

DAIL Advisory Board Meeting Minutes

December 12, 2019

Sally Fox Conference Center, Waterbury

ATTENDEES

Board Members: Ruby Baker, Kim Fitzgerald, Joseph Greenwald, Jeanne Hutchins, Frances Keeler, Nick McCardle, Delaina Norton, Diane Novak, Steven Pouliot, Christine Scott, Marie Zura

Guests: Sean Londergan, Lynne Cleveland-Vitzthum, Toby Howe, Jill Olson, Susan Aranoff, Becky Lewandowski, Donna Reback, Dena Monahan

State Employees: Monica Hutt, Liz Perreault, Kirsten Murphy, Camille George, Tiffany Smith, Suzanne Leavitt, Mike Smith

Motion to Approve Minutes: November 14, 2019 minutes: Move to Approve: Ruby Baker
Seconded: Marie Zura

Abstained: Nick McCardle and Christine Scott

Minutes are approved as written.

Meet the New Agency of Human Services (AHS) Secretary Mike Smith, AHS Secretary

Mike Smith was recently appointed to lead AHS as Secretary by Governor Phil Scott. Secretary Smith came to introduce himself and meet the DAIL Advisory Board. This is not Secretary Smith's first time as AHS Secretary. He was the agencies Secretary 14 years ago and he feels very fortunate to have the opportunity to be in this role again. He also commented on how much things have changed at the agency since he was secretary.

Secretary Smith recognizes that resources are finite. Whether that resource is natural, time or money, however innovation is not. AHS is facing some challenges in working with finite resources and the agency will have to bet creative to address those challenges. Secretary Smith's approach to his new position is to drive as hard and fast as he can in a way that gets us back to helping people.

His initial focus as Secretary has been on issues that have naturally bubbled up. Secretary Smith has been addressing concerns in the Department of Corrections, Woodside Juvenile Rehabilitation Center and 211's late night emergency phone coverage. However, he looks forward to working with the departments on the variety of priorities facing AHS in order to provide the best services possible to the people of Vermont.

Conversation with the Commissioner
Monica Hutt, DAIL Commissioner

Older Vermonter's Act (OVA):

Commissioner Hutt, Adult Services Director, Megan Tierney-Ward, and the Vermont Unit on Aging Director, Angela Smith-Dieng met with Representative Wood and Representative Noyes about the OVA bill that the legislature is drafting. Part of the conversation included wanting to add language about self-neglect. Currently, Vermont doesn't have anything that effectively addresses this problem. However, this topic deserves a deeper understanding and a clear line defined between behaviors that may be informed risk taking and self-neglect. It is DAIL's preference to have this issue looked at during a summer study before language is added to a bill.

Comments from the department on the draft bill are due Tuesday, December 17. There is some weak language in the current draft of the bill that should be addressed.

VPR/Seven Days Articles that Highlight Residential Care Homes:

The five-segment series on the topic of Residential Care Homes has been relatively balanced and done with good intention. The reporting has raised valid concerns and is a critical discussion to have. In light of the results from the investigative reporting, Andrea Suozzo of Seven Days created an Elder Home Navigator. This is a tool that the public can use to search facilities and see the results from inspections that S&C have conducted. This is another benefit that came from this reporting series.

However, one area that seems to be misinformed is the concept that Survey and Certification (S&C) isn't doing enough when violations are found in facilities and that more fines would solve the problems. S&C investigates complaints and conducts regular surveys of facilities and applies appropriate penalties to violations.

Since May of 2019, S&C has been working on revising the regulations. Through the VPR and Seven Day's reporting, there has been some useful points that will be addressed while revising the regulations. It is important to strengthen the regulations that allow for waivers to Residential Care Homes who want to provide Nursing Home level care to an individual. In the past, Residential Care Homes were given waivers so residents could age in place as their needs changed. However, that practice is being phased out. There is a limit to what a facility can do as the needs of an individual change. An individual's needs can outgrow the services a facility can provide. It is clear that there should be a transitional plan for these cases. Or, facilities should have tiered levels of care available. As the regulations are being rewritten, it would be important for this scenario be captured and addressed.

Training is another area that would benefit the industry to have built into the regulations. Implementation of mandated trainings will need to be creative because it is difficult to have staff away from the facility at a training because it puts a stress on staffing. It is also difficult to ask a staff member to go to trainings and bring that knowledge back to co-workers.

Deputy Commissioner, Camille George's Retirement:

Commissioner Hutt shared that when she was appointed the Commissioner of DAIL, she specifically sought out Camille George to be the Deputy Commissioner. Commissioner Hutt knew that Camille George as Deputy, would bring a different view point and a voice different than that of her own. Commissioner Hutt believed Camille George would bring balance to the Commissioner's office and she was correct. Camille George has been invaluable to DAIL in her role as Deputy Commissioner and all the other roles she has held at DAIL over the past 30 years and will be sorely missed!

Long-Term Care (LTC) Ombudsman Project and Conflict of Interest Study

Sean Londergan, LTC State Ombudsman

Sean Londergan addressed the advisory board outlining the two items he would be discussing:

1. Asking the DAIL Advisory Board to certify that the Ombudsman Project is operating without conflict.
2. Give an update to the Advisory Board about what the role of an ombudsman is.

Conflict of Interest Study:

The DAIL Advisory Board created a subcommittee to conduct the annual review and then report back to the full DAIL Advisory Board. The subcommittee members were: Ruby Baker, Diane Novak and Fran Keeler. The subcommittee reviewed both the State and Federal Ombudsman statutes.

The DAIL subcommittee, which reviewed conflict of interest and the Vermont Long-Term Ombudsman Project, determined that the Project is currently free of conflicts and has procedures in place to ensure that it is able to operate free of conflicts of interest for the next year.

After hearing from the subcommittee, the full DAIL Advisory Board accepted the subcommittee's recommendations that the Ombudsman Project could operate conflict free for the upcoming year.

Fran Keeler moved that the DAIL Advisory Board certify that the Vermont Long-term Ombudsman Project was without conflict of interest and would be able to operate free of conflict of interest was made and approved by the full Board. Marie Zura seconded the motion, the motion was passed. DAIL will issue the certification letter to Sean Londergan for inclusion with the Ombudsman Annual Report that is submitted to the Legislature each year.

Ombudsman Update:

There have been some staffing changes within the Ombudsman Project. Two Ombudsmen got done and the organization were only able to fill one of the positions due to funding constraints. They have

hired a person who will serve in the Grand Isle area. There are 170 facilities across that state with five fulltime Ombudsmen and many volunteers to do the work of the project.

Advisory board members asked when the Ombudsman's office was made aware of the issues at Pillsbury Residential Care Homes. The Ombudsman's office was contacted but the complaints that were made were not initially at a level of concern until sometime later. Complaints were made to the Ombudsman office, Attorney General's office, and S&C. The initial complaints began as residents and their families became concerned that rent checks were not being cashed by the facility. These concerns were looked into but they didn't rise to a high level of concern until more time went on and the checks were still not being cashed and how the facility was paying for necessities without the income from the rent. That is when it became clear of the magnitude of problems the facilities were experiencing and deeper investigations were conducted.

Residential Care Home and Assisted Living Residence Regulations

Donna Reback and Dena Monahan of Flint Springs Associates and Suzanne Leavitt, Division of Licensing and Protection S&C

After DAIL issued a Request for Proposal (RFP) Flint Springs Associates won the contract to help update the Assisted Living Residence Regulations. They conduct research by interviewing stakeholders, providers and individuals to gain an understanding of the gaps that the current regulations do not address. The team also brought Dena Monahan on who is a subject matter expert.

One of the first things Flint Springs did was to move forward gathering initial input from the stakeholders, managers from the facilities and individuals. To do this, five meetings were held around the state. Some themes that emerged from the meetings were: wanting to age in place, Residential Care Home regulations, uniform consumer disclosures from Residential Care Homes, creation of one set of regulations for both Residential and Assisted Living Care Homes with a separate section specifically for Assisted Living Homes.

There are other pieces that need to be addressed in the regulations such as defining what an owner is and adding Commissioner Hearings to review grievances of S&C decisions instead of those grievances going directly to the Human Service Board. There has to be a better description of what a facility would need to have in place in order to receive a variance for providing services for a person needing nursing home level of care when living in an Assisted Living Facility. The new regulations should include facilities being required to provide dementia and Alzheimer's training to all staff. This process will look at all areas that require updates to the regulations.

When the regulations were originally written, they were appropriate and worked. However, needs have changed over the years. It is important to look at what best practice is in order to ensure facilities have the guidance to operate at a high functioning level. It is also important to strike a reasonable balance between regulating and giving facilities the room to do their job.

The next step in this process is to complete a first rough draft to present to the legislature in January. S&C will release the first rough draft to the DAIL Advisory Board at the same time as the legislature. Advisory board members will have an opportunity to give feedback on this first draft.

Once a final set of draft regulations are completed, they will be submitted to the Secretary of State, then to ICAR where public input is given and addressed by DAIL. Once all of these steps are taken and necessary revisions are made based on feedback, the regulations then go to the legislature for final approval.

DAIL Advisory Board Member Perspective

Ruby Baker, DAIL Advisory Board Member

Ruby Baker shared with the advisory board four unique and beautiful stories of her grandparent's journeys through life to death. These observances informed her own wants when it is time for her journey to end and how she would like other's experiences to be.

Ruby watched as each grandparent battled illnesses and made decisions, if they could, on how they would face death. It was watching them that she learned how everybody's needs are different and how they meet death should be a choice that an individual has a right to make with health care professionals and loved ones supporting those choices.

It is these personal experiences and observations that brought Ruby to the work she does today at Community of Vermont Elders (COVE). She is grateful for being in a position where she can help older Vermonters have the power to make their own decisions.

Meeting was adjourned