JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES

April 10, 2012
Room 643, Legislative Office Building

The Joint Legislative Oversight Committee on Health and Human Services met on Tuesday, April 10, 2012 at 10:00 A.M. in Room 643 of the Legislative Office Building. Members present were: Senator Louis Pate, Representative Nelson Dollar, and Representative Justin Burr, Co-Chairs; Senators Austin Allran, Doug Berger, Stan Bingham, Harris Blake, Jim Davis, Fletcher Hartsell, Eric Mansfield, Martin Nesbitt, and William Purcell, and Representatives Mark Hollo, Pat Hurley, Bert Jones, Marian McLawhorn, Tom Murry, and Fred Steen. Also present were Senators Andrew Brock and Ralph Hise and Representative Verla Insko.

Lisa Hollowell, Denise Thomas, Donnie Charleston, Karlynn O'Shaughnessy, Shawn Parker, Theresa Matula, Amy Jo Johnson, Jan Paul, Patsy Pierce, Susan Barham, Joyce Jones, Pat Porter, Rennie Hobby, Candace Slate, and Dina Long provided staff support to the meeting. A Visitor Registration Sheet is attached and made a part of the minutes. (See Attachment 1)

Chairman Dollar called the meeting to order and welcomed members and guests. He asked for a motion to approve the minutes from the March 13, 2012 meeting. The motion was made by Senator Bingham, seconded by Representative Murry and the minutes were approved.

Al Delia, Acting Secretary of The Department of Health and Human Services (DHHS) and Tara Larson, chief Clinical Operation Officer from the Division on Medical Assistance (DMA), DHHS provided a response to questions regarding Personal Care Services (PCS) and the 1915(i) Waiver. (See Attachment No. 2) Secretary Delia provided a quick summary for those members not aware of the fact that the Center for Medicaid and Medicare Services (CMS) had granted a plan of approval for an extension of the current PCS from April 30th to December 31, 2012. There are requirements that the State and DHHS must meet certain milestones of progress, outlined in a plan of correction, seeing that services are comparable between In-Home and Adult Care Home providing Personal Care Service. After reviewing the responses to questions the Secretary and Ms. Larson addressed additional questions from the Committee.

Chairman Dollar recognized Bruce Little, Vice-Chair of Operations for the Department of Public Health at the Brody School of Medicine at East Carolina University, who was visiting with four students enrolled in the Master's Program for Public Health.

Secretary Delia was asked when the actuarial of the rate and payment methodology under the 1915(i) option would be available. He replied that the worksheets could be provided today. He cautioned that technical questions regarding the determinations in the actuarial could not be addressed until Mr. Owen from the Budget Office returned from vacation. Chairman Dollar asked if the estimated 4,000 people that would no longer be eligible for PCS services under the 1915(i) option in ACH would also not qualify for those same services outside of the ACH, and if they would receive services regardless of where they are housed. Secretary Delia clarified that the 4,000 number represents all the people, regardless of setting, that would lose PCS because with the implementation of the proposed1915(i) option. Those outside the ACH would not receive services because they are required to have comparable services provided regardless of their setting. These are people that an independent medical assessment has determined do not meet the eligibility threshold for services. Ms. Larson explained the model of the 1915(i) target population on page 3 providing the definition and the eligibility criteria. Chairman Dollar asked if the rate would still be the same. Secretary Delia said the rate would be the same though there is a complication in the way the rate would be billed (an issue raised by the Adult Care industry) – whether by day or in 15 minute increments. He said DHHS was currently looking at the methodology. Chairman Dollar asked how a budget figure can be determined without knowing the rate. The Secretary responded that DHHS has based that estimate on the current rate which is an estimated total of $37M for a full year of service effective July 1, 2012. Because 1915(i) would go into effect halfway through the fiscal year on January 1, 2013, the first year fiscal impact is anticipated to be a little over $15M at the current rate.

Representative Murry asked about the future care of Alzheimer's patients and how they will be provided the same level of care as they are currently receiving. Ms. Larson responded that the Special Care Units which are secure units do not meet the Home and Community Based Service requirements necessary in the implementation of the I option. She said DHHS was looking at a lower level of care and a State Plan Amendment that may be able to address the issue. She added that they were working with CMS and the industry on alternatives realizing it is a much needed service. The most viable option is a level of care that looks like a nursing facility level of care. DHHS is also looking at the requirements from a Federal level against what the reasonable options are at a State level. It may be necessary to have legislation to address the problem.

Secretary Delia was asked if there was a way to make the system more "family friendly" looking at opportunities to compensate families to some degree to help individuals be able to stay at home with their families. He responded that some receive payment under the CAP program. He said there was difficulty in balancing policy with making sure that the individual receives the best most community integrated care.

Chairman Pate asked if a package with the timeline had been submitted to the Legislature. The Secretary said the package had not been delivered yet. A draft proposal will be submitted to CMS by the April 15th timeline on what the 1915(i) will look like. Between the 15th and the 30th DHHS expects to receive feedback from CMS which will be provided to the Legislature and providers to make any additional adjustments. Senator Pate questioned whether or not the Legislature would be able to provide input. Secretary Delia said nothing could be agreed to between DHHS and CMS relating to policy without the Legislature acting upon it. Chairman Dollar was concerned that the Legislature needed ample time to consider all aspects of a proposal being made. He would like the background information that has been shared with CMS thus far in order to start evaluating and to ask questions that need to be asked. Chairman Dollar asked how kitchen facilities in ACH can be available for access, according to the standards of the Home and Community Based Services, by those that by current health standards would not be able to go into those facilities now. The Secretary responded that access was to the use of a toaster, a microwave oven, or perhaps the ability to get snacks. He said he could go into details of what constitutes Home and Community Based Standards and what constitutes cooking facilities. Chairman Dollar asked for the information in writing.

Chairman Dollar asked if the person at the front desk of an Adult Care Home would be able to make a determination on a daily basis as to who could come and who could go. Secretary Delia said the physician working with the family would make the determination which is an ongoing process since a person's ability to come and go may change over time. Chairman Dollar responded that it was disconcerting that the person at the front desk could not make that determination.

Representative Murry pointed out the obvious frustration of the Committee with the CMS Federal regulations. He said the Federal regulators appeared to not understand what it is like to provide care to various patient populations. He asked how the Legislature could help DHHS. The Secretary replied that North Carolina was unique in that most states do not provide the kind of PCS service or the level of care provided in Adult Care Homes that we have. He said that there was no indication that the regulations would change at CMS. He said CMS has been consistent in applying regulations in North Carolina that they have applied to other states and that DHHS was trying to work with and negotiate with CMS and trying to adapt the system to what the Federal government is requiring. The Secretary added that other states have chosen to provide services with state only dollars which does eliminate the Federal government's ability to dictate how the dollars are used. Senator Bingham asked for additional information on which states are providing state dollars for these services and for how long. Secretary Delia said he would also provide an estimate of what the cost would be in all state dollars. If PCS services were provide at the proposed rate that would be $414M in State dollars.

Shawn Parker from Research reviewed draft legislation that would require action by the General Assembly prior to the sale or lease of the property at the Dorothea Dix campus. (See Attachment No. 3) He said the draft was an amendment to Article 7 which would prohibit the conveyance of the real property encompassing Dorothea Dix Hospital campus from being sold, leased, rented, or gifted without the prior approval of the General Assembly. Mr. Parker was told to verify that the current draft language would require a bill to approve and if not clarify that that is the intent. Chairman Burr made the recommendation that the proposed legislation be considered for introduction during the Short Session of the General Assembly. The motion was seconded by Senator Pate and the committee voted in favor to adopt the legislation for introduction for the upcoming Short Session.

Shawn Parker provided opening comments on the Federal Eastern District Court ruling regarding appeal modifications from Piedmont Behavioral Health (PBH) and DHHS, and Ms. Pam Shipman, CEO of PBH provided details and plans of action. Mr. Parker stated that North Carolina operates a program called the Innovations Waiver which is a home and community based waiver that offers Medicaid services to individuals with developmental disabilities who would otherwise qualify for services within an institutional facility thus allowing recipients to remain in their homes instead of being institutionalized. Several Medicaid beneficiaries who are consumers of services under this Waiver brought a lawsuit against PBH and the DHHS Secretary to stop reductions or terminations of these home and community based services based on an individual annual budget, claiming that Federal Medicaid program participation requirements and constitutional due process requirements were not met.

Services under the waiver are authorized for one year as part of an annual plan of care. There was a change in the method used by PBH to assess the needs of program participants (approved by CMS). Based on the new assessment, PBH proposed to make changes in budgets to support care plans that the court found to be an agency action of terminating or reducing benefits. Accordingly, the judge determined that the plaintiffs were entitled to appeal rights as outlined in Medicaid action. The judge then found that the plaintiffs were likely to succeed on the merits of the appeal rights conveyance and issued an injunction that would require the State to restore reduced services on the grounds that PBH and DHHS comply with legal requirements that would give consumers adequate notice of the reductions, and an opportunity for a hearing. A Federal District Court judge certified the lawsuit as class action, which consists of consumers who had services reduced or terminated (about 130 out of 670 had budgets projected to be reduced).

Ms. Shipman explained how PBH started a pilot program (Support Needs Matrix) last July that was the result of three years of research that studied utilization of services against documented needs of individuals in which they found no correlation between the two. She said PBH had worked with a technical advisor for three years reviewing the data, and as the pilot was being developed there was a consumer/family/provider group that met for a year before implementation. Ms. Shipman explained that the purpose of the pilot was to have a methodology for a fair and consistent allocation of resources. The study showed there was a disconnect between the measured intensity of service need and how much money a person receives. She said there needed to be a methodology to see that people were not over served or under served. The Support Needs Matrix is a planning tool based on age, living situation, disabilities, risk, and level of support needed as assessed by the Supports Intensity Scale. She said the budget range a person is assigned is a tool used by the person's Planning Team when the individual plan is developed. The Team determines if the individual's need is consistent with the assigned budget, and if the need exceeds the budget range they can request an Intensive Review which is a category for people whose needs do not fit within the budget range. She added that there were options within the model to meet the needs of individuals.

Ms. Shipman said that on July 1, 2011, 130 people were identified as over-served and 450 underserved. Since then, the 450 people that were identified as "underserved" have had increases to their budget. One of the complications of implementing this model is that the Supports Intensity Scale evaluation, budget assignment, and the annual plan meeting do not all occur at the same time. She explained that the evaluation may be done in January but the budget may not be due until August so an individual's services do not change until August. Under Managed Care regulations, an Action generates Appeals Rights. She said that PBH had taken immediate action to implement and comply with the court's ruling and that this was the third ruling since July 1, 2011. She emphasized the fact that Support Needs Matrix is a pilot and a new program, and these are areas of Medicaid regulations that may not always work in the real world. Chairman Dollar asked if the issue under which the order was granted had been satisfied by the State and if the court had been notified. Ms. Shipman responded positively and said that the assumption was that the court would be satisfied with the action taken.

Dr. Beth Melcher, Assistant Secretary, MH/DD/SAS Development, DHHS provided an update on a provision calling on DHHS to do a Regulatory Functions study and plan. (See Attachment No. 4) She said the first part of the provision asked for a report consisting of a comprehensive inventory on the regulatory functions of each division, and the second part of the provision, based on that inventory, asked for a plan detailing how to efficiently carry out the various regulatory responsibilities of the Department. (See Attachment No. 4) She said the report sent to the Legislature covers the first part of the provision describing the inventory of all the activities the Department has been engaged in. Chairman Dollar remarked that it was time to break the silos down, address consolidation, and to make the regulatory system make sense.

Chairman Dollar gave a brief update on the LME Governance Subcommittee. He reminded members that the subcommittee was appointed by the HHS Oversight Committee and was charged with identifying the barriers to the transition process in mental health from the Local Management Entity (LME) to the Managed Care Organization (MCO). The subcommittee has been looking at issues that are causing barriers to the transition to the MCOs, finding solutions to those issues, and will then make recommendations to the Oversight Committee to be considered for recommendation for action during the Short Session. The final meeting of the subcommittee will be held May 14th. Senator Nesbitt said the recommendations coming from the subcommittee were very important and requested that members of the Oversight Committee be given the recommendations as quickly as possible for review before the next meeting. Chairman Dollar replied that ample time would be allowed for discussion at the May 15th meeting of the Committee.

Steve Jordan, Director of the Division of MH/DD/SAS provided an introduction to *Leading in Transition to Accountable Behavioral and Intellectual and Developmental Disabilities Care*. Presenting the presentation was Dr. Gary Nelson, Associate Director of the Jordan Institute for Families and Jen Medearis Costello, Clinical Instructor. Mr. Jordan stated that several years ago the General Assembly allocated funds to the University of North Carolina for a Leadership Academy for LMEs. The purpose was to identify leaders in the LME environment. With the transformation to MCOs, Dr. Nelson was contacted regarding the change in direction of how to look at leadership in order to keep up with the changing system such as customer service, utilization management, and care coordination. He said that through the process they reviewed what leadership looked like in total, as well as the expectations from the community regarding leadership moving forward with MCOs.

Dr. Nelson said the commitment at the Jordan Institute for Families is to engage communities and families, to bring research and best practice together to support the outcomes they desire for themselves and their families. (See Attachment No. 5) Dr. Nelson explained the five characteristics of the collective impact of achieving outcomes for individuals and families; the objective to contribute to a successful publicly managed system; and he shared things learned through success such as partnerships, trust, honor of self-direction, and a system committed to innovation.

Ms. Costello explained how the Jordan Institute came to understand the system. She said the project goes across a time span of 9 to 12 months, with three stages and has an increasingly larger dialogue starting with the Davidson County community which is within the PBH catchment area. The project then reached across to all the LME/MCOs and then engaged the State entities and public entities in conversation. Ms. Costello explained what had been learned from PBH, and what was learned from the leadership at PBH LME/MCO focus groups. She said the State Assembly for this project would be held on April 30th which would bring together participants to identify outcomes everyone hopes to achieve and an understanding on how to achieve those outcomes. On June 8th there is a Leadership Congress which expands the dialogue across all levels of leadership building a consensus on those visions and outcomes. Ms. Costello added that the General Assembly was invited to the meeting on June 8th at the Rizzo Center in Chapel Hill from 9:00 – 4:00.

Chairman Dollar thanked the Jordan Institute for their help with the transition to MCOs. He said that the General Assembly fully supports the process and recognizes the value and the potential of even greater value moving forward to have an effective and efficient mental health system in North Carolina.

Dr. Laura Gerald, State Health Director, Division of Public Health, DHHS, provided an update to the recent changes to the Minority Health Grant Program. (See Attachment No. 6) She said that North Carolina continues to see the detrimental effects of health disparity and inequities which are a significant contributor to our low overall health ranking. North Carolina ranks 32nd in the nation. There will not be a significant improvement in the overall health outcomes unless the gap in health status is closed for racial and ethnic minorities in vulnerable populations. Dr. Gerald also described the recent events regarding the investigation of the use of state funds. Secretary Delia said two employees had resigned, and that the issues raised as part of the internal audit indicated that processes and procedures were not properly followed. The SBI has been notified of the possibilities of wrong doing. There will be an internal audit of all the grantees and the history of those grantees will be examined.

Dr. Gerald was asked if the grants provided over the last several years had made a difference in the outcomes. She responded that in July of 2010, the program gave a report to the General Assembly which contained an outside review by UNC. The report described that 478,000 people were touched throughout the State through the Community Focused Eliminating Health Disparities Initiative (CFEHDI) grant, through education and outreach. Dr. Gerald was asked to provide a copy of the report to members. Senator Mansfield also requested that the Cape Fear Regional Bureau Report from Cumberland County be sent to members. Chairman Burr asked if any of those employed administering the grants were funded by Federal dollars and if so, he requested the details and their titles. She responded that they were paid with Federal dollars and that she would provide the information.

Karen Tomczak, Director of the Division of Information Resource Management (DIRM) gave the final report of the Continuation Review as put forward in the 2011-2012 Budget. (See Attachment No. 7) Ms. Tomczak provided background information including the mission statement, explained the purpose of the report which covered the operations and maintenance contracts administered by DIRM, the business functions supported by the contracts, the consequences of discontinued funding, and recommendations related to continuation budget funding. She also provided an overview of DIRM which has an operating budget of $52M annually, and said the continuation review focus is on the contractual costs that make up the operating budget. After explaining the four contracts and describing the duties of the ten contractors within DIRM, she offered recommendations. Chairman Dollar questioned the increase in the cost of the contractors which in December of 2009 was $3.4M and as of January 1, 2012 the cost was $12.6M. Ms. Tomczak responded that she would check for discrepancies but that according to the certified budget for this fiscal year of the $52M, the IT Supplemental Contractors was $3.1M, and the IT contracts for vendors for services was $4.2M. She was not sure if project costs or NC FAST were a part of the $12.6M but would follow up. Chairman Dollar expressed concern over the time it is taking to convert long term, multi-year contractors into State positions, and reserving contractors for short term assignments. Ms. Tomczak said that an extension could be based on something being replaced and timelines being changed which would warrant the continuation of those resources for continuity until the new system comes in. She added that a plan of the infrastructure resources to establish State positions was not approved so DIRM is looking internally at positions. She volunteered to look at each of the situations. Chairman Dollar suggested that staff get with her to provide the answers needed. Senator Brock requested that information be provided detailing the different information systems and their ability to report - who has authority over those projects, and other pertinent details.

Berkeley Yorkery from the NC Institute of Medicine is the Project Director for the Task Force on Mental Health, Social and Emotional Needs of Young Children and Their Families. She reported on the issue of young children's mental health. (See Attachment No. 8) Ms. Yorkery provided background information on the Institute of Medicine and explained the charge to the Task Force. She described how the experiences of a young child can impact brain development and social-emotional development. She explained the benefits to young children through positive investments such as programs and services to strengthen the relationships with their caregivers, and she detailed the gaps in the current system. Ms. Yorkery reviewed the preliminary recommendations of the Task Force, and said the final recommendations would be in the Institute of Medicine's report in July.

There being no further business, the meeting adjourned at 3:25 PM.

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Senator Louis Pate, Co-Chair

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Representative Nelson Dollar, Co-Chair

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Representative Justin Burr, Co-Chair

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Rennie Hobby, Committee Clerk