

DAIL Advisory Board Meeting Minutes
April 13, 2017
Sally Fox Conference Center, Waterbury

ATTENDEES:

Board Members: Linda Berger, Robert Borden, Nancy Breiden, Terry Collins, James Dean, Matthew Fitzgerald, Joseph Greenwald, Jeanne Hutchins, Laura MacDonald, Nick McCardle, Nancy Metz, Virginia Milkey, Diane Novak, Judy Peterson, John Pierce, Steven Pouliot, Martha Richardson, Beth Stern, Lorraine Wargo, Kim Fitzgerald

Guests: Sean Londergan (VLA), Marie Zura (UVS), Marlys Waller, Jacob Speidel (VT Legal Aid)

State Employees: Monica Hutt, Camille George, Liz Perreault, Mary Kate Molhaman, Michael Costa, Clayton Clark

Review and Approval of Meeting Minutes

Matthew Fitzgerald moves to amend page 3, paragraph 2 from “admit” to “not admit”

<u>Motion to Approve Minutes:</u>	3/9/17 minutes:	Approved:	Robert Borden
		Seconded:	?

Robert Borden called the meeting to order at 10:00A.M., guest speaker, Jacob Speidel from Vermont Legal Aid, was then introduced.

Improvident Transfers

Jacob Speidel from Vermont Legal Aid

Jacob Speidel is a staff attorney with Vermont Legal Aid and works with the Elder Law Project in Springfield. He works with people age 60 and over with non-criminal cases. Today his focus was the financial exploitation of elders. Years ago, people would sign their house away thinking they needed to in order to qualify for Medicaid. One of the bigger problems stemming from this was elders would sign their house away to scam artists and would lose their rights to their own home, both losing their investment and a place to live. Reversing that mistake is very difficult. However, the loss of the home is not the most common financial abuse elders face. Many times, their bank accounts are accessed and drawn on without permission.

When these situations occur, Mr. Speidel stated that they have had to litigate under common law because there aren't any statutes addressing this issue. There are no clear standards and most times an old case would be used as a precedent.

Thirty years ago, Maine passed a law called Improvident Transfers of Title Act. The law states that if a senior citizen sells their house for far less than market value or gives it away, and they did not have a lawyer advising them, they could go to court. The burden would then fall on the new owner of the house to show why the transaction was fair and equitable. Maine is the only state to currently have a law like that.

In 2011 Mr. Speidel co-wrote an article suggesting that Vermont pass a similar law to help people who have been exploited, specifically to get their homes back. The drafted legislative proposal that was introduced in Vermont is different from Maine's law. Maine's law is triggered by age, but the proposed Vermont legislation uses the existing definition of "vulnerable adult". By using this definition, Vermont could use existing laws that protect this population using Article 13 in the Criminal Statute and Article 33 in the Relief from Abuse Statute.

The same legislation included a Private Right of Action so that if you have been exploited you will have a right to ask for your money back with damages as well as getting back the attorney's fees. If the exploitation is intentional, the victim could receive up to three times the money back. The common law could have done this but it's so unclear how to sue under common law. The Attorney General's office can sue but then the money goes to the State of Vermont, not the victim. The change in law gives the individual the same right to sue that current law already gives the Attorney General.

The legislation was proposed as House Bill 183. In the Senate, pieces of proposed legislation were attached to legislation related to the Long-Term Care Ombudsman Act. Recently, the Senate Health and Welfare Committee recommended that the full Senate approved the legislation with some changes around the burden to prove the transaction was legitimate and fair in a real-estate transaction. The real estate community is worried about people being able to reverse a transaction after it had been completed and the ramifications of time and money related to that type of reversal. The part of the proposed law that presumed there was exploitation of a vulnerable adult if real estate was sold for under market value or given away without the advice of a lawyer, was removed for now. That part of the proposed law will be revisited this summer and a new proposal will be brought back in the next legislative year. This year the focus will be to put in place the Private Right of Action. The other parts of legislation can come in future legislation.

There are circumstances where property is given to family members and the rights of the vulnerable adult are taken advantage of. The upcoming legislation will address these situations by requiring either each party has representation or at the very least the seller/giver of the property has representation so their rights are protected.

Even with representation, the vulnerable adult can refuse the lawyer's advice and still use the Private Right of Action Act to say they did not understand the legal ramifications of the transaction and sue to reverse the transaction.

The Health and Welfare Committee recommended the Private Right of Action piece of legislation. To have this pass this year, the full Senate will have to have a second reading and then go back to the House of Representatives. Now that the real estate portion of the proposed legislation has been removed, there doesn't seem to be any opposition.

Mr. Speidel will e-mail Camille George the article to have it posted on the DAIL Advisory Board webpage.

Repeal of the Affordable Care Act, the Proposed American Health Care Act and Their Relationship to Governor Scott's Priorities

Mary Kate Molham, Director of Health Reform & Michael Costa, Deputy Commissioner at DVHA

Repeal of the ACA

There is much uncertainty in the current state of the Affordable Care Act (ACA). The current proposal to replace the ACA, American Health Care Act (AHCA), has been pulled so where do we go from here? What the State can do is monitor the situation and be prepared for whatever the federal government decides on. We are communicating with other governors through the National Governor's Association and the Centers for Medicare and Medicaid Services (CMS) to learn more about a three-pronged approach. Approach one was to replace and repeal through budget reconciliation, but it was pulled from the floor with no vote. Approach two is dismantling the ACA through the regulatory process as much as possible. Approach three would include additional policy legislation.

We are looking at the second prong and have a call in to CMS to understand where they are coming from when they speak about flexibility. Vermont has a lot of flexibility with the Global Commitment waiver. We want to clarify what they mean by "flexibility".

Part of the AHCA was the Medicaid block grant for states that was based on a per capita cap, not utilization or how much was spent per person. The impact on Vermont, since we have a waiver, calls into question whether the waiver takes precedence or would we have to follow the new legislation. Depending on how they develop the formula would drive the impact on Vermont: 2016 would be a baseline year to look at Medicaid. At the time, there were many low-cost people on the plan who have subsequently been taken off the plan which has now increased our cost per person on the plan.

A budget is being developed by continuing to work with the numbers that are available. Our focus in Vermont is trying to be prepared for whatever comes down the pike. However, in the meantime, we keep moving forward with relevant, current information.

What are the Governor's health care priorities and what will Vermont continue to do?

We have the All Payer Model, Global Commitment Waiver, and a contract between Medicaid and the Accountable Care Organization (ACO). All of this is to set up the economics. Health Care is catching

up with Human Services in understanding that upstream preventative care really helps with the downstream costs. We have the policy and we have the science. Health Care is now ready to sit down at the table with the Human Service providers. We also have the All Payer Model (APM) and capitated payments and have put in the economic incentive for health care to want to come to the table. Now their financial health is hinged on trying to keep people healthy and not treating people who are sick.

Looking Ahead:

In looking ahead under the new Administration and the future of payment reform and the All Payer Model transition, transformation and turbulence are key:

Transition – be humble, be prepared to tell your story because people can't support what they don't understand be respectful of new ideas.

Transformation – The APM is value based purchasing, paying for outcomes not fee for service. The APM gets Medicaid to pay a different way and brings hospitals to the table in a way they have never been before. The real goal is an integrated care continuum through value based purchasing and looking at what sort of investments are we making toward value based purchasing.

Turbulence – Even through all the changes, the CMS Innovation Center is still being funded and the Federal Government is looking to create more flexibility through the 1115 Waivers and the 1332 Waivers. High quality health care at a more sustainable cost is a nonpartisan issue. We need calm and assertive leadership to get through these times of uncertainty.

The pausing of the Medicaid Pathways was so it could be looked at and evaluated with the goal of bringing health care reform into the human service agency. Momentum is building to move forward. The object is to turn it into a collaborative and working from the agency out then bringing in stakeholders and advocates.

Commissioner Hutt expressed that DAIL was able to operate and plan under the rubric of health care reform using information that had been shared over the years around reform but not necessarily bound to it. We don't have to wait for the big thinking in order to move ahead with the common-sense changes. We can contribute to reform by improving our services now and be looked at as an example by the Health Care Reform Team.

Mr. Costa speaks about Vermont Model of Care and how it is clear and went through a stakeholder process. However, when we say Model of Care, the ACO is taking on risk. The State of Vermont can just ask for what we want. There is a principled way of saying what we want and a prescriptive way of saying how we want it done. It was part of the negotiations in the past and will be again this year.

Ms. Molhman states, to follow up on Commissioner Hutt's comments about moving forward that if you are ready, implement what is happening out in the communities. You can't wait for the State to catch up. Go do what you're doing in the communities and come back and teach us. There could be opportunities for Health Reform to learn from what is already happening.

Robert Borden states that we currently are operating without a "north star". A simplistic model of where are we now, where do we want to go, how do we get there, what resources do we need and how do we know when we get there? That thinking doesn't seem to be operative anymore. We seem to be operating under the chaos theory where eventually the non-random will emerge and guide us.

Ms. Molhman responded that we are trying to develop an integrated care continuum and better linking our upstream services with our downstream - curing, reducing chronic illnesses. Where we are lacking a north star is how to implement. We understand that we have to elevate services, but which ones? It is a massive transition from fee-for-service to value-based and people are just starting to wrap their heads around what that means. What does that mean economically, for care, for patients? It is uncharted waters.

There is a global conversation and acceptance of the social determinacy of health that it all starts with acute care, then long term health conditions. Health, wellbeing, quality of health and quality of life. Access and inclusion that drives health. That is the connection and we will get there, it will just take some time.

We do well with health care coverage, we rank number one in the country with access. What is the problem we are trying to solve? How do we build the common vision and create urgency?

Without a focus on long-term care and only focusing on acute conditions we may miss what will benefit the in the long-term. If we keep addressing acute care with a fee-for-service model, there is tremendous risk. Medicaid is a medical insurance program that innately does not consider preventative care. However, Vermont has been able to include some of that thinking in our coverage.

We do look at the world and the health care that is offered. An example of this is Blueprint for Health. Elizabeth Bradley from Yale, has researched how the world handles health care and unfortunately, we are ranked #24 for life expectancy, which isn't very good, especially for a developed country. Social-medical countries and states statistically have better outcomes.

Conversation with Commissioner Hutt

A formal welcome to Sean Londergan who is new State Long-Term Care Ombudsman. Mr. Londergan works out of the Springfield office; however, starting on May 1st he will be working out of Burlington.

Moderate Needs Workgroup

We have a group of volunteers and have a meeting date scheduled on May 23 from 2 to 3:30. That will be the beginning of the conversation. We have some proposals from some folks who are out in the field implementing Moderate Needs and we will put them out there to see what is working and not working and what goals do we want to set and see what the financial structure is. It can be a reform project because it separates out individuals with specific dollars. We have the flexibility to work with the group since it is not a Medicaid population.

Mental Health Proposed Legislation

There is proposed legislation in the Senate. Commissioner Hutt is specifically using the term mental health because that is how the rest of the world is looking at this. The two bills that have her most concerned are, S.133 and S.61. Commissioner Hutt recognizes that her concerns may not reflect the concerns of all of those in the room.

S. 61 – This bill came out of Senate Judiciary. It has to do with the intersection between people who are incarcerated and need mental health treatment. So, what does this have to do with DAIL?

Because the bill references Act 248 it connects us to S.61. Act 248 is a way of diverting people with intellectual disabilities who have been found incompetent to stand trial and serves as a way to provide services at DAIL. We provide a public safety that requires a significant level of support and it is a level of support that constricts the individual rights of a person in the name of public safety.

S. 61 changed the language from “intellectual disability” to “developmental disability”. This is a very big change in who will be eligible under Act 248 and presents a huge financial risk for DAIL.

Commissioner Hutt asked what the intent was with the change in language and learned that it was a well-intentioned effort to use respectful language. However, developmental disability is much broader than intellectual disability (and both are respectful) and it completely changes who is eligible for the services. Commissioner Hutt is working hard to try to reverse this. We need to have the conversation legislators about the change and the implications without it just going through without that awareness of the initial intent.

Ombudsman Bill

The Senate included the improvident transfer language onto our Ombudsman bill. It was the only legislation we advanced which was very important because of the new federal ombudsman regulations.

S.133

Mental Health Bill S.133 is 17 pages filled with many different concepts all merged into one bill. The Legislature is trying to solve 2 big problems with one bill. The legislature is trying address the issue of people being stuck in emergency rooms or receiving the wrong level of care and not being able to move easily through the system to get to the proper care. The other issue they are trying to solve is trying to speak to stabilizing and supporting community providers financially.

S.133 also included a focus on older Vermonters. The bill originally spoke to a desire to focus on the geriatric psychiatric forensic population. In Vermont, we use the term “forensic” to delineate individuals who are incarcerated. In mixing the idea of a forensic population and geriatric psychiatric population, it muddies the conversations about appropriate interventions. It is clear that there is a population of older individuals in corrections that requires appropriate care and a population of older Vermonters with psychiatric issues and complex care needs that need supports whether that be in nursing facilities or in community.

There is a real unmet need of psychiatric care to the homebound and isolated, as well. Out of 182 people with a diagnosis of depression or anxiety only 25% were receiving treatment because of lack of access.

Commissioner Hutt testified before the House Health Care Committee because they moved Mental Health into Health Care. This committee change is difficult because it moves mental health out of human services. Commissioner Hutt testified on S.133 and DAIL wasn't even originally part of this conversation.

SFY 18 Budget

One of the things that the House part of the budget bill did was to identify dollars from the Governor's budget to put in a reserve pending some huge financial changes from the Federal government. This was done so we don't have to repeal certain federally funded programs that the state doesn't want to lose. For example, one of the federal proposals is to eliminate the Senior Community Service Employment Program. The legislature is leaving in the first week of May in anticipation of having to come back in October.

The House put forward a budget bill to the Senate. The House version of the bill, in addition of allocating money to case load increases, added money in Choices for Care and is now in the Senate. The House balanced the increases with reductions to grants. There was a suggestion of reduction in AHS programs and structure. It is not clear what the intent is there, but that was the suggestion. Now the Senate has to move forward with this.

Older Americans Month

Older American Act Month is May. Share ideas for themes or ways to celebrate and there will be media coverage.

Gray is the New Green empowering older workers. There is a conference in Concord New Hampshire. Let's use our older Vermonters in the workforce instead of bemoaning the loss of younger workers.

Earned Sick Leave

The sick leave bill will affect us budgetarily. We will have to figure out a budget plan that will put money in so we don't have to take away from services. The Family Leave bill is another thing that can financially affect us. We need to look at the possible impact.

Adult Protective Services

Clayton Clark, State of Vermont Division of Licensing and Protection

There has been an established narrative that we are going to move away from: Over the past three years we have had 11 investigators leave and we have averaged 1 investigator per year. Currently, the organization has been stable. The way we lead is more from the front end. We tried to gather information from the employees and spent time with each investigator to help improve the process.

What we are seeing now is better intake because staff are able to spend more time on intake. Then the information goes to the screeners and they further develop the information. We are making better screening decisions and fewer investigations are being asked for appeals.

Three years ago, there were on average 30 open investigations per investigator. Now, the average is down to 19. The reason for the drop is because the staff have been staying onboard and there has been less of a turnover. And, experienced staff are more efficient. Previously, 37% of victims would decline to participate in the investigation, we are now down to about 10%.

Since the lawsuit, a required subcommittee was formed and tasked with reviewing our files that brought to our attention where we could do better. In 2013 we missed all but 1 benchmark. After reviewing APS, by 2015 we hit our benchmarks. We continue to do file reviews to keep the process clean. We made the standing subcommittee as part of the board so we can continue to do the reviews and keep us accountable.

COVE

Virginia Milkey and Nancy Metz

COVE's mission is to promote and protect a higher quality of life for older Vermonters through education and advocacy. COVE sponsors a program (VT Senior Medicare Patrol) that educates older Vermonters, their families and others about Medicare fraud/errors/waste, and educates about a range of scams/fraud and related issues such as elder abuse and drug diversion. COVE's VT SMP Savvy Seniors use humorous dramatic presentations to illustrate those topics. More than 32 skits have been developed to date and each performance is followed by a discussion with the audience.

In order to deepen and expand the work of VT SMP, COVE applied for a VOCA grant through the VT Center for Crime Victims Services and is now developing "Building Bridges to Services for Elders." The goals of this program are both: 1) to further decrease the number of older Vermonters who become victims of crime, especially through financial exploitation, fraud and scams, and 2) to

connect more elder crime victims to appropriate existing and newly-expanding services that will result from other VOCA grants. The Savvy Seniors will be a part of the education and training provided through Building Bridges.

Members of the Savvy Seniors explained their program and performed several skits, effectively showing how older Vermonters sometimes are brought in by scammers due to loneliness and naivety, but also how to turn the “script” around in order to expose the scam for what it is and how to avoid the trap. The group goes to senior housing and senior centers around the state.

This SMP Savvy Seniors group is part of Lyric Theater and performs at the Flynn Theater in Burlington. They perform two Broadway plays per year. This winter they will perform *A Christmas Story* and next spring they will be performing *Dirty Rotten Scoundrels*.

Tuesday is COVE day at the State House.

Meeting was adjourned