North Carolina General Assembly

Mental Health, Developmental Disabilities and Substance Abuse Services
Legislative Oversight Committee

August 26, 2008
10 a.m.

MINUTES

The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services met Tuesday, August 26, 2008 in Room 643 of the Legislative Office Building. Co-Chairwoman Verla Insko called the meeting to order at 10:09 a.m.

Also in attendance with Co-Chairwoman Insko were Co-Chairman Martin Nesbitt, Senator Austin Allran, Senator Bob Atwater, Senator Jim Forrester, Senator Vernon Malone, Senator William Purcell, Senator Larry Shaw, Representative Jean Farmer Butterfield, Advisory Member Representative William Brinson, Representative Carolyn Justus, and Representative Fred Steen.

Gann Watson, Shawn Parker, Ben Popkin, Andrea Poole, Denise Harb, Susan Barham and Jessica Bennett provided staff support to the meeting. Attached is the Visitor Registration Sheet that is made a part of the minutes. (See Attachment No. 1.)

Co-Chairwoman Insko made opening remarks about the day's meeting and called upon members for any discussion regarding minutes from the committee's April 23 meeting. Hearing no discussion, Representative Carolyn Justus motioned for approval of the minutes. The motion carried unanimously. Representative Insko then recognized Co-Chairman Nesbitt for comments. Hearing none, Co-Chairwoman Insko called on staff to begin presentations.

Staff Andrea Poole from the Fiscal Research Division and Shawn Parker from the Research Division were recognized by the Chair to present a Review of 2008 Legislative Actions. Ms. Poole was recognized first to speak.

Ms. Poole summarized reports to and from the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse. (See Attachment No. 2.) Reports received included monthly reports on community support services, a report on compliance with State and Federal restraint and seclusion requirements, a report on deaths within facilities and a report on implementation of drug reimbursement, dispensing of generic drugs and clinical edits.

Mr. Parker reviewed portions of "Overview of Mental Health, Developmental Disability and Substance Abuse Services-Related Legislation." (See Attachment No. 3.) Legislative actions of note:

- All deaths in state facilities reported: Legislation was ratified during the 2008 session to direct the Secretary of DHHS to report all deaths in state facilities to the local medical examiner. Effective July 28, 2008
- Children with disabilities in residential treatment programs: the State Board of Education and DHHS are now required to determine the agency responsible for providing special education programs. Such determinations or other policy changes will be reported to the Joint Legislative Education Oversight Committee and this Committee. Effective August 4, 2008.
- National Instant Criminal Background Check System Reporting/Restoration: this requires the clerk of superior court to report to the National Instant Criminal Background Check System individuals whom are involuntarily committed for in- or out-patient mental health treatment; is acquitted of a crime by reason of insanity; or is found mentally incompetent to stand criminal trial. Effective December 1, 2008
- The Studies Act of 2008: this authorizes this Committee to study the involuntary commitment statues to determine whether standards are adequate to protect the health and safety of the individual and others.
- Modify Appropriations Act of 2007.

Co-Chairwoman Insko thanked Ms. Poole and Mr. Parker for their reports. She then recognized Ms. Gann Watson and Ms. Denise Harb to discuss Agenda Item Number 3, reports on community support services.

Ms. Harb summarized legislative actions taken to improve and strengthen fiscal oversight for community services. (See Attachment No. 3.)

- Requiring DHHS to revise service definitions and submit for federal approval.
- Requiring DHHS to replace current "blended rate" for support services to a tiered structure recognizing skill, educational and professional levels.
- Allowing the Secretary of DHHS to designate mental health/DD/SA services requiring national accreditation.
- Requiring DHHS to implement a community support provider appeals process for certain temporary process.
- Requiring DHHS to adopt guidelines to local management to ensure qualified providers are used and held accountable.
- Requiring that providers may not bill for more than eight hours of community support per customer per one week.

Chairwoman Insko called on Ms. Watson to discuss changes to the current Medicaid appeals process. Ms. Watson presented a summary of the Medicaid Appeals Process. (See Attachment No. 4.) Ms. Watson commented that a new "user friendly" form is being used by the Office of Administrative Hearings (OAH), and that OAH now has 45 days to schedule an appeal for a recipient. The "spirit" of the changes, Ms. Watson said, is to have hearings that are "fairly" held. The new appeals processes created by the legislature during this past session have a sunset of July 1, 2010.

Dr. William Lawrence, Acting Director of the Division of Medical Assistance, was recognized by the Chairwoman to report on the Division's actions regarding Community Support Services. Dr. Lawrence summarized recent spending on Community Support. (See Attachment No. 5.)

Co-Chairman Nesbitt questioned monthly numbers on Dr. Lancaster's handout, noting that there was a slight increase in claims but that the numbers could change given the increase was merely over a month's time. Discussion ensued about the legislative directive that the maximum hours of Community Support Services per consumer per week be reduced to 8 hours.

Co-Chairwoman Insko then recognized Ms. Poole to discuss the state's psychiatric hospitals. Ms. Poole summarized expansions and reductions in the budget relating to the State Hospitals. (See Attachment No. 6.) Ms. Poole also reviewed legislative and statutory changes. (See Attachment No. 3.) She said that DHHS may transfer patients to the new Central Regional Hospital only after the Secretary of DHHS has determined that there are no finding of noncompliance of conditions required by the Centers for Medicare and Medicaid Services. Also, she noted that DHHS is permitted to operate a temporary 60-bed unit on the campus of Dorothea Dix Hospital and that the budget included one-time funds appropriated for this use.

Co-Chairwoman Insko called for questions from members. Hearing none, she recognized Dr. Mike Lancaster to report on the state's hospitals. Dr. Lancaster talked about Broughton Hospital, Cherry Hospital, and Central Regional Hospital. (See No. Attachment 7.) He stated that the department was trying to recruit nurses and that there were recruiting problems in all of the State's hospitals. Co-Chairman Nesbitt questions conditions cited by Dr. Lancaster said that corrections were being made.

Dr. Lancaster then said that all are responsible for the system, from the top down. He continued that there are immediate oversight issues. Representative Brisson asked who decided to shut down a unit at Cherry Hospital after the death of a patient. Dr. Lancaster answered that it was the hospital's director. Representative Farmer-Butterfield asked where the patients were moved. Dr. Lancaster answered that some were discharged and others were moved to Central Regional and Dorothea Dix hospitals. Discussion continued and Co-Chairwoman Insko said that at a recent Institute of Medicine meeting a discussion ensued about to number of patients in hospitals being treated for substance abuse issues. Senator Purcell asked about nursing rounds in the State hospitals, relating to the death of the patient at Cherry Hospital. Dr. Lancaster answered that there is a director of nursing in State hospitals and said that although recent events, including the death of a patient at Cherry Hospital, did not "paint a picture that is very good," such events do "not paint a picture of our system."

Co-Chairman Nesbitt said that he was concerned about the salary range for hospital directors, saying that there would not be a lot of applicants at the current salary range of $110,000 to direct a hospital that is in trouble. Co-Chairman Nesbitt added that he visited Broughton Hospital and was convinced that the employees cared about the patients.

The committee adjourned for lunch and reconvened at 1:24 p.m.

Co-Chairwoman Insko called on Mr. Parker to report on LME Administration. Mr. Parker reviewed changes that were made this past legislative session. (See Attachment No. 3.)

Ms. Wainwright was recognized to discuss LMEs. She began by discussing "single stream funding." She explained that single stream funding allows each LME to determine how it may best use State dollars; money is given upfront to the LMEs, who subsequently report back on how it money was spent. She noted that there is a push to move LMEs toward single stream funding. She then outlined which LMEs use single stream and which do not. (See Attachment No. 8.) Ms. Wainwright said that in July 2007,

six LMEs were approved to convert to single stream funding. She then reviewed guidelines for approval of single stream funding.

Currently, there were ten LMEs converted to single stream funding by July 1, 2007. Three were converted after July 1, 2008. Two LMEs have applied but are not approved and nine have yet to apply.

Representative Brisson said he was concerned about performance expectations, and asked how well LMEs were performing. Ms. Wainwright said there were 21 performance requirements, and that LMEs were meeting between seven to ten requirements.

Co-Chairwoman Insko asked to know what those 21 requirements were.

Co-Chairman Nesbitt asked whether LMEs were all failing in the same areas or in different areas, adding that he was looking for a common thread. Ms. Wainwright answered that most LMEs were adequate at giving timely treatment. Discharge services after hospitalization is one requirement many LMEs struggle with, she said. Co-Chairman Nesbitt followed up saying that some things may not be the LMEs fault. He added that it is crucial to look at services in rural areas.

Co-Chairwoman Insko then called on Ms. Harb to summarize legislative actions relating to crisis services. Ms. Harb reported on the following incorporated changes. (See Attachment No. 3):

- Of the funds appropriated to DHHS, DMHDDSA, $6,113,947 shall be allocated for walk in crisis and immediate psychiatric aftercare and shall be distributed to the LMEs according to need as determined by the Department to support 30 psychiatrists and related staff.
- That of these funds, $1,550,000 shall be used for telepsychiatry equipment to be owned by LMEs.

Ms. Harb also reviewed local crisis services funding (See Attachment No. 6):

- Mobile units: $4,655,000 recurring; $1,100,000 non-recurring;
- Local psychiatric inpatient capacity: $8,121,644 recurring; $0 non-recurring;
- START crisis model for developmental disabilities: $1,737,250 recurring; $138,993 non-recurring, supporting six teams;
- Respite beds for developmental disabilities: $903,375 recurring; $177,617 non-recurring;
- Walk in crisis and immediate psychiatric aftercare: $4,463,947 recurring; $1,650,000 non-recurring.

Next, Ms. Wainwright then reported on crisis services on behalf of DHHS. (See Attachment No. 9.) She reported that the goal of the crisis system is to provide prompt response to emergency situation and to bring all components of the system together to be effective. She then reviewed new components, listed above, including mobile crisis teams, respite beds, and walk in crisis clinics. Ms. Wainwright then reviewed the following components:

- Mobile crisis teams
- DD START
- Walk in crisis and aftercare
- Community inpatient beds
- Inpatient beds

Co-Chairwoman Insko again called on Ms. Harb to discuss CAP-MR/DD Tiered Waivers. Ms. Harb reviewed Session Law including: a) a directive for DHHS to

implement the tiered CAP waiver program; b: creation of four tiers; c) a requirement for DHHS to review a case by case basis tier funding exceeding $100,000; d) a specification that a portion of funds appropriated by DHHS be used in a varied combination of Medicaid waiver, slots under the North Carolina Piedmont Behavioral Health Care; e) a directive for DHHS to implement a plan to catch up Piedmont Behavioral Health slots to the statewide average. (See Attachment No. 3.)

Next, Ms. Wainwright was recognized by Co-Chairwoman Insko to discuss DHHS actions regarding CAP-MR/DD Tiered Waivers. She reported that two new waiver applications were submitted to CMS on August 1, 2008 with an effective date of November 1. (See Attachment No. 10.)

Common elements of Tiered Waivers include person centered planning, quarterly waiver slots, deadlines for providers, and risk assessment. Priority is given to individuals leaving State developmental centers, people leaving PBH catchment areas who were participating in Innovations, individuals to be served through the Money Follows the Person grant. For persons in waiting lists for services, priority is given using a standardized instrument evaluating acuity of need and time spent.

Ms. Wainwright reviewed waivers, including supports waiver and comprehensive waivers, and reported on new services:

- Long term vocational supports: assisting recipients to maintain a job when they no longer need more intense services;
- Transitional Work Services: similar to group supported employment in making employment opportunities where a group of consumers perform jobs such as maintenance or lawn care.

Next steps, she said, include spending the months of September and October training customers, families, providers and LMEs on changes to waivers. New waivers will be implemented November 1, 2008 pending CMS approval. Working on additional Tier 2 waivers is targeted to begin July 2009.

Ms. Harb was again recognized by Co-Chairwoman Insko to report on MH/DD/SA System Indicators. (See Attachment No. 11.)

Co-Chairwoman Insko moved for discussion among members. Representative Justice asked the committee to focus on an amendment from a prior meeting regarding supervision of involuntarily committed persons. Representative Farmer Butterfield asked about families' abilities to provide services for relatives. Representative Brisson said he was concerned with the quality of services provided. Co-Chairwoman Insko said that she was concerned about services in rural areas. Representative Farmer Butterfield added that a focus is needed for actual providers to determine where gaps are.

There being no further business, the meeting adjourned at 2:48 PM.

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Senator Martin Nesbitt, Co-Chair Representative Verla Insko, Co-Chair

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Jessica Bennett, Acting Committee Assistant