

**Developmental Disabilities Services
State Program Standing Committee (SPSC)
November 19, 2015
Comfort Inn, Berlin**

Attendees:

Members: Greg Mairs, Ed Place, Bethany Drum, Theresa Wood, Nicole LeBlanc, Max Barrows, Connie Woodberry, Rachel Colby, Barb Prine, Linda Berger, Anne Bakeman, Susan Yuan

Visitors: Karen Schwartz, Cathy Hull, William Gilbert, Kirsten Murphy, Colin Provencher, Karen Topper

State Employees: Veda Lyon, Jackie Rogers, Clare McFadden, Lisa Parro, June Bascom

Introductions, Agenda, Approve September Minutes:

The October 15th SPSC meeting minutes were reviewed. Nicole made a motion to accept the minutes as written, Ed seconded, and the acceptance of the meeting minutes was passed.

The Family Supports discussion on the meeting agenda was moved after the SPSC Co-Chair Discussion.

Theresa stated that Vermont State Employees Association (VSEA) recommended to the Joint Fiscal Committee that caseload sizes for DCF social workers should not exceed 12 or 15 cases. Theresa inquired to what extent DAIL is involved in this discussion, and how this would apply to state guardianship and other caseloads.

Office of Public Guardian (OPG) – Jackie Rogers, Director of OPG (See handouts)

The Office of Public Guardian (OPG) operates within the Developmental Disabilities Services Division (DDSD) in the Vermont Department of Disabilities, Aging, and Independent Living (DAIL). Individuals receiving guardianship through OPG are considered to be in the custody of the DAIL Commissioner and the assigned guardians are acting as the Commissioner's designee.

Public guardians are appointed by the Family Court (Title 18 Chapter 215), for individuals with developmental disabilities, and are appointed by Probate Court (Title 14 Chapter 111), for elders age 60 and older, and for emergency guardianship orders for elders and individuals with developmental disabilities. The premise for guardianship is to assign a guardian only when it is absolutely necessary, when an individual is not able to make basic life decisions.

The need for a guardian is defined in the statute and uses the same criteria that is used in determining eligibility for developmental services, or individuals 60 or above with any type of a disabling cognitive impairment, and the person is in need of assistance with basic life decisions

and a private guardian can not be found. Both laws encourage self-determination and independence and only use guardianship to make decisions in areas where assistance is needed. As an individual becomes more independent, guardianship may be reduced over time and ultimately stopped. Guardianship can sometimes be split between multiple people, public and private, although this is less than ideal.

Title 18, Family Court, the order of guardianship may include the following areas: General supervision, contracts, legal, medical and dental. For Title 14, Probate Court, the order of guardianship may include the same areas as Title 18, but may also include powers to sell or encumber personal or real property, and exercise supervision over income and resources. Barb Prine noted that if an individual is assigned a guardian, they are still eligible for a free attorney through the Disability Law Project, and to have an evaluation from a private evaluator.

OPG also processes court ordered guardianship evaluations for both public and private guardianship, provides representative payee services (for government benefits), may assist private guardians, and may assist an individual who self-manages who needs assistance to navigate in the system. An individual receiving assistance with a representative payee may not be in the guardianship program (where they would lose their rights); they just receive assistance with paying their bills and managing their money.

OPG cannot force an individual to do anything; however, they are able to work in conjunction with others and help someone move to a different location, if they chose to do so. The core work of guardianship is to understand what the person wants. Occasionally what an individual wants may put them at harm, so the ability to use the best interest standard is necessary to weigh the risk of harm and what is desired. The guardian needs to be aware of what the guardianship paperwork states to ensure they have the power of guardianship for the area in which is being addressed. There are times when a guardian may need to go back to court to obtain approval to make a decision.

OPG served 751 individuals last year with 650 of them [having a developmental disability](#). The number of individuals who terminated from the program was about the same as the number of individuals coming into the program. A large population of the individuals in the guardianship program is due to an emergency order being filed by Department of Children and Family Services (DCF) or by the Adult Protective Services (APS) due to concerns with the individual's welfare. Guardianship for the older population is more complex as they do not receive the wrap around services from the designated agencies like the [the people with developmental disabilities do](#). Many nursing homes will not take a person without guardianship.

At the end of fiscal year (FY) 2015, there were 23 guardians in the OPG program, each with a caseload from 25 to 40 individuals. Two guardian positions were eliminated during 2015, which will leave 21 guardian positions in the OPG program as of 12/24/15. In addition to the challenges created from fewer positions, another longtime employee with very in-depth knowledge and skills is retiring and this caseload is being carefully reassigned to cause the least amount of disruption to the individuals. DDS is crafting a strategy to address the caseload pressures.

Because of the recommendation from VSEA to the Joint Fiscal Committee about caseload sizes,

Theresa felt it was important for OPG to include caseload information in the DAIL Annual report.

SPSC Co-Chair Discussion:

At the last meeting Theresa agreed to continue as the Co-Chair of the SPSC; however, with her new responsibilities in the legislature, she may not be able to attend all of the meetings and feels the Co-Chair should attend all of the meetings. Per the history and procedures, the Co-Chair replacing Theresa should be a member that represents advocates or professionals.

Linda Berger volunteered to be the Co-Chair starting in July, after her retirement. Theresa will be available for the meetings in December, May, and June. Susan Yuan volunteered to act as Co-Chair from January through April. Bethany made a motion to accept the Co-Chair coverage, Nicole seconded the motion and the motion passed.

Status of Recruiting for New Member:

The SPSC has received three good applicants to fill the vacant slot previously held by Kyle Moriarty. The SPSC Nominating Committee is reviewing the applicants and will be reporting back to the SPSC.

Applied Behavior Analysis – Clare McFadden, Assistance Director, DDSD

Applied Behavior Analysis (ABA) is used to teach new skills to individuals and address challenging behavior. Providers of this service are board certified, and there are only a limited number of providers available in the state that have board certified staff. Last fiscal year, the Department of Vermont Health Access (DVHA) was not ready to cover this benefit under Medicaid and provided funding through the designated agencies (DA's). However, DVHA has worked with CMS on developing a benefit for kids up to the age of 21, and this benefit became available in July of this year. Designated agencies with board certified staff, as well as private agencies with board certified staff can now provide the service and it will be covered. The benefit is rolling out slowly as prior authorization needs to be completed to enroll the providers, and plans need to be submitted and approved, just as any other Medicaid service. Some private insurances will also cover ABA services.

About a year and a half ago, the Center for Medicare and Medicaid Services (CMS) stated that ABA services cannot be covered under the waiver, if they are available under the state plan. DAIL is working with DVHA to ensure that children on the waiver who use ABA services have a smooth transition to the state plan service. This will affect about ten children.

The DVHA rates are different from the mental health billing rates for the designated agencies. There will be one rate for the assessment, one rate for ongoing monitoring, one rate for supervision, etc. A discussion pursued about the viability of some agencies being able to provide the services using these rates, and/or whether certified staff will remain in Vermont with these rates. It was noted that ABA is not the only treatment available; however, in situations where ABA is necessary, it should be available.

Further discussion entailed about the need for ownership and resources for Autism services; and the network inadequacy of service providers for ABA and workers in the school system that are proficient in working with children with Autism. A State plan on Autism services was developed previously by the Autism Specialists in DAIL the Agency of Education. These positions no longer exist in either department and recently there have been discussions about moving this plan to Integrated Family Services (IFS) for continued implementation.

Barb moved that the DS SPSC write a letter to the AHS leadership and DAIL Commissioner, DVHA Commissioner, DMH Commissioner, Secretary of the Agency of Education, and the DCF Commissioner, addressing the issues of reimbursement rates for ABA, availability of supports for children with Autism, lack of other therapeutic services in the state plan at this time, need to identify and publicize leadership and responsibility for Autism services, why IFS does not include Autism, the need for collaboration with Agency of Education to increase therapeutic professionals, and for AHS and DOE to apply pressure to private insurers on this issue. Nicole seconded the motion, and the motion was passed. Theresa will write the letter.

DDSD Updates:

DOL rules

One part of Department of Labor (DOL) rule relates to payment for 24 hour respite. This has been a part of the rule for a long time; however, the new rule has highlighted it. If a worker sleeps 8 hours, if the employer and employee agree, the worker can be paid for working 16 hours rather than 24. With the new rule if a worker has to get up to assist the person receiving respite, they are paid for that time. If the worker gets less than 5 hours of sleep, the employer has to pay for the entire 24 hours. At the first equity meeting since the new rule was enacted, there were individuals asking for 24 hour respite rates rather than 16 hours, as many individuals do get up during night. Therefore, this is already impacting the budget.

During the week of December 14th, DAIL is going to sponsor 4, 2-hour trainings, on 4 consecutive dates, around the state to assist the designated agency case management staff on the new rule and ensuring they have information about resources that are available. At this time, these trainings will be limited to the designated agencies; however, if registrations are low, it may be broadened to other audiences as well. After these trainings, Maryann Willson will go around the state to offer more trainings at the agencies.

There was a short discussion about how the new DOL Rule affects respite and the DS home providers in taking time off for vacations, with possible scenarios/situations about how it may be handled.

Family Supports – Discussion continued from last month

Supporting families is being looked at on the federal level. The Supporting Families Project, through NASDDDS, is a project to support families with family members with intellectual and developmental disabilities throughout their life. www.supportstofamilies.org *(The Supporting Families project is operated under a five year grant awarded to NASDDDS by the Administration on Intellectual and Developmental Disabilities (AIDD) beginning October 2012. Grant partners include University of Missouri Kansas City-Institute on Human Development*

(UMKC-IHD), Human Services Research Institute (HSRI) and the National Association of State Directors of Developmental Disabilities Services (NASDDDS).

Approximately 75% of individuals with intellectual and developmental disabilities receive care by their families, and these families are aging families. Natural supports are being discussed, with a new perspective of life course, rather than life span. There are three buckets: Information and referral; Emotional and spiritual supports, including peer support and counseling; and instrumental support, which is basically services. Susan believes this is another way of looking at person centered planning.

A discussion about family supports took place, which included the following areas:

- The need for increased community interaction – This does occur, but does not occur enough.
- Families provide the vast amount of care and coordination, within the home and when an individual is living on their own and relying on their family – There should be an awareness of this when budgets are being discussed.
- Some support is currently being given to families; however, costs are high.
- Vermont is the second highest aging state in the country, Maine is the first.
- Training for families on advanced care planning is an area to look at.
- Brainstorming ways to improve the overall situation.
- Possibly research the existing waiver to determine if a support waiver can be done as part of this.

SPSC Updates and Announcements

Linda Berger is retiring at the end of school year (in June).

Karen Schwartz, who has held a leadership role at the VT DD Council for many years, is retiring. Kirsten Murphy will be the Acting Director.

Last week, there was a hearing, of sorts, in DAIL about global commitment (GC), and there is a public comment deadline of 12/10 for the renewal. Karen stated that there was nothing in GC about the DD waiver, nor any QA about DS. Theresa reminded everyone that during the Quality Strategy presentation by Shawn Skaflestad, he stated that DD was not going to be included during this phase.

Future Agenda Items:

- HCBS Rules and what the federal government will be looking for. (For example, farmstead – Heartbeat) Theresa believes this will be addressed during the community supports discussion in December.
- Community Group Supports: People who participate in services in a group fashion and their experiences (Possibly GMSA assist with this), hear from agencies who provide it, DAIL is interested in hearing from the SPSC about group based, center programs and whether they should be supported financially.