

# MENTAL HEALTH AND DISABILITY SERVICES COMMISSION

May 17, 2018 - 9:30 am to 12:00 pm  
Polk County River Place, Room 2  
2309 Euclid Ave, Des Moines, Iowa  
MEETING MINUTES

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## MHDS COMMISSION MEMBERS PRESENT:

Thomas Bouska	Brett McLain
Dennis Bush	Mary Meyers
Jody Eaton	John Parmeter
Kathryn Johnson	Rebecca Peterson
Betty King (phone)	Richard Whitaker
Sharon Lambert	
Geoffrey Lauer	

## MHDS COMMISSION MEMBERS ABSENT:

Thomas Broeker	Representative David Heaton
Marsha Edgington	Representative Scott Ourth
Rick Sanders	Senator Liz Mathis
Senator Mark Costello	

## OTHER ATTENDEES:

Theresa Armstrong	MHDS, Bureau Chief Community Services & Planning
Kris Bell	Legislative Services Agency
Christie Gerken	IAMHR
John Hedgecoth	Amerigroup
Julie Maas	MHDS, Community Services & Planning
Kim Murphy	Iowa Hospital Association
Flora Schmidt	IBHA

## Welcome and Call to Order

John Parmeter called the meeting to order at 9:37 am and led introductions. Quorum was established with eleven members present and one participating by phone. No conflicts of interest were identified.

## Approval of Minutes

Brett McLain made a motion to approve the April 19, 2018 meeting minutes. Geoff Lauer seconded the motion. The motion passed unanimously.

## Administrative Rules regarding Chapter 24, “Accreditation of Providers of Services to Persons with Mental Illness, Intellectual Disabilities, or Developmental Disabilities”

Theresa Armstrong presented the rule package on IAC 441-Chapter 24 and said that she is bringing it back to the Commission requesting the Commission to approve the rules. Theresa said there wasn't any public comment on the rules and it is the same rule package the Commission approved to be noticed.

There was discussion on how the changes give flexibility to providers when documenting and doesn't restrict a provider from using narrative in their documentation.

Tom Bouska made a motion to approve the rule package and Dennis Bush seconded the motion. The motion passed unanimously.

### **Nomination for Children's State Board**

John Parmeter said that the MHDS Commission was named in the Governor's Executive Order 2 as a member of the Children's State Board. John said he would like to have a nominee come from the Commission but the Governor still has discretion to appoint who she wants on the Board.

There was discussion on the number of nominees and who was interested in being a nominee. Richard Whitaker and John Parmeter both expressed interest in applying for the Children's State Board.

Geoff Lauer made a motion to move forward with John Parmeter and Richard Whitaker as nominees for the Governor to select from. Tom Bouska seconded the motion. The motion passed unanimously.

The Commission discussed having Kathy Johnson submit a letter to the Governor with the Commission's process for submitting their nominees.

### **Review of Commission Duties – Theresa Armstrong**

Theresa said the duties of the Commission's statutory duties listed in Iowa Code 225C.6. Theresa summarized the duties saying that the Commission provides advice on the Department of Human Services (the Department) budget, assist in the development, notice, and adoption of Administrative Rules, and provide advice on Medicaid as it relates to mental health and disability services.

Theresa said there would be changes made to some administrative rules as part of the Department's regular review of rules. Theresa said the Commission is already a part of the changes being made for the complex service needs rules package.

Theresa said the Commission's collaboration with the DD Council and Mental Health Planning Council is also important, and provides the Department with valuable information.

### **Commission Planning Calendar/New Member Committee Assignments/Discussion of information requests for Annual Report**

John Parmeter reviewed the commission planning calendar and spoke about the committees the Commission has, and their responsibilities throughout the year. The Commission members volunteered to serve on the following committees.

#### **Legislative Priorities**

- Geoff Lauer
- Rebecca Peterson
- Tom Bouska
- Jody Eaton
- John Parmeter

#### **County/Regional Services**

- Jody Eaton
- Kathy Johnson

- Rebecca Peterson
- Brett McLain
- Dennis Bush

#### MHI/SRC Committee

- Tom Bouska
- Marsha Edgington
- Richard Whitaker

#### Cost Increase Recommendations

- Tom Broeker
- John Parmeter

The Commission discussed information that would be helpful to them as they complete their annual report. The Commission requested information including the impact of legislative priorities at a local level from regional CEOs, information from IME and MCOs, DHS budget, MCO quarterly reports, and the brain injury state plan for the next five years.

The Commission broke into committees at 10:27am and reconvened as a whole at 11:01am.

#### **Review of the Administrative Rule-Making Process – Harry Rossander, DHS Policy Coordinator**

The administrative rule-making process is a very intentional and careful process designed to promote transparency and to invite public participation. It is linked directly to the legislative services agency calendar which publishes the Iowa Administrative Bulletin every two weeks. A rule is something that implements a federal or state law or policy, interprets a federal or state law or policy, prescribes a state law or policy, and describes an agency's organization, procedure, practice requirements, or how state laws or policies will be enforced.

Administrative rules have the effect of law. Rule-making agencies do not have independent law-making authority, and can only act within the restrictions of statute.

There are three different rule-making bodies in the Department. The Council on Human Services, The Mental Health and Disability Services Commission, and the Hawk-I Board all have the authority to make rules with regards to Department programs. Which body has authority for a specific rule depends on which program is being affected.

Each rule draft comes to the Bureau of Policy Coordination in a rule packet with a fiscal impact statement. The Bureau will review the rule, and give notice to the public. Every comment is received, read, and compiled. All comments received are published along with the Department's response to them.

The schedule for rule-making process is rigid and runs on a specific calendar. There is an initial nineteen day period for a proposed rule to be edited and published in the Iowa Administrative Bulletin. Once published, it is available for comment for thirty-five days. After all comments received have been compiled and addressed, there is another nineteen days for the final rule to be published, followed by a thirty-five day implementation period. This schedule may be extended by weeks or months depending on how many comments there are, or how quickly the proposed rule can be proofed. The schedule can also be extended depending on how often the rule-making body meets, and when the Administrative Rule Review Committee (ARRC) can

notice the rule. Harry said that on average, the entire process takes around six months to complete.

It is possible to speed up the process by waiving the comment period. These emergency rule-making provisions may be used if the comment period would be unnecessary, impractical, or contrary to the public's interests. Harry advised against waiving the comment period unless it is absolutely necessary to do so. It is also possible to waive the implementation period if the legislation permits it or if it is in the public's best interest. These are implemented as emergency rules, which waive comment period and implementation period. When the emergency rule-making process is used, the rule becomes effective, and then also goes through a regular process with the comment and implementation periods taking place after the rule is in effect. Emergency rules can be implemented as quickly as two months and normally take around four months.

When the need for a rule change is identified MHDS staff develops a proposal. Harry said the proposal comes to the Commission for approval. The Commission must approve the proposal for it to become a notice of intended action.

After the Commission gives approval to file the rule, it gets published in the Iowa Administrative Bulletin and is open for public comment. The ARRC reviews the notice. If there are comments, MHDS staff collates, review, and drafts responses to them. Then the Bureau of Policy Coordination will edit the preamble to reflect that the rule is no longer intended action, but adopted and filed. If there are no changes due to comments, then the Commission will vote to adopt the rule. If the Commission adopts the rule, it gets filed, and the editors have nineteen days to prepare the final rule for publication in the Administrative Bulletin. The rule then goes to the ARRC, who can approve the rule, object to the rule, or delay the implementation of the rule.

### **Review of Open Meetings, Conflicts of Interest, and Ethical Considerations of Commission Membership – Gretchen Kraemer, Attorney General's Office**

Gretchen Kraemer explained that the Commission as a state commission is governed by open meetings laws which are in Iowa Code Chapter 21. There must be an agenda for each meeting. Agendas must be posted at least twenty-four hours before the meeting and available to the public. The agenda is the invitation to the public to come to the meeting. In the past, there have been questions about taking agenda items out of order during the meeting when presenters are running late or not available. Commissions are allowed to take items out of order, but Gretchen said that this should be done in a way that preserves the agenda as much as possible. The concern is that members of the public will miss something of interest if it is presented at a different time than what is posted on the agenda. If something important comes up that is not on the agenda, Gretchen encouraged the Commission to push it to another meeting so that the public can have adequate notice. Phone participation is allowed as long as the phone number is published and the call is done via speaker phone. Electronic participation and email participation is also valid, but such emails are public information and subject to Freedom of Information Act requests.

Gretchen said there are rules dictating how boards and commissions can go into closed session. There are times when sensitive information is being discussed when the Commission would want to discuss it off of the public record such as pending litigation or a contested case, but only that item could be discussed in closed session, and any vote or decision would need to be made and announced publicly.

Gretchen said that if the Commission had an informal outing where a quorum of members were present, and conversation turned to the business of the Commission, this would be considered a meeting that did not comply with open meetings laws. If there is a quorum of members present, they cannot discuss the business of the Commission without adequate public notice.

Open meetings are required to have a period during the meeting for public comment. This could be a specific period of time reserved for public input, or the Commission has, as a matter of practice, allowed for public input throughout its meetings, which is also acceptable.

Committees within the Commission can meet and are not governed by open meeting laws. They must have less than a quorum, and they may only make recommendations. The Commission must vote on any decisions. Commission members can discuss the business of the Commission in informal or social settings as long as less than a quorum is present. Once there is a quorum, open meeting laws apply.

Conflicts of interest arise when a member of the Commission has a personal or professional stake in a decision being made by the Commission. If a matter comes to the Commission that would affect a member personally or their business, the member must abstain from any vote on the subject and shouldn't participate in the discussion due to the appearance of conflict.

There was discussion on individuals participating in public comment if there is a potential conflict of interest for a member of the Commission.

The Commission is allowed to lobby, however it must follow certain rules. The Commission must elect one representative to be the designated lobbyist, which is traditionally the chair. The designated person must register as a lobbyist, and the Commission must vote on all official Commission positions. Individual members are still allowed to lobby as private citizens, but cannot claim to represent the Commission while doing so.

### **Planning for Future Meetings**

The Commission asked for presentations from the Sheriff and Deputy's Association, Ombudsman, human rights, CJJP, and IDPH planning advisory committee on brain injury.

### **Public Comment**

Flora Schmidt asked when organizations will see a copy of the draft complex service needs rules. Theresa Armstrong said that so far only the committees have seen a draft of the rules not the full Commission. Theresa said the rules will go out to the full Commission prior to the July meeting. Theresa said there will be copies of the rules at the Commission meeting for members of the public. Theresa cautioned that the draft presented at the Commission may not be the same as the noticed draft if the Commission has changes.

The meeting adjourned at 11:45 am

Minutes respectfully submitted by Julie Maas.