

MENTAL HEALTH/DEVELOPMENTAL DISABILITIES/SUBSTANCE ABUSE  
SERVICES – COMMISSION FOR MH/DD/SA SERVICES WORK GROUP

MINUTES OF THE MEETING

March 6, 2002

The meeting was called to order by Representative Martha Alexander. The members present were Senators William Martin, co-chair, Virginia Foxx and William Purcell and Representatives Alexander, Esposito and Crawford. Staff counsel, Linda Attarian and Gann Watson, Dr. Mary Fraser, Project Manager and committee assistant, Ann Faust, were present. A list of visitors is attachment D.

Representative Alexander reminded everyone that this meeting is a work meeting for the Committee and no formal presentations would be made.

Linda Attarian presented and reviewed three handouts: Issues for Discussion on Possible Reform of the Commission for MH/DD/SAS (Attachment A) and a copy of the roles of boards, commissions and committees prepared in 1984 as part of a study conducted by the North Carolina Center for Public Policy Research setting forth strengths and weaknesses when boards and commissions work well and when they do not. (Attachment B) and Selected General Statutes Pertaining to: Duties and Responsibilities of The Commission for MH/DD/SA Services, and the Department of Health and Human Services and the Secretary of Health and Human Services pertaining to MH/DD/SA Services, and to adoption of rules under Chapter 150B, Administrative Procedures Act, March 7, 2002. (Attachment C)

Representative Alexander said the Committee would consider the following: to determine the role of the Commission in setting policy, how the Commission and Department of DHHS would work together, who would serve on the Commission and other issues pertaining to the Commission. What rules will be made by which body? Senator Foxx referred to the handout Selected General Statutes Pertaining to: Duties and Responsibilities of The Commission for MH/DD/SA Services, and the Department of Health and Human Services and the Secretary of Health and Human Services pertaining to MH/DD/SA Services, and to adoption of rules under Chapter 150B, Administrative Procedures Act, March 7, 2002. (See attachment C) She cited §143B-147 7(b): “All rules hereby adopted shall be consistent with the laws of this State and not inconsistent with the management responsibilities of the Secretary of the Department of Health and Human Services provided by this Chapter and the Executive Organization Act of 1973.” She finds it hard to see how a Commission adopting rules and having the authority given to the Commission is within the provision. Gann Watson referred to page 14, which tells what management functions are, and page 16, which lays out the duties of the Secretary. In Chapter 122C the policy statement says “within available resources.” She said that “Theoretically the Commission could adopt rules which would not be inconsistent with the management responsibilities of the Department, if it kept in mind the overall statutory policy that services will be provided based on this policy, but that there is the limitation of available resources”, which Ms. Watson thinks applies to the Department and to the

Commission. Extensive discussion followed about independent rule-making conflicting with the implementation and management of those rules. Ms. Watson said that the Commission does go before the Rules Review Commission. Dr. Fraser said that different states give rule-making authority to different bodies, and North Carolina gives authority to commissions for policy and rule making.

In response to a question from Representative Alexander regarding the working relationship between the Commission and the Department, Tara Larson, Assistant Director, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, responded that the Commission has two subcommittees one of which does an in-depth study of each issue brought by the Department before the rule comes before the whole Commission.

Senator Foxx raised the point of the Commission's accountability in committing State resources because none of the members is an elected official. Ms. Watson said that fiscal impact is taken into account, and the Commission asks for a fiscal note on each rule change consideration.

Discussion followed on the efficacy of writing into statute a procedure for the Commission and Department to work together for future reference. Presently, cooperation and coordination are implied, which is working fine. Ms. Attarian said that the Secretary could establish an interagency committee representing all divisions within the Department for input and some dispute resolution, particularly when rules made by different entities conflict. This would not replace the Commission. In response to a question from Senator Purcell, Ms. Watson said that two conflicting rules can be adopted, and the Department has to enforce both to the extent possible. Senator Purcell asked if creating a resolution body would be helpful. Ms. Attarian said that only a few inconsistencies had been presented in recent years that would call for resolution. Ms. Larson said that rules within categories are not always consistent. Ms. Watson said that she and Ms. Attarian could develop responses to inconsistencies, many of which do not need statutory action, but clarifying language because at times, statutory language is not clear. Ms. Attarian reminded the Committee that public input was a vital part of the rule making process. Ms. Larson said that some rules simply evolve.

Ms. Attarian noted that it was the role of the Commission to set policy and the role of the Department to enforce policy. She asked how much policy setting authority is it the will of the Committee for the Commission to have. DHHS is getting more rule-making authority. Ms. Watson said that the more specific and particular the statute the stricter the understanding, and that it is important for conflicts to be resolved between the Commission and the Department. Senator Martin sees the need for interagency "conflict resolution" to act where various inconsistencies in rules arise.

Following discussion, Dr. Fraser concluded that the Committee favors the Commission having broad rule making authority. Senator Martin added that the authority should be statutory, and a mechanism for resolving disputes should be put in place. Senator Foxx reminded that no rules could be made without statutory authority and asked

if there was need for any other means of checks and balances. She also reminded that a rule could not be implemented if there was no money available. Representative Insko, Co-Chair of the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services, remarked that funds could be taken from other programs to fund implementation of new rules. Ms. Watson and Ms. Attarian reviewed the process of rules becoming statute: a proposed permanent rule is created by an agency, presented to the Rules Review Commission (RRC) which reviews and approves the rule. Any rule not approved by the RRC cannot become effective, and the effective date of the permanent rule is delayed until at least the 31<sup>st</sup> day of the next regular Session of the General Assembly, and during the first 30 days of the Session, any member of the General Assembly may introduce a bill to disapprove the rule. If the proposed rule affects State funds, the agency must submit a fiscal note to the Office of State Budget and obtain certification that funds are available. The Rules Review Commission cannot accept a proposed permanent rule that affects State funds without certification of available funds from the Budget Office. In addition, the agency must prepare a detailed fiscal statement for proposed permanent rules having “substantial economic impact” (defined to mean an aggregate financial impact on all persons of at least \$5,000,000 in a 12-month period).

Discussion followed concerning the makeup of the Commission, number of members, term limits, authority to appoint members, geographical residence requirements of members, makeup of membership- professionals, consumers, consumer family members, service providers. Ms. Attarian said that the Executive Branch could appoint members to the Commission with expertise and experience that the Department could not afford to hire. The Committee agreed that having consumers on the Commission is important. Staff was asked to provide suggestions, having heard the discussion, as to the makeup of the Commission for the next meeting as well as other matters.

The next meeting of the Committee will be Thursday, April 4, at 1:00 in Room 421.

There being no further business, the meeting was adjourned.

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Representative Martha Alexander, Co-Chair

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Senator William Martin, Co-Chair

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Ann Faust, Committee Assistant