

PROGRAM DEVELOPMENT COMMITTEE

June 16, 2008 – 6:00 p.m.
Michigan High School Athletic Association
1661 Ramblewood Drive
East Lansing, Michigan

MINUTES

MEMBERS PRESENT: Lynn Mason, Chair; Dale Barr; Jan Bunting; Shirley Carter; Dale Copedge; Jean Golden; Cliff Herl; Jerry Michalowicz; Deborah Smith; Jim VanDoren

OTHER BOARD MEMBERS PRESENT: Joe Brehler; Earl Poleski

STAFF: Gary VanNorman, Executive Director; Mary Kronquist, Treatment & Program Development Manager; Jeanne Diver, Quality Assurance Manager; Lori Griffin, Executive Secretary; Joel Hoepfner, Prevention Coordinator; Dr. John A. Baker, Medical Director

GUESTS: David Stoker, Cohl, Stoker, Toskey & McGlinchey, Commission's attorney; Judith Cates, CEI-CMH; Melanie Jackson, CEI-CMH; Ericanne Spence, CEI-CMH; Alan Platt, CEI-CMH; Toby Bayliss, CEI-CMH; Bruce Hindenach, CDRS; Peggy Phelps, CDRS; Lisa Larson, CDRS; Bob Sweet, CDRS; Carol Patterson, Cristo Rey; Lisa McCafferty, Ionia County Health Department; Katie Ballinger, Addiction Solutions; Ann Kusch, Family Service & Children's Aid

CALL TO ORDER

Ms. Mason called the meeting to order at 6:00 p.m.

APPROVAL OF THE MINUTES OF APRIL 21, 2008

Mr. Barr moved approval of the minutes of April 21, 2008 as presented. Mr. Herl supported the motion. The motion carried.

ADDITIONS TO THE AGENDA

Ms. Bunting asked to add questions to administration. It was added under Old Business, A. Mr. Copedge asked that few items be added to allow the Committee to deal with the business at hand.

PUBLIC COMMENT

There was no public comment.

UNFINISHED BUSINESS

A. Regional Access/Utilization

Ms. Mason commented this issue has attracted a lot of attention, and that the goal is to do what is in the best interests of the citizens the Commission serves. Mr. Herl asked if there is an Attorney General opinion. Mr. VanNorman responded there is not.

Mr. Herl moved to keep the issue of regional access/utilization tabled. Ms. Bunting supported the motion.

Mr. Copedge noted there was no explanation offered as to what is being tabled, and said he could not vote not knowing what is being discussed. Ms. Mason stated this issue was first brought to the Committee at the February meeting, and due to numerous questions it was tabled. She added that at the April meeting, the individual who motioned to table still felt there were unresolved issues, so it was kept on the table. Mr. Copedge asked Mr. Stoker for an opinion on tabling.

Mr. Stoker said although the person who placed the item on the table does not wish to have it removed that does not mean it can not be brought off. It can be brought off the table by anyone for discussion, then retable or voted on. Mr. Copedge asked for the topic to be announced to the gallery so everyone is on the same page. Ms. Mason provided that information.

Ms. Bunting commented on the fact that the executive director did not follow the wishes of the Board to obtain an Attorney General opinion as instructed in 2006. Mr. VanNorman asked if the agency should go through a process that may or may not yield an opinion. Ms. Bunting added she has a friend who gave her a phone number for an attorney and she could get one. Mr. Stoker commented on getting an AG opinion.

Mr. Copedge moved to take the regional access/utilization issue off the table for discussion. Ms. Golden supported the motion. The motion carried with Mr. Herl and Ms. Bunting voting no.

Mr. Copedge requested an overview for all to be given. Mr. VanNorman presented the history of what has transpired since the 1990's when CDRs were created, and how the system is evolving toward the movement of certain CDRS functions away from the CDRS and into CAs. He reiterated that the State has mandated that as of October 1, 2008, assessments conducted at a centralized access management setting will not be paid for with state dollars. Ms. Golden asked about the lawsuit filed by Mr. Hindenach and how it was resolved. In response to Ms. Mason's question on whether CDRS could be reimbursed another way, Mr. VanNorman stated the only way CDRS could be paid for assessments are with PA2. Ms. Mason asked Mr. Hindenach to speak to his lawsuit, and then the Committee would hear from Mr. Stoker. Members asked to hear from Mr. Stoker on his opinion first. Mr. Stoker noted some information discussed would fall under Attorney-Client privilege.

Ms. Golden moved to waive attorney-client privilege for discussion purposes. Ms. Carter supported the motion.

Mr. VanDoren asked for clarification of what was proposed to be waived. Waiver consideration was related to the May 4, 2006 and March 13, 2008 correspondence from Mr. Stoker. Ms. Smith encouraged exercising diligence in entering into privilege and to be slow to speak. She added she was unsure of what she was giving up, and was not comfortable giving up what she was unsure of. Mr. VanDoren stated the need to make sure the two opinions are specific to the lawsuit and the action that is before the Committee. Mr. Stoker said the opinions relate to regulations and authority to act. The alternative of moving to Executive Session was noted.

Ms. Golden moved to amend her motion to move into Executive Session for discussion on items with attorney-client privilege. Ms. Carter supported the motion. The motion carried.

The Committee moved into Executive Session at 6:37 p.m.

The Committee came out of Executive Session at 7:22 p.m.

Ms. Mason reopened the public meeting at 7:23 p.m.

Mr. Copedge asked if the current structure were maintained, how it would affect other services and funding streams. Mr. VanNorman stated it would impact some providers, depending on the level of assessments, and it could impact current programming in counties where PA2 dollars are limited.

Ms. Mason invited Mr. Hindenach to the table to speak to his legal issues. Mr. Hindenach stated his position has been, and continues to be, that CA functions are clearly defined. He added when the State wanted to expand access management services, rather than change the Public Health Code, they did a back door to change the Administrative Rules, a process in his belief that was not correct. He added he sought a declaratory ruling twice and was denied. He also stated he requested the Commission, through the Executive Committee, to join his lawsuit, which was denied. Mr. Hindenach also stated he was told by the former executive director it was left on her desk a priority for the incoming director, yet there is still no AG opinion.

Mr. Hindenach continued by stating in the 2006 AAPG's there was a clear outline of protocol for CAs to follow when developing QA processes, and if the AG opinion had been sought and this plan followed, this issue would not be on the agenda at this meeting. He also referenced a letter from the president of MASACA that says this proposed action is optional, and that Macomb County has an independent contract for access. Mr. Hindenach also noted that with the State saying CDRS cannot conduct assessments, this will impact other contracts his agency has, as his contract with Ingham County DHS includes assessments for those involved in the foster care system. Under what is proposed, those assessments will no longer be able to be conducted.

Mr. Hindenach also commented that budget figures provided by Mid-South in the April meeting packet were incorrect. He stated contrary to Mid-South, start up costs in the first year would be approximately \$40,000 more than reported as opposed to keeping services at CDRS.

Mr. Hindenach concluded by stating he wishes to get clarity as to the legality of what is proposed, in a fair and open process, which in his belief, he has not received. He noted all of his program evaluations have been good, they are meeting all contractual obligations, and have been a good provider for many years. He added a lot more is at stake than just the AAR issue.

Ms. Mason thanked Mr. Hindenach for his professionalism in coming to the meeting and his presentation to the Committee.

Ms. Golden stated there are no concerns or questions of the quality of services CDRS performs; that is not the issue. She said we need to deal with the reality of now, not 2006 or what did or did not happen years ago. She continued by stating we are not required to do what is proposed, but there will be

significant financial implications if it is not done. Until the rule is overturned, it has the force of law. She also stated that as a board member, she takes it seriously as there could be negative effects of failing to implement regulations. Ms. Golden also stated what is foremost is the need to address the community needs for treatment.

Ms. Mason asked Mr. Hindenach if, in his opinion, there is a way to meet the needs of both Mid-South and CDRS which meets the language in the Administrative Rules that has not been explored. She suggested the possibility of a work group being formed. Mr. Hindenach responded that through a work group process, potential savings could be explored.

Ms. Golden posed the following questions: (1) if the administrative functions are taken in-house and assessments are moved to the providers, does that prohibit seeking an AG opinion; and (2) if providers would want to subcontract assessments, could they do it? Mr. VanNorman responded an AG opinion could be sought at any time, and that providers can subcontract for assessments.

Ms. Bunting moved to establish a special work group, outside of the Program Development Committee, to sort through all of the issues to see if there is a way to come to a compromise. Mr. Herl supported the motion.

Ms. Smith stated any changes will be effective on October 1, and if a work group is established, it would not leave sufficient time for implementation. She added there are significant human issues involved, plus an infrastructure needs to be developed to withstand any possible legal ramifications, and there is not a lot of time to do it all. Ms. Carter agreed, stating that bringing others into the mix that have not been involved to-date, then expecting a decision, would be difficult and not fair to either Mid-South or CDRS. Ms. Bunting stated a committee process can be unfair due to some counties only having one voting member. Mr. Copedge stated his agreement with statements from Ms. Carter and Ms. Smith, and noted the Executive Committee can make decisions, so a decision from this Committee needs to be made tonight. Ms. Mason responded it was the Executive Committee who instructed that the AG opinion be sought in 2006, and added if this Committee is charged with making programming decisions, its work would be discounted if the Executive Committee acted. Ms. Golden added that any decisions made must be ratified by the full Board; the Committees makes recommendations only.

Ms. Golden asked for clarification on what would be the cost if the new policy is not implemented by October 1? Mr. VanNorman responded that is difficult to predict. He stated PA2 dollars could be shuffled, which he stated he could not support as it would be a waste of money.

Ms. Smith called the question.

A friendly amendment was made to the motion for a work group, that it includes one commissioner per county (for counties on the Program Development Committee), one Mid-South staff person, one CDRS staff person, and two providers (one selected by Mid-South and one selected by CDRS). Ms. Bunting and Mr. Herl agreed to the friendly amendment.

Ms. Mason stated her belief that it is unfair to both parties involved to make a decision tonight as this is the first time discussion has taken place due to it being tabled twice before, and that it deserved more time and consideration that it received. She added she wanted to hear from providers.

A roll call vote was taken on establishment of a work group. The motion failed on a 6 to 4 vote, with Bunting, Herl, Mason and Michalowicz voting yes, and Barr, Carter, Copedge, Golden, Smith and VanDoren voting no.

Ms. Golden moved to recommend to the Commission that AAR administrative functions delineated under ODCP's access management policy and allowed under Administrative Rules be moved in-house effective October 1, 2008, and that an Attorney General opinion be sought on the regulations and their legality. Mr. Copedge supported the motion.

Ms. Mason asked if AG opinion says that the actions taken are illegal, what would happen then. Ms. Golden responded if an opinion determined it was not legal, there could be implications, but that bridge could be crossed when needed.

Ms. Golden stated there has been ample opportunity for discussion. Commission staff has offered to meet with Board members, and the motion will undoubtedly be discussed at the next full Board meeting. She added she did not feel there was a rush to judgment taking place. She also noted her understanding of implications for staff of the agency involved and the probable impact of these actions. She continued by stating the writing has been on the wall since 2006, and CDRS has been aware since then. She added everyone involved has a role in how the issue got here tonight.

Ms. Mason asked about the possibility of a waiver being granted in this case. She added her hope that such discussion would take place. Ms. Mason also stated she would vote no on the motion due to Mr. VanNorman's alleged statement that this was a "done deal" prior to it coming before the Board. She also noted she was uncomfortable with the use of words such as "murky", "maybe", "not great", and the legality issues.

Ms. Smith noted there are sometimes consequences for a delay in action. She added this discussion was needed tonight, and two months ago. She added she received copious written information, and was comfortable with her vote this evening. She also noted her discouragement that the discussion did not take place in April. Ms. Smith also stated her feeling that Ms. Mason's concern with it feeling abrupt is due to the decision to table, and giving away discussion time.

Mr. VanDoren offered that the motion to table is antiquated and that a more appropriate action in the future would be to "postpone to a specific time". He stated his agreement that discussion should have taken place two months ago.

A roll call vote was taken on the motion. The motion carried on a 7 to 3 vote, with Barr, Carter, Copedge, Golden, Herl, Smith, and VanDoren voting yes; and Bunting, Mason, and Michalowicz voting no.

NEW BUSINESS

There was no New Business brought before the Committee,

OLD BUSINESS

A. Questions to Administration

Ms. Bunting asked for the following information: names of all employees, their job description, salary and benefits, and last salary action.

PUBLIC COMMENT

Ms. Ann Kusch, from Family Service and Children's Aid in Jackson spoke, stating her respect for the decision made. She added there could be unintended consequences. She noted her support for the establishment of a work group, which could help to assure a smooth transition.

Ms. Judi Cates, from CEI-CMH spoke, stating her agency works with multiple CAs who all do things differently. She added two CAs have services in-house, which works just fine, freeing dollars to providers for treatment. She added that in looking at the use of PA2 dollars, they are limited, and taking them from services already funded would create a hardship. Ms. Cates stated everyone is here to serve people in the community. She continued by stating her agency has a good working relationship with both Mid-South CDRS, but the bottom line is what can be afforded and what can be afforded to lose. She also stated decisions these days are tough, and both Mr. VanNorman and Mr. Hindenach have been very professional in their roles, adding this is not a personality issue but one of what is best for consumers.

Ms. Barbara O'Connor, from Bridgeway Center in Jackson, spoke, stating her agency has enjoyed positive relationships with both CDRS and Mid-South for many years. She stated concern should be with timely access, which providers hear from Mid-South a lot, and they respect it. She said all need to consider implications for the patient population, and to keep the clients needs in the forefront.

Ms. Patricia Wheeler, from NCA/LRA, echoed previous statements. She added her support of a work group. She further stated changes will impact her agency as they provide residential assessments. She further noted her appreciation of the decision to vote at this meeting because the sooner providers know what may happen, the better they will be able to serve clients.

Ms. Golden stated the work group is a good idea, and should include someone from this Committee. She added all need to remember it is a recommendation only, and as soon as a decision is made, follow-up should happen.

ADJOURNMENT

The meeting adjourned at 8:43 p.m.