

**Meeting Minutes of
The Governor's Council on Behavioral Health
8:30 A.M., Thursday, April 10, 2008**

The Governor's Council on Behavioral Health met at 8:30 a.m. on Thursday, April 10, 2008, in Barry Hall's Conference Room 126, 14 Harrington Road, Cranston, Rhode Island.

Members Present: Richard Leclerc, Chair; Linda Bryan; Leo Cronan; Stephanie Culhane; Scotti DiDonato; Mitch Henderson; Richard Hill; Karen Kanatzar; Peter Mendoza; and Anne Mulready.

Ex-Officio

Members Present: Gene Nadeau, Department of Mental Health, Retardation and Hospitals (MHRH); Craig Stenning, Department of Human Services (DHS); Sandy Woods, Department of Children, Youth and Families (DCYF); Mary Ann Ciano, Department of Elderly Affairs (DEA); Denise Achin, Department of Education; and Pauline Marcussen, Department of Corrections.

Staff: Melinda Thomas, Charles Williams, Elena Nicolella, Corinna Roy and Mary Ann Nassa.

Guests: Richard Antonelli; Jen McCarthy, NAMI and Marie Waldeck.

Once a quorum was established, the Chair, Richard Leclerc, called the meeting to order at 8:40 a.m. Richard entertained a motion to accept the Minutes of March 4, 2008. Denise Achin corrected the spelling of her last name. Peter Mendoza motioned to approve the minutes as amended, and Stephanie Culhane seconded the motion. All were in favor, and the minutes were approved as amended.

HEALTH INFORMATION EXCHANGE LEGISLATION

Richard introduced Linn Freedman, the attorney for the Rhode Island Quality Institute (RIQI). Richard stated that he serves on the board of RIQI and that RIQI was instrumental in spearheading legislation that would protect consumer rights on electronic transmission of healthcare information within the State of Rhode Island.

Linn Freedman highlighted the legislation which was e-mailed to the membership prior to the meeting. An overview of the legislation: *Rhode Island Quality Institute – Rhode Island Health Information Exchange (HIE) (See Attachment I)*; along with a copy of the legislation: *2008 – S2679, An Act Relating to Businesses and Profession – The Rhode Island Health Information Exchange Act of 2008 (See Attachment II)* was distributed.

Linn Freedman explained that this legislation would address only the statewide health information exchange. She highlighted the following history of the legislation:

- In 2004 the Rhode Island Department of Health (DOH) was one of six states nationally to receive a \$5M, five-year demonstration grant from the Agency for Healthcare Research and Quality (AHRQ).
- The grant supports a community-based effort to design and develop a statewide Health Information Exchange. It does not relate to doctors and pharmacies that are presently moving information from provider to provider with respect to health information.
- When the grant was received in 2004, the RIQI had a govern-in-structure put in place with respect to the HIE. Please *see Attachment I which illustrates the HIE Committees* on the first page.
- Linn Freedman is a member of the Policy & Legal Committee which is Chaired by David R. Gifford, M.D. of RIDOH and consists of a broad array of physicians and lawyers from around Rhode Island responsible for the legal and policy implications with respect to the HIE.
- Present laws in the State of Rhode Island are not geared toward the electronic transmission of healthcare information with a statewide exchange.

- The Policy & Legal Committee determined and recommended safeguard legislation to specifically safeguard the information in the HIE.
- The safeguards were codified in draft legislation that has been extensively vetted and discussed by all of the committees involved.
- The ACLU determined that it did not reach far enough in protecting the privacy and security of patients, and they are the only entity who has publicly spoken not to support the legislation.
- Senate Majority Leader, Theresa Paiva-Weed is the sponsor in the Senate; and Representative Kilmartin is the sponsor in the House. The bills are identical in both the House and the Senate.
- The first hearing was held on March 26, 2008. Several supporters came to the hearing and one board member from the ACLU attended to testify against the bill.
- Presently, DOH is moving forward working with the Senate Council to redraft language that was questionable.
- The bill is going towards votes in both House and Senate in the Health, Education and Welfare (HEW) Committees.
- The following are key aspects of the legislation:
 - It is a voluntary system.
 - It creates an increase in communication between physicians/providers and individuals involved with your health care through access to information.
 - You choose who gets to access the information.
 - Information is not accessible to insurance companies or pharmaceutical companies.
 - No exceptions except for emergency and public health purposes.
 - It will safeguard information much more than present laws.
 - Once you agree to participate in the HIE, all of your information goes in. You are not able to pick and choose which information is included.
 - Strong penalties apply if someone accesses information without authority, including prosecution by the attorney general's office.
 - Electronic records are easier to audit, creating a safer environment.

The following are questions and discussions pursued:

- Denise Achin asked how consumers will know exactly what they are getting into and what their choices are in terms of who they release the information to.
- Denise raised concern about using a social security number.

Linn stated that social security numbers are not necessary and that everyone should keep their social security number private. Linn further stated that one authorization form is being developed for the HIE which will be understandable at a third-grade level.

With respect to educating the consumer, Linn stated that there is a Consumer Advisory Committee working with a public relations firm in order to brand the name of the HIE. There will be a marketing campaign that will include pamphlets, as well as a Medicaid Advisory Committee to specifically talk about education to the Medicaid population. An entire education component has been built in with the Consumer Advisory Committee.

Linn added that there will be a revocation of authorization form that will allow you to revoke at any time.

- Craig Stenning asked what the House bill number was.

Linn stated that she will e-mail it to him.

- Richard Hill asked what specifically the ACLU objected to.

Linn asked Ann Mulready who represents the ACLU to address that question. Ann stated that there were three broad things that they objected to. She stated that the ACLU did not object to the creation of the HIE, but is concerned about how it is done in the context of Rhode Island's Healthcare Law. There is no broad protection for healthcare information. Therefore, some of their concern is that despite the language that has been put into the legislation that states "no one will be able to access the information of the HIE," they felt that would not stand up to judicial challenge. She added that every time the Healthcare Confidentiality Law has been challenged in Rhode Island by a court, the court has said that they have authority to access the information. Therefore despite the language in the legislation, the ACLU feels if a court needs your information that is located in the HIE, the court has the right to access it. Anne stated although no social security number will be attached to the information, the statute language on penalizing individuals who wrongfully access healthcare information is linked to information with a social security or diver's license number. Therefore, the penalty needs to be looked at to make sure that if someone wrongfully accesses the HIE information without using those numbers, they can be legally penalized.

Ann stated that one of the other concerns the ACLU has is that there will be a private entity running the HIE. While either the Department of Health or the Executive Office of the Department of Health and Human Services will have the authority to issue regulations, they are only able to issue regulations under very limited circumstances. Therefore, the ACLU's concern is that the State does not have adequate control over the uses of data in the HIE and its management by a non-governmental agency.

Linn stated that the penalties have nothing to do with social security numbers. "Notice of Security Breach" is what is tied to the social security number. The penalties are directly from the mental health advocate of the Attorney General's Office.

- Someone asked if break-the-glass would be recognized.

Linn stated that break-the-glass is recognized unless you refuse to be part of the HIE; and if you enroll, break-the-glass will be the minimum amount that someone will be able to access information.

- Richard Hill asked for clarification regarding "providers access information," he asked if that means the doctor, or does it mean the front office, or the billing people or secretary or anybody that works for the provider.

Linn stated that present law is minimum necessary. She stated that they are working out the technical solutions, but it would not be at the minimum any different that it is today under the law. She added that providers and people with password protection in their offices will have access which is more secure than a paper record.

Linn stated that she will provide the Council with more detailed information via e-mail to Mary Ann Nassa who will pass it along.

UPDATES FROM MHRH

Charles Williams reported that on Monday, April 7th two of the key components of the electronic voucher system for the Access to Recovery (ATR) grant were up-and-running. He reported that they are phasing out of the interim paper system and moving towards the electronic voucher management system.

On Tuesday, April 8th the RFI for continuous recruitment for clinical treatment service providers and recovery support providers was posted at the Division of Purchases. He added that they have begun receiving applications and are planning training soon with some of the new members of the network of providers.

He reported that they have held the Government Performance Result Act (GPRA) interviews with nine clients and that number will increase as they are able to bring on recovery support providers.

ANNUAL REPORT TO THE GOVERNOR - REVISION/APPROVAL

Richard Leclerc distributed a draft copy of the most recent version of the Annual Report to the Governor *but ATTACHED IS THE FINAL VERSION OF THE ANNUAL REPORT TO THE GOVERNOR (See Attachment II)* which reflects all the comments that were presented.

Corinna stated that all of the caveats on data need to be included because it is a public document, using some State data and it cannot be spun. If comments in the report are questioned and the caveats were omitted and later discovered the impact of the report will be negligible and the Council will lose credibility. Therefore, she moved some of the caveats into footnotes in order to make them less prominent. She also explained that she had incorporated some of the comments that Mitch Henderson sent out in his e-mail to the group in the form of separate options for how various sections of the report could be presented.

The Council reviewed and voted on the report in the following sections:

Section 1:

After discussion and review of Section 1, Mitch Henderson motion to accept Option 2 as listed. Richard Hill seconded the motion.

After discussion, the motion was made by Stephanie Culhane to amend Option 2 by changing the word “contends” to “asserts.” Scotti DiDonato seconded the motion. All were in favor, and the motion passed.

After further discussion, Mitch Henderson motioned to amend the language in Section 1 to remove “all of the” from the statement “denied all of the rights to treatment” so that it would read “denied rights to treatment.” Scotti DiDonato seconded that motion. All were in favor, and the motion passed.

After more discussion, Stephanie Culhane motioned to amend the language in Section 1 to remove the wording “According to hospital records” and replace with “According to records received from hospitals contracted to provide psychiatric inpatient hospitalization to uninsured persons in Rhode Island.” Kai Cameron seconded the motion. All were in favor, and the motion passed.

Richard Leclerc called for a motion to accept Option 2 as amended. All were in favor, and motion carried.

Section 2:

After discussion, Mitch Henderson motioned that Option 2 of Section 2 be approved. Peter Mendoza seconded the motion. All were in favor with the addition of the word “abuse” after substance which was a typographical error, and motion carried.

Section 3:

After discussion, Richard Hill motioned to accept Option 1 with the addition of “including those who are too impaired to care for themselves.” Stephanie Culhane seconded the motion. All in favor and the motion was carried.

After discussion, Mitch Henderson motion to accept Option 1 and Scotti DiDonato seconded the motion. Peter Mendoza was not in favor of the word “warns,” and suggested it be changed to “concerns.” After discussion,

the motion remained to accept Option 1 with the word “warns.” All in favor with the exception of Peter Mendoza, and motion was carried.

Page 5 “Optional Insert”:

After discussion, Mitch Henderson motion to include the Optional Insert and Scotti DiDonato seconded the motion. Craig Stenning suggested that the tone that it sets in summary is much too negative. Richard Hill agreed with Craig Stenning. Linda Bryan agreed that it was too negative.

Richard Leclerc entertained a motioned to include the insert of this paragraph. The motion was rejected by all members present. Richard requested action. Stephanie Culhane motion to reject and delete the Optional Insert, and Richard Hill seconded the motion. All were in favor with the exception of Peter Mendoza and Scotti DiDonato.

Additional Discussion on Entire Document:

Mitch Henderson cited a typographical error on Page 4 in Footnote³. “\$64 should be \$64 million.”

Peter Mendoza motioned to accept the document as amended and Mitch Henderson seconded that motion.

After much discussion, Richard Leclerc entertained a motion to amend the document and accept the document with deletion of Section 4. Mitch Henderson motioned to accept, and the motion was seconded. All were in favor with the exception of Scotti DiDonato.

Richard Leclerc stated that the motion was to accept this document as amended with all amendments forgoing and all options selected and to opt Number 4 out.

After discussion, one last friendly amendment was recommended to change the words “recommend that” in the last paragraph on page 4 to “support.”

Richard entertained the motion to accept this document as amended. All were in favor to accept as amended, and the motioned carried.

BLOCK GRANT CONFERENCE

Richard Leclerc stated that there is a national conference on the block grant in Washington, D.C. on May 21 and 22, and three people from Rhode Island are invited to attend. Corinna Roy along with someone from DCYF will be attending, and there is a slot for one other. Richard asked that if there is anyone interested in attending to let him know by Monday, April 14th. Richard distributed a copy of the letter on the *block grant allocation for this year (See Attachment IV)* which indicates that Rhode Island has a drop this year.

MEDICAID REFORM PACKAGE

Craig presented a PowerPoint presentation which will be included as an attachment with the electronic distribution of the minutes. Craig stated that in the past Rhode Island maximized Medicaid in every possible way. He stated that Medicaid expenditures are expected to grow at a rate of 7 percent a year through the year 2013 and revenues in Rhode Island are not growing at that rate. The federal government has taken on a whole new approach with the Center for Mental Health Services (CMS) no longer asking states to expand their Medicaid. They are actually requesting them to contain costs, because that will contain the federal cost as well. Craig stated the following facts:

- Presently, there are 183 individuals receiving services in the state Medicaid system.
- Rhode Island has a bias toward institutional care which is one of the highest in the country.
- Rhode Island is in the top ten states in the country for the percentage of seniors in nursing homes.

- Rhode Island also has a high rate of residential care. Within the developmental disabilities (DD) system, Rhode Island has one of the highest rates in the country of individuals in group homes.
- Rhode Island has a high use of hospitals especially in the area of psychiatric hospital beds.
- Currently, there are nine waivers in place which have caps in them. The caps have not been reached in most of them. One has reached the cap and once that occurs it creates a waiting list.
- Rhode Island is submitting the “Global Consumer Choice Compact Waiver” which is based upon a number of principles that takes all of the current waivers that are in place and takes all of the services that are now funded by Medicaid and puts them under one large global waiver.
- The State foresees reducing the number of people at the highest institutional level of care being either in a hospital, in an Intermediate Care Facility for the Mentally Retarded (ICFMR), group home, DD group home or in a nursing home, with a goal of reducing institutional care towards a 50/50 split with Home and Community Based Care by the year 2013.
- Suggested programs include shared living and mobile treatment teams.
- Guiding Principles of the Global Waiver:
 - Consumer choice and empowerment
 - Personal responsibility (co-pay or co-share)
 - A portion of the dollars saved will be reinvested at the community level
 - Five-year waiver
 - State negotiates with CMS what the baseline is and the trend rate
 - Monitoring and trigger points must be in place to protect dollars necessary to reach the five year goal.
 - Includes all people, all ages, and all disabilities.
 - Highest-end levels of services include hospitals, group homes, and nursing homes.
 - Within those three levels there will be the highest, high and preventative levels.
 - Shared living and medication management would be added.
 - Increase adult daycare and home-based services.
 - Voucher system.
 - Centralized assessment: one assessment team who would complete eligibility, initial care plan, and would decide the level of resources that could be expended in each particular case.
 - Every individual will be given a medical home. The medical portions will be included under a variety of options for managed care.
 - Smart Purchasing will set one rate tied to quality performance outcomes.

Craig stated that in the past the waiver process has been conducted over an 18-month period. This process will be completed in four months. He stated that Article 17 which is the General Assembly’s authorization on this issue that was submitted and redrafted will be completed on April 11. The concept paper has been submitted to CMS. It has been posted on the DHS webpage and the OHHS webpage. The waiver is in process of being drafted for a submission next month. Craig stated that the Medicaid system is cutting \$67 million and addition of \$60 million plus in other cuts that have nothing to do with the reform package.

The question of receiving services outside of Rhode Island was brought up. Elena Nicolella responded that the only time that the state should pay for out-of-state care is when the care is not available within the state. She stated that there are allowances for boarder physicians in hospitals and the state will need to make a decision about how those hospitals and providers would be affected. Emergency services, however, are an exception and have their own rules and regulations.

Craig listed the following strengths:

- Leadership commitment

- Department collaboration
- Strong group of services already in place in Rhode Island
- Good provider networks
- Stakeholder support
- CMS support

The following are advantages:

- Personal choice
- Informed choice
- Predictable fiscal outlook
- Expanded community capacity
- Better coordinated care
- Gain flexibility in decision making and operations of services

Finally, Craig stated that during the next month there are five regional forums planned. He anticipates training programs after the kickoff to educate everyone on the new procedures.

Richard Leclerc asked if this waiver deliberately or inadvertently expands treatment options for individuals with addiction disorders. Craig stated that it does not do either one of those. Because the Medicaid coverage is such a small part of the substance abuse population, it did not get as much focus, but there is a behavioral health subgroup that is beginning to meet on April 11. Craig distributed a summary of the *Medicaid Reform Initiative – Behavioral Health Subcommittee (See Attachment V)*. He stated that within the behavioral health population there are several overlapping agendas.

OLD/NEW BUSINESS

There was no further business.

ADJOURNMENT AND NEXT MEETING

There was no further business. Upon motion made and seconded, the meeting adjourned at 10:50 a.m. The next meeting of the Council is scheduled for **Tuesday, May 6, at 1:00 p.m. in the first floor Conference Room 126 at the Barry Hall Building.**

Minutes respectfully recorded and written by:

Mary Ann Nassa
Secretary, Governor’s Council on Behavioral Health

Attachment I: Overview: Rhode Island Quality Institute – Rhode Island Health Information Exchange (HIE)

Attachment II: Legislation: 2008 – S2679, an Act Relating to Businesses and Profession – The Rhode Island Health Information Exchange Act of 2008

Attachment III: Adopted - Annual Report to the Governor

Attachment IV: Block grant allocation letter

Attachment V: Medicaid Reform Initiative – Behavioral Health Subcommittee Presentation