DAIL Advisory Board Meeting Minutes
December 8, 2016
Sally Fox Conference Center, Waterbury

ATTENDEES:

Board Members: Robert Borden, Nancy Breiden, Terry Collins, James Dean, Kim Fitzgerald, Matthew Fitzgerald, Mary Fredette, Joseph Greenwald, Jeanne Hutchins, Nancy Lang, Laura MacDonald, Nancy Metz, Gini Milkey, Diane Novak, Judy Peterson, John Pierce, Steven Pouliot, Martha Richardson, Christine Scott, Lorraine Wargo

Guests: Michelle Carter, Kirsten Murphy, Jill Olson, Marlys Waller

State Employees: Clayton Clark, Joanne Fleurrey, Camille George, Monica Hutt, Megan Tierney-Ward

Review and Approval of Meeting Minutes

Motion to Approve Minutes: 11/20/16 minutes: Approved: Steve Pouliot
Seconded: Jeanne Hutchins

I. **DAIL Scorecards**
Clayton Clark, Director of the Division of Licensing and Protection and Megan Tierney-Ward, Director of Adult Services Division

The Division of Licensing and Protection (DLP) has not used Results Based Accountability (RBA) as much as other divisions of DAIL, due to an already long list of legislative and federally mandated reporting. When the Legislature adopted the Act 186 Indicators, DLP was required to use RBA as there were the indicators in Act 186 that were relevant to DLP. One population indicator shows the estimated rate of abuse, neglect and exploitation of vulnerable adults. This indicator is population vs. performance. The report rates are consistent, but the goal is to improve the rate. The challenge is having fewer reports made and less substantiated cases, but that does not always mean that abuse is not happening. Because each state has its own definition of what a vulnerable adult is, there is no way to compare Vermont to other states. There is work being done to have each state use the National Adult Maltreatment Reporting System (NAMRS) which would use consistent reporting standards. The reporting to the Adult Protective Services Subcommittee is much more extensive than this Act 186 indicator. It consists of file reviews and more detailed information from the reports received.

Percentage of APS Investigations Completed Within 90 Days of Assignment: Because 13% of all APS cases are joint cases with other authorities – law enforcement, state prosecutors, service providers, and financial institutions – the 90-day window sometimes needs be extended. The statute requires APS to provide the

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alleged perpetrator a report within 90-days. But, if another agency is still working a case, the case needs to remain open. Law enforcement would not want the alleged perpetrator to receive a report if they are still investigating. When this indicator was put into place the case load was at 35 and now it is down to 19. There are many factors behind this improvement, but staffing and having good practices in place are the most prominent.

Number of APS Recommended Substantiations Where the Alleged Victim is a Resident of a Licensed Facility: APS investigates allegation of the abuse, neglect or exploitation of vulnerable adults, regardless of their location in the state. The measure shows the work performed by APS at facilities licensed by DLP. This measurement is provided because concerns were raised by the advocacy community that APS is not active at licensed facilities. These reports had been reported incorrectly in the past. They were reported to the Survey and Certification (S&C) unit of DLP and not APS. S&C should only receive reports against a facility, not a resident of the facility. This reporting change – reports going to APS – will improve going forward.

Number of Coordinated Treatment Plans Written by APS Investigators: During an APS investigation, the investigator will determine if the alleged victim could benefit from additional services or protections. If so, the investigator will create a written coordinated treatment plan. The higher the number of written treatment plans, the higher the number of vulnerable adults receiving referrals for beneficial services. In the past, these reports were only written on cases that were substantiated. Now a plan is written on all reports received and not always just on what abuse was reported, because during an investigation, other issues may come up that need to be addressed.

Number of Vermont Nursing Homes with a DLP Survey Finding of F or Higher: These surveys are conducted by the Survey and Certification (S&C) unit of DLP. Having this report done by quarter is not effective, as nursing homes are surveyed annually. This indicator was developed to find the "health" of a nursing homes. S&C surveys Vermont nursing homes on behalf of the Centers for Medicare and Medicaid Services (CMS). The core licensing requirements are established by Medicare. Surveys are conducted annually or when there have been significant complaints, including self-report forms from facilities. When surveyors cite a deficiency at a nursing home, the deficiency is given a rating from A through L, based on the scope and severity. Although all deficiencies are taken seriously and must be corrected, deficiencies rated F or higher indicate either actual harm to resident(s) has occurred or the deficiency is widespread at the facility. The higher the number of facilities with F rating or higher, the higher the number of facilities that have been found to provide substandard quality of care. The indicator does not report percentage, it reports all cases.

Percentage of DLP "Complaint" Surveys (Federal and State) Completed Within Regulatory Timelines. This indicator will always be 100% due to S&C's reporting structure. They are required to survey annually, so the surveys are always completed within the regulatory timelines. If there is a report of food quality, a surveyor is not sent to the facility. This complaint would be looked at when their yearly survey is due.

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Adult Services Division:

The Adult Services Division (ASD) strives to utilize RBA framework throughout the work that they do. As of 2015, all Medicaid Services, including Choices for Care (CFC), are managed through the State Global Commitment to Health 1115 Waiver and the accompanying Comprehensive Quality Strategy (CQS). Additionally, all state contracts and grants now require RBA performance measures and ASD is participating in a pilot to improve this work.

You can find real data on their new website that has a link to their scorecard. The link to the new site is: http://asd.vermont.gov/

The data had not been current due to a vacancy that has recently been filled. Now ASD has two scorecard users, one for ASD and one for the State Unit on Aging, that is housed within ASD. The focus is on programs that are required measurement by legislature, high budget programs that data will be used during Budget Testimony, grants and contracts and areas that need improvement. The areas being refined to focus on are:

- Contracts and Grants Measurement
- Choices for Care (CFC) Program (high budget and performance measures)
- Choices for Care – Moderate Needs
- Money Follows the Person Project
- Traumatic Brain Injury (TBI) Program
- Area Agency on Aging Home Delivered Meals
- Substance Abuse and Misuse in Older Vermonters

Contract and Grants Measurement: This population Act 186 indicator is to show that Vermont has an open, effective and inclusive government. ASD currently manages 12 contracts and grants. To assure access to services and support high quality performance, our contracts and grants must be accurate, be processed in a timely manner and include RBA performance measures. ASD is participating in a pilot to test a new document, Attachment A, which outlines work expectations in a consistent RBA format and outline the actions that will be measured.

Choices for Care (CFC) High/Highest Needs Groups: CFC offers long-term services and supports to adult Vermonters who need nursing home level of care and who also need Medicaid to help pay for services. If found eligible, they have the right to choose where they want to receive their services. Population Indicator – Vermont elder's and people with disabilities and mental conditions live with dignity and independence in the setting they prefer.

Clinical eligibility is targeted to be determined within 30 days. Timely eligibility determinations are critical because services generally do not begin and cannot be paid for until a person is found both clinically and financially eligible. ASD manages the clinical eligibility portion of the application process which requires by regulation that a determination be made within 30 days of the date of application. Things that can affect the 30-day timeline are:

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- Staffing
- Timeframe for receiving the application from the Department for Children and Families (DCF) – DCF determines the financial eligibility
- Complications on reaching the applicant to schedule an assessment
- Timeframe to receive verification of clinical information from healthcare professionals
- Current workload of ASD staff

In the next year, ASD will be moving towards National Core Indicators (NCI), so there will be a slight delay until we are fully on board with NCI. When we are, we will be moving towards more home and community-based services (HCBS) and person centered planning. NCI Indicators measure choice and control in planning for services and satisfaction in service delivery.

Choices for Care Moderate Needs Group: Again, Act 186 Indicators will measure that Vermont elders and people with disabilities and mental conditions live with dignity and independence in the setting they prefer. For CFC Moderate Needs Group services, ASD will track similar data to CFC High/Highest, but the data is harder to capture. The Moderate Needs Group is labeled as a demonstration project even though it has been around since 2005 when existing State General Funds for Homemaker and Adult day services were matched with federal dollars. This more than doubled the available funds and expanded the state's ability to pay for services, there are still provider-based caps on available funds in addition to very broad eligibility criteria. Those two factors will continue to lead to wait lists at the provider level across the state. Case management hours have increased due to a higher number of variance requests, the flex funds option and serving more people with complex needs.

Money Follows the Person: Money Follows the Person (MFP) is a federal grant that helps people transition from a nursing facility to community based settings. The funds are used to identify and eliminate barriers to the transition. Using these indicators to be sure that people are utilizing the services to help them stay at home. Some of our changes have been to track that these funds are accessed. This federal grant is expected to end in 2019, so we are trying to find what services in MFP that will need to continue as part of the sustainability plan.

Traumatic Brain Injury Program: Traumatic Brain Injury (TBI) services were designed to help people rehabilitate from their brain injury, regain life skills and return to work, while preventing unnecessary out-of-state placements. Funding is limited by the budget appropriated in the Global Commitment 115 Waiver. The goal is to improve the number of people who reach their rehabilitation goals and appropriately identifying people with long-term needs that can be met by transitioning to the CFC program.

Older American's Act Nutrition Services: Food security is an important focus of the Older American's Act (OAA). In Vermont, this includes Home Delivered Meals (aka Meals on Wheels) which is funded by the Administration on Community Living (ACL) via DAIL and managed by Vermont's five Area Agencies on Aging (AAA's). To create consistent RBA performance management across the state, the AAA's worked together to identify two core measures for home delivered meals.

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- Are people getting enough to eat?
- Have these meals improved health and helped manage their medical conditions?

One focus of the ACL is serving more people with higher functional needs. Since Vermont's data shows a relatively low number of people with higher functional needs, ASD is interested in ways to increase this number including improved data collection and integrity.

Substance Abuse and Misuse in Older Vermonters Project: Vermont has a high incidence of alcohol use and abuse among older Vermonters. In 2015, the Agency of Human Services implemented the Substance Abuse Treatment Coordination Initiative. DAIL shares a position with the Department of Health, with the goal of managing the screening policy, providing training, education and outreach to state staff and providers. To track this information the data source is the Behavioral Risk Factor Surveillance System (BFRSS) and it is an annual indicator. Focus groups are being put in place now on how to target and track opiate use or misuse in the future.

II. Long-Term Care Ombudsman Program and Conflict of Interest

Michelle Carter, Vermont Legal Aid

Michelle Carter is one of Vermont's Long-Term Care (LTC) Ombudsmen for Vermont Legal Aid. Under the state statute for the LTC Ombudsman Program, there is a real concern to make sure that conflict-of-interest (COI) is addressed well. The statute requires that the Commissioner of DAIL convene a committee to review COI on a yearly basis "for the purpose of ensuring that the State Ombudsman is able to carry out all prescribed duties without a conflict of interest." The Commissioner solicits from the committee its assessment of the State Ombudsman's capacity to perform its duties without conflict of interest and that assessment becomes an appendix to the annual report that is submitted by the State Ombudsman to the General Assembly and Governor (33 V.S.A. Title 33 Chapter 75 §7509(b)." The DAIL Advisory Board serves as that committee.

The Vermont Long Term Care Ombudsman Program advocates for people that live in nursing homes, residential facilities or receive home-based services through CFC. DAIL contracts with Vermont Legal Aid (VLA) because given the current structure of AHS and DAIL, it would be a conflict for the Ombudsman Program to be operated out of DAIL. In regards to COI, the program has a written draft policy and procedures that address, among other things, COI. The policies and procedures are currently being reviewed and revised to come into compliance with new federal regulations State Long Term Care Ombudsman Programs. There are two types of COI that is looked at – organizational COI and individual COI. Individual COI looks to be sure that VLA Board members, LTC Ombudsmen, the Director, volunteers and other staff are free from COI. This is done by using forms that are completed at time of hire, part of which is on the employment application. If COI is found, there must be a plan to address it and remedy or remove the conflict. This form is revisited on an annual basis. Organizational COI looks at whether there are conflicts within the organization that is operating the Ombudsman Program. For example, if VLA is considering taking on any new programs or grants, the Executive Director must work with the LTC Ombudsman to be sure there is not COI with existing programs.

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Last year, the DAIL Advisory Board (as the committee established by the Department to review COI in the Ombudsman Program) decided to convene a subcommittee to work with State Long Term Care Ombudsman Jackie Majoros (now retired, position is still under recruitment) to review COI in preparation for the new Federal regulations. The subcommittee made a few recommendations that were implemented and recommended to the full committee. Due to the vacancy of VLA's Statewide LTC Ombudsman, the Advisory Board has made the motion to accept this year's report by Michelle Carter that conflict of interest is being appropriately addressed and to provide that assessment as an addendum to this year's Ombudsman Report, but to include the recommendation that a subcommittee be convened next year to meet with the new State Long Term Care Ombudsman and once the policies and procedures have been finalized to review conflict of interest in more detail for next year's report.

This motion was made first by Lorraine Wargo and seconded by Diane Novak. Nancy Breiden abstained. The motion was passed.

III. DAIL's Role in the Accountable Care Organization (ACO) World
DAIL Advisory Board

Nancy Breiden thought that it would be best that this topic was on our radar. This is an important discussion because we all have different viewpoints and different pieces of information depending on where we sit. OneCare – part of UVM, a network of connected, private providers and Dartmouth Hitchcock –are negotiating the ACO contract with the State. At this time, we do not have all the details and won't until the contract negotiations have been finalized. The ACO can go forward without any support of the All-Payer Model (APM).

What is DAIL's role? We have had limited service staff that did sit at all the right tables during this discussion, but that position's time has ended. DAIL programs are not currently "traditional" fee-for-service, so it is hard when people ask for information based on that. Developmental Services (DS) and CFC are not fee-for-services, they are budgeted amounts based on individual need. Until now, most of our focus has been on the Medicaid Pathway. One request that came from the CFC Medicaid Pathway Work Group is for Selina Hickman (AHS) to attend a future meeting to explain how the Medicaid Pathway, APM and ACO relate or not. Selina is currently putting together a presentation to address this topic and will be invited to share this with the DAIL Advisory Board.

Initial Thoughts and Questions:

- What we do know about ACO's?
- Where is the conversation at? At the agency or department level?
- What is the role of DAIL if the funding goes through an ACO and not DAIL?
- Who are the people that are part of the ACO?
- If your primary care physician is a member, are you attributed to the ACO?
- Physicians receive a certain amount of money to treat a patient. If that person's care doesn't require all that funding, the ACO can reinvest it into something else. If it does, the ACO could be at risk.

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- What outcomes will be measured?
- How many providers are in?
- How accountable will the providers need to be for the health of their patients?
- Is there a way to improve on integrating services?
- Need to be sure that all populations are included in this discussion.
- Encourage DAIL to not just "keep up" but to stay ahead of this topic.
- AHS is still in charge of the quality of the program.
- Hospitals are very motivated to work with community partners to keep people out of the hospital.
- It will be important to have state oversight on ACO's so that measures are met and quality is given.

Jill Olson, from the VNAs of Vermont, shared that at this moment in time, ACO is better integration of care and how providers are paid. Starting with hospitals and providers. CFC and DS will not have an immediate change on how the money flows for many years. In 3 years, under the model, there must be a plan on how to work with providers that are not in an ACO. At this point in time, we are not behind the 8-ball, we have plenty of time to answer these questions and more.

The ACO has a consumer advisory committee and they are looking for members. It was suggested that perhaps a member of the DAIL Advisory Board apply for this committee; and Nancy Metz expressed an interest in considering this. Nursing Homes have been asked by CMS to partner with hospitals to really dissect certain topics, like infection. The idea is to improve health care and Performance Improvement Plans (PIP) to reassure that this will work and that someone is looking out for consumers because it is scary to not know what is going on, what it means and how it will affect us.

IV. Conversation with the Commissioner

Monica Caserta Hutt, Commissioner

<u>ABLE Act</u>

The ABLE (Achieving Better Life Experience) Act is an opportunity for a savings account for people with disabilities that does not impact their benefits or services. This stems from an Act of Congress that took a decade to pass through. Each state then has the responsibility of enacting a state specific savings program. The wording that you must live in the state where the account lives was removed from the original act. Since Vermont does not have the population size for this type of an account to exist without large fees involved Vermont chose to join Ohio's ABLE Accounts with a Vermont brand.

ABLE accounts come with a lot of flexibility and can be used for a wide variety of things. It has a higher cap and will grow tax free and will not count against benefits – but the funds that go into the account are not tax deferred. Instead of having to always spend down the former cap of $2,000, you can transfer funds to an ABLE account. Families with a child or any individual adult with a disability can open an ABLE account. Anyone can contribute to their accounts, once they have been opened. The IRS wrote several rules for these accounts, but if you can make a case that the expenditure was needed for a disability, you can access these funds.

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These accounts have a $14,000/year contribution cap and $100,000 total cap. These are not to replace trusts that families may be setting up for their children or for an inheritance. Medicaid has the right to take a portion of the funds back if that person dies. This is called a claw-back account. Advocates are wary that these accounts do not replace public benefits, since the benefits are already so low. They are also working to be sure that these funds do not affect the 3 Squares VT (formerly referred to as food stamp) benefit.

Representatives from Ohio are coming to Vermont in January. Ohio staff have been trained on how best to communicate and work with a large range of the population. We can anticipate to have a press-release in late January. There will be more information available about the federal and state tax reporting requirements once the meeting with the Ohio representatives has taken place.

Many thanks to Kirsten Murphy with the DD Council for her contribution to this discussion. This topic will be back on the agenda in either February or March.

Transition of State Government

It has been announced that Al Gobeille has been selected as the new Secretary of the Agency of Human Services. He serves on the Green Mountain Care Board, so he has been embedded in health care reform. Mr. Gobeille comes into human services by choice, he owns several local businesses in the Burlington area. The challenge is to know where to focus any ongoing work and priorities, just make sure the department is ready for any change in leadership. All DAIL's division directors are classified employees, so they cannot be replaced in the transition. The Department of Human Resources is trying to help those exempt employees that have return rights. There is not yet a decision on who will be appointed to lead DAIL. Commissioner Hutt will keep the Advisory Board updated.

Department of Labor Overtime Rule Update

There are two sets of Department of Labor Overtime (DOL OT) Rules. One for independent support workers. This was the overtime rule for employers that have a budget and hire their own support workers. DAIL established a way to ask for more hours during a specific time and under specific circumstances. Employers apply for additional time to budget when it didn't make sense to change services. In DS, emergency overtime hours are being tracked.

The second DOL OT rule was scheduled to go into effect on December 1, 2016 for staff at agencies/organizations. It lowered the level of salary that would make a staff eligible for OT. This was anticipated to have a tremendous impact on Designated Agencies (DAs) and Specialized Services Agencies (SSAs) – close to $5M. For Home Health and other DAIL partners, it was not as much. A lot of work went into getting ready for this change, then the rule was stayed. The State of Texas said that this rule was unconstitutional. The Trump Administration has been very clear that they do not support this rule. So, it may not go into effect after all. However, some agencies in Vermont already made changes to start complying with the rule and if it is not addressed, there will be an impact on our provider system.

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Site Visit from Administration for Community Living (ACL)

Administration for Community Living (ACL) is the arm of the federal government the directly oversees the work around the OAA, all the work of the AAA's – nutrition, legal services for elders, case management, etc.… Vermont has a new representative from ACL named Rhonda Schwartz. She came to visit a few weeks ago, and it was and is a great opportunity for communication. A virtual site visit was conducted to be sure that we are doing all that we need to do and to review our progress in achieving the goals in the State Plan on Aging. Our work at DAIL is focused on outcomes and the goals and strategies on how to get there. Increased funding was authorized in Reauthorization of the OAA, but the actual appropriation of funds happens through the federal budgeting process and so far, no increased funds have been appropriated. Vermont has not really done a lot of triaging of services, but this is a direction where we can see improvement. For example, anyone that asks for home delivered meals, receives them. We are not prioritizing this need and this may need to change going forward.

US Department of Agriculture (USDA) – Rural Development

This department runs loan and grant programs for brick and mortar projects. Nursing homes and other facilities have been requesting these loans, and people have been requesting grants/loans to make their homes more accessible. USDA Rural Development could not understand why they were always running out of money and wanted to meet with us to find out why. Do our demographics really support this? Yes, it definitely does as we are the oldest state in the country. It was a great opportunity to speak with these representatives and we were very excited to learn that about other programs that they have for housing that are not being touched. They also feel that the new Administration will not derail this program.

Frameworks Meeting – Tri-State Learning Collaborative

FrameWorks Institute conducted studies in partnership with a collaboration of eight leading aging organizations, with funding from a group of national aging organizations. The studies were designed to explore how the public views older adults in this country and how media and expert discourse help shape these understandings. The research compares what experts say about older adults to what the public perceives to be true. This process has found profound differences, with deep implications for the way we need to communicate about aging services and policies.

The UVM Center on Aging is bringing the Frameworks Institute to Vermont at some workshops this spring. Our hope is to ask them to stay an additional day to present to a group of our stakeholders. It is not connected just to aging, because people with disabilities are aging and sometimes as we age we develop certain disabilities – visual, physical and cognitive.

Innovation Meeting to Explore Support Strategies in Developmental Services

The Executive Directors for Vermont Designated Agencies are envisioning the future. Beyond regulations, rules and process, and into innovation of the future. There is so much work around new innovations going on that is not currently being shared with everyone. They are working to put together an "Innovation Day" to highlight Best Practices, new ideas, new strategies and to see what we as a state can promulgate and help

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push along, especially around technology. There is a window to the world that we can offer and make available.

V. Perspective from a DAIL Advisory Board Member
Nancy Brieden, Disability Law Project

Nancy is the Director for the Disability Law Project of Vermont Legal Aid. Jackie Majoros, former LTC Ombudsman of Vermont Legal Aid, came to Nancy to ask her to apply to the Board because, at the time, there was not a lot of representation for people with intellectual and developmental disabilities. Jackie is nothing if not tenacious, so Nancy sent in her application in 2011.

Nancy's work with the Disability Law Project is mainly around representing people with intellectual and/or developmental disabilities in lawsuit cases. DAIL has the obligation to provide services within a limited amount of funds. Nancy brings to DAIL information about the people in the community with disabilities. Part of her job is to advocate for more and better services.

Nancy, also needs to be there to support DAIL when they are looking to expand services and other difficult decisions that DAIL must make based on limitation of funding. She also advocates where DAIL cannot, due to our limitations to do so. Nancy represents people when they appeal decisions made around their services – either a denial or reduction of services. Another part of what Nancy does is to research the laws and explain these laws to people that DAIL has made the right decision. She also can help if there hasn't been enough information provided to DAIL to make their decision. There is not a lot of conflict in these cases. There is conflict when it comes to pushing the limits of the laws and to expand the way it is read. Sometimes cases are taken to the Human Services Board or the Supreme Court.

VI. Board Updates
Advisory Board

Jeanne Hutchins shared that the Town of Cambridge has elected to fund the Village Model. It is a community approach to individuals aging at home involving community members and not state or other agencies. It is an enhanced association that includes things like snow plowing, transportation, running errands – there is no nursing care involved. People who need nursing care are referred to the Home Health agencies.

Beth Stern was not present at this Board meeting because she was at a conference in Washington, D.C., but wanted to send a message that there are rallies going on in DC and to urge the new leadership not to "mess with Social Security and Medicare." She encouraged Vermont to do the same.

The Board also mentioned that they can make their preferences for leadership within AHS and DAIL known to the new Administration. Advocate for the leaders that would like to see stay in place or not.

Meeting was adjourned

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