DOL) Fair Labor Standards Act - Companionship Rule

Clare McFadden and Sara Lane, DAIL

Clare McFadden from DDS and Sara Lane from the Adult Services Division (ASD) joined the group to provide an update about what we are doing within the programs of DAIL to comply with the DOL Companionship Rule.

While DAIL is working across programs and across the Agency of Human Services, such as with the Children's Personal Care Program, there are commonalities and there are some unique aspects to each program.

In DS, most of the workers will not meet the exemption and will need to be paid overtime and minimum wage. Minimum wage is already being paid due to the collective bargaining agreement with independent direct support workers. Most home providers will be exempt to the rule as they are independent contractors. Through ARIS Solutions, DDS has advised employers (individuals and families) about the importance of managing within their approved budget. However, there will be a variance process for specific purposes, particularly if there is a risk of institutionalization. Some of

the challenges have been that the rule itself is complicated and hard to understand. It involves calculating overtime and determining when overtime is needed. It is also complicated as we try to sort out how to handle situations when the same employer hires the same worker across multiple people and different programs for more than 40 hours and figuring out who pays the overtime. DDS is also working to get clear information out to people who speak different languages, particularly in Chittenden County. They are planning trainings for people in the field about how to support employers. One of the benefits of the rule is that some workers who are generally paid low wages may experience some financial benefits.

Sara Lane sees this as an opportunity to provide more flexibility and choice within Choices for Care (CFC) to manage their own budgets. There are approximately 1,000 people who self-manage or have a surrogate who is managing services. ARIS Solutions is helping to get more data about employees who may be entitled to overtime. One thought is that this may involve employees who are providing both personal care and companionship. Currently, CFC authorizes hours for care; however, DAIL is now working on authorizing a budget, which will provide more flexibility and working with a budgeting tool to make sure they are complying with the rule. Self and/or surrogate managed care may offer an employer the ability to pay their caregiver higher wages and help to retain their caregivers.

When an employer has a provider that would like to take a vacation, overtime may be a large impact on the employer's budget. Since it is difficult and/or impractical to hire multiple employees, an employer will need the same amount of services from possibly one person. Therefore, overtime could be significant and there is the possibility of reduced services or running out of funds.

Choices for Care has already received requests from case managers for a variance to this rule. They are working on a variance process.

A workgroup has been formed for the Attendant Services Program (ASP) and CFC to plan for implementation, training and for ARIS to make some changes to their software. The target implementation date is February 1, 2016. The initial letters gave people instructions on what to do in the meantime.

The question was posed about notifying people of appeal rights if there is essentially a loss of hours. However, when CFC and ASP change to managing care based on budgets rather than hours of service, the model changes. The Advisory Board questioned and expressed some concern about whether there are sufficient funds to cover any overtime required. The point was made that this may be an advocacy point related to the budget for DAIL.

III. Facilitated Communication

Camille George, Deputy Commissioner, DAIL

Camille provided a brief update on Facilitated Communication (FC). The Developmental Services Clinical Services Task Force is co-led by DAIL and the Department of Vermont Health Access (DVHA). This Task Force will be looking at FC and other issues related to clinical services for people with developmental disabilities. This week the Task Force began to take up the topic of FC with a presentation from 2 state experts on FC and a person who uses FC to communicate. The presentation provided an overview of the history of FC, what FC is, the standards applied when using FC and how FC is evaluated to determine its effectiveness. At future meetings, additional

information will be shared and the Task Force will examine some of the research. Camille noted that in Vermont and nationally there are diverse and strong opinions about FC. The available data is dated and we are not aware of any current research that is being done. While these conversations continue with the Task Force, Camille confirmed that DDS is continuing to consider requests for funding through Developmental Services Home and Community Based Services' usual protocol.

IV. State Long Term Care (LTC) Ombudsman Conflict of Interest (COI) Recommendation Conflict of Interest Subcommittee

Diane Novak reported that the subcommittee met by conference call to examine the policies associated with conflict of interest in the ombudsman program. The meeting went forward knowing that the federal regulations are expected to be updated this year. State LTC Ombudsman Jackie Majoros provided updated information to the COI subcommittee. The group recommended that the definition of immediate family be included in the disclosure form; and Jackie agreed with this change. The subcommittee is very comfortable with recommending that the Commissioner sign off on the Conflict of Interest Certification. The next step would be for the full DAIL Advisory Board to vote on the recommendation. Steve Pouliot moved that the DAIL Advisory Board approve the recommendation. Nancy Lang seconded. The motion passed.

V. DD Council

Karen Schwartz will be retiring and stepping down as Executive Director of the Developmental Disabilities Council on November 30, 2015. Members of the Advisory Board wished Karen well. Kirsten Murphy will serve as Interim Director while recruitment for a permanent director proceeds.

VI. Future Agenda Items for the DAIL Advisory Board

- Adequacy of Choices for Care Report
- Creative Workforce Solutions
- SHIP and United Healthcare Termination of their Medicare Advantage Plan (January)
- Home and Community Based Services (HCBS)
- Alignment Assessment Report for Choices for Care (December)
- Nursing Home Rate Setting
- Further discussion about rate setting for HCBS All Payer Waiver and How It Relates to HCBS
- Recent Report About Vermont's High Enrollment in Social Security Disability Income (SSDI)
- SFY 17 Budget and SFY 16 Budget Adjustment Act (on-going as needed)
- Legislation (on-going as needed)

VII. Board Member Updates

DAIL Advisory Board

COVE, in conjunction with their annual meeting, held a forum with gubernatorial candidates at the Eastview Retirement Community. The venue was specifically chosen so that the candidates were surrounded by the people, services, and needs that COVE was trying to highlight. The agenda included several elder issues – transportation, housing, home health. The candidates were asked how they planned to pay for these services. The answers focused mostly on services that were already in place. The focus was to have elders or the aging population looked at in a more positive light and no longer as a separate society. Based on the candidates' reactions and responses, it was clear that more research and education is needed.

The COVE 2014 Annual Report was distributed. Gini will send the link to the recording of the forum to DAIL to distribute.

CVCOA's annual meeting will be taking place next week.

The Commission on Successful Aging is focusing on recognizing and encouraging employers that employ mature workers.

AARP sponsored a forum on livable communities. It was not for a specific age group but to make communities accessible regardless of age and/or disability. They want to create a safe, accessible and inclusive place to live. AARP engaged a broad range of agencies and stakeholders for the forum, including VTrans, people from housing and regional planning commissions

DAIL Updates:

Camille provided a brief update on DAIL Retirements. Six people decided to accept the offer and of them four were willing to and were approved to stay on a bit longer to help ease the transition. DAIL was given approval to fill one of the positions being vacated due to retirement and will be recruiting to fill an Office of Public Guardian Regional Supervisor.

Camille also spoke about some of the work going on within the Agency of Human Services to better serve people who have complex situations and often end up stuck in hospitals or other settings that are not appropriate for the person. DAIL Advisory Board members reflected that inadequate funding, training and support are all likely factors and that perhaps new/different models should be considered, such as some sort of step down option for people coming out of the hospital or out of Corrections.

VII. Global Commitment (GC) Waiver Extension Request 1115

Selina Hickman and Danielle Fuocu, AHS

This waiver falls under Section 11 of the Social Security Act. These waivers are intended to foster innovations such as finding ways to save Medicaid funds and to use those savings in other ways. The waivers are approved for 5 years and extensions can be applied for 3-5 years. Vermont is requesting a 5- year extension to the current waiver. Vermont's Global Commitment for Health (GC Waiver) is a demonstration waiver, which means we are testing something. In Vermont, our demonstration model is of a Public Managed Care Delivery System. As a result, Vermont must adhere to specific Medicaid law and regulations. Under Managed Care, Vermont has greater flexibility in what can be reimbursed and how providers are reimbursed. Vermont does not have to ask for CMS permission for every payment model that is used. Some examples include the Chronic Care Initiative and the Blueprint for Health. Vermont's waiver also allows for expanded Medicaid eligibility and coverage (such as Choices for Care Moderate Needs Group), flexibility in allowable expenditures, and the ability to offer Special Health Needs Populations and Programs (such as developmental services).

The financing of the 1115 waivers require that the waiver at least be budget neutral. The waiver goes back to 2005. Based on our spending prior to that, what was our trend and trajectory of spending? We need to be sure we are not going over that trend of spending if we didn't have a waiver in place. An actuary sets our monthly rate that is established annually and cannot be changed. Budgeting is based around a per member per month rate. Savings, if any, can be reinvested. We had \$13.7 billion

over 11 years as our spending cap. We are currently spending \$1 billion/year so we are way under. Because we do not have enough State General Funds available to match, even if we wanted to go over that cap we could not. Every time you take an action on a waiver you run the risk of not getting what you need if the federal government does not feel you are demonstrating what you said you would.

Vermont's current extension request has no changes to the current waiver.

Vermont is looking at an all payer model in Medicaid as well as Green Mountain Care. As the waiver stands, an all payer model will fit into it as it has flexibility. The financial data is being looked at to be sure there are no missed opportunities.

Motion to adjourn, Jim Coutts moved to adjourn the meeting, Nancy Brieden seconded the motion.

The DAIL Advisory Board meeting was adjourned. After the DAIL Advisory Board meeting was adjourned, one of two required public hearings on the 1115 Waiver extension request was held.