Meeting Minutes

Nevada Commission on Aging
Legislative Subcommittee
(Nevada Revised Statute [NRS] 427A.034)

Date and Time of Meeting:
May 27, 2020
10:00 am until adjournment

1. Call to Order/Roll Call

Jeff Klein called the meeting to order at 10:03am

Subcommittee Members Present:
Jeff Klein
Mary Liveratti
Diane Ross
Barry Gold
Larry Weiss

Subcommittee Members Absent:
None

Staff:
Shannon Sprout, Health Program Manager, ADSD
Jennifer Richards, Elder Rights Chief, ADSD
Miles Terrasas, Executive Assistant, ADSD

Presenters:
Chuck Duarte, COA Policy Subcommittee Chair
Dr. Jeanne Wendell, University Nevada Reno
Kirsten Coulombe, Social Services Chief DHCFP
Crystal Wren, Social Services Chief, ADSD
Jeff Duncan, Social Services Chief, ADSD
Dr. Leon Ravin, Statewide Psychiatric Medical Director, DPBH

2. Public Comment – None

(No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. Comments will be limited to three minutes per person. Persons making comment will be asked to begin by stating their name for the record and to spell their last name and provide the secretary with written comments.)

3. Approval of Minutes of the September 17, 2019 meeting

Larry Weiss moved to approve. Diane Ross seconded the motion. The motion passed unanimously.

4. Approval of Minutes of the March 4, 2020 meeting

Mary Liveratti moved to approve. Diane Ross seconded the motion. The motion passed unanimously.

5. Assembly Bill 122 Update

Mr. Klein introduced Chuck Duarte, Chair of the Policy Subcommittee. Mr. Duarte deferred the presentation to researcher and Professor Jean Wendell. Ms. Wendell gave an overview and update on progress for Assembly Bill (AB) 122. (See Attachment A)

Mr. Gold asked about employer strain/caregiver strain mandating paid time off for businesses 50 or more and explained caregivers unable to take care of loved ones in situations and caregivers who work for smaller businesses. Ms. Wendell gave her number to Mr. Gold for a follow up conversation.

Ms. Ross asked about a timeline. Ms. Wendell responded the phase 1 draft report will be available in about a month. Phase 2 stakeholder interviews have started but among COVID have been delayed and the complete draft is to be completed by mid-summer.

Mr. Klein asked if they talked to CMS about entertaining a settings rule waiver. Mr. Duarte responded the Policy subcommittee has not considered that but might be discussed among the legislative subcommittee.

6. Home and Community Based Services Settings Rule Presentation

Kirsten Coulombe gave a presentation on the HCBS Settings Rule. (See Attachment B)

Discussion ensued among Ms. Coulombe, Mr. Klein, and Mr. Gold on the following:

- Request for a broader waiver and concern for more guidance on the issue.
- Mr. Klein asked if she seen anything come from Washington to combine licenses and put facilities on the same campus and act on a broader waiver? Kirsten stated she has not seen anything related to the waivers.
- No prohibition to have a dually licensure from Medicaid but would be decided by HCQC for flexibility in the waiver of those requirements. The settings rule would apply if next to a nursing facility or the public grounds.
- Clarification on the broader waiver. If the waiver is not broad it would have to be a case by case basis.
- Facilities available in the rural that would not be exposed to the settings rule.
- AB122 carefully choosing locations and avoiding issues with the location.

- CMS adopting stricter guidance. Closures of centers with change of CMS administration because a different interpretation of the rules.

Mr. Duarte asked about prohibition against locating assisted living facility or HCBS program adjacent to a hospital nursing facility, is there any waiver to the specific provision? Ms. Coulombe answered that is FE/PD Medicaid reimbursable service, ADSD and DHCFP if no HCBS option, limiting providers and the recipients would have to go to the other Medicaid provider. CMS gave findings for Highland and are working with Highland on a couple of the components. Ms. Coulombe provided examples of rural facilities and that CMS is firm with the HCBS rule. Mr. Duarte's second question is about several facilities in rural Nevada and their health district revenues is another area of prohibition. Is there another waiver to allow those government entities to run HCBS programs? Ms. Coulombe clarified if he was speaking of critical access hospitals. She continued that Ms. Jone Hall is a great advocate for those hospitals, and she is trying to work on enhancing their outpatient services not specific to HCBS long term services, they can definitely look into but not sure if there is a different component. Mr. Duarte stated they can move forward with legislation for a broad waiver to the settings rule and add to the Policy Subcommittee agenda.

Mr. Klein asked about the final determination letter for the NNAMHS campus and expressed how useful it would be for counties, in addition, the guidance it would provide. Ms. Coulombe responded she would be happy to share findings with the committee on the final rule's sections where its applicable.

Mr. Gold asked if Kirsten could find out the process for the rural and report back to the committee and expressed concern that AB122 needs to be part of the study. Mr. Klein stated a story that encompasses the situation would be beneficial and added going back to ACL/alternative pathways development. Ms. Liveratti stated that-AARP has a rural group which may enable us to collaborate with other states to build strength and affect federal policy. Mr. Gold responded he will ask his national liaison.

Larry Weiss asked about current HCBS waitlist, specifically the length and time to get on. Crystal Wren provided the numbers for the frail elderly 780 individuals waiting, physically disabled 270 individuals waiting, frail elderly 145 days for processing due to the amount of people apply versus the amount of slot. The number of slots does not make up the amount of people applying the disabled waiver is about 200 days. Barry expressed his concern with the waitlist and processing times and the needed to figure out and update. Mr. Weiss stated finding more funding to assist. Mr. Klein expressed his concern that the impact on the most vulnerable will be impacted for the next 4 or 5 years. Mr. Gold mentioned Senator Rosen is always looking for input.

7. <u>Elect a volunteer to review last sessions senior issues, including where they ended, and which need attention for a report to the subcommittee.</u>

Mr. Klein asked for one or two volunteers to review last sessions issues. To review work after the 2019 session and what might have not been addressed. Dena Schmidt offered

that Nikki Haag, ADSD Liaison, can pull a comprehensive list from the legislative data system and compile a spreadsheet for the committee. No action was taken on this item.

8. **Discuss and approve recommendations for the Legislative Subcommittee on Senior Citizens, Veterans, and Adults with Special Needs to the Commission on Aging Chair for submission of Recommendation**

Mr. Gold suggested the subcommittee send a letter to DHHS to seek a broader waiver in the rural for dual licensing to go forward. Review some of the issues to move forward to the senior committee including flexibility of earned sick leave - businesses under 50, 75% are not covered by that law. Paid time off employees under 50 benefits of using sick leave to care for another family member and mentioned AARP might be separately working on it.

Mr. Gold. stated increased funding for HCBS, reasons behind the waiting list and investigate the many components. Ms. Schmidt stated the funding for technology for streamlined eligibility to reduce timeframes and have more data on stop gaps and maintenance of the wait list. She added the technology request was approved by the Director's Office.

Mr. Gold moved on behalf of the subcommittee that the Administrator of ADSD submit the recommendation to the interim committee that they support to increase funding of technology to address the waitlist, reexamination of flexibility of sick leave benefits for employees who work for businesses under 50, and examinations of the settings rules and its effect on AB 122. Larry Weiss seconded the motion. Ms. Liveratti stated the motion was created as Dena Schmidt as the Administrator and should be as the Chair of the Commission. Barry amended the motion. The motion passed unanimously. Ms. Liveratti asked if the Policy Subcommittee had other recommendations to be sent to the Interim Committee? Ms. Schmidt stated Miles and herself will look over the minutes and then she will submit the Policy Subcommittee recommendations as the ADSD Administrator.

9. **Review status of federal COVID-19 legislation and proposals as it impacts seniors. Discuss and approve recommendations on spending and policy priorities to the Commission on Aging**

Mr. Klein stated in March and April, Congress acted in a series of measures to respond to COVID-19 and there were 4 relief bills (all temporary) which covered testing, telehealth, Medicare payment policy, and tax provisions which are to expire determined by the public health emergency's expiration and the President's decision to end the public health emergency which would prompt the expiration of a lot the policies. On November 30th the third of COVID-19 bills CARES act included additionally Medicare/Medicaid provisions which are to expire right around this time. The questions are going to be on the health extenders funding for community health centers, money follows the person, these items expire after the election and are not handled by the P4 (Phase 4) funding. The policy issues will get negotiated out.

Mr. Klein provided the following bill timeline:
COVID 1 March 6

Families First Bill, March 11
CARES Act, March 27
Paycheck Protection Healthcare Enhancement, April 24th
P4 house passed and negotiation over the next legislative cycle.

He continued with all the testing relates lives till the end of the emergency declaration, including waiver cost sharing under the Medicare program for testing. Testing and treatment no cost sharing provision under the Medicare advantage program, no cost sharing for Medicaid & CHIP, cost sharing under Tricare, and no cost sharing for Indian country. Temporary increase of the FMAP, the aging community are all pushing for enhancements to the FMAP and increase the federal share to provide relief to the states. The 12% increase would benefit the states with budget balancing. Mr. Klein reviewed COVID legislation and their deadlines.

Mr. Klein provided an update on Nevada CAN, including a 150 calls per week around essential services issues. He asked how to support the things stood up in a three to four-month window? What are the implications for the federal money and how to allocate and what resources are needed to support? What are the implications with the legislature? Limited for tax revenue, funding, licensing to keep people safe and out of institutions. He added the Division cannot do it alone and needs advocacy. Ms. Schmidt added how to sustain activities under Nevada CAN and expand to other vulnerable populations. ADSD is working with partners such as DPBH and Developmental Services, disability services and how to help people held by a 14-day quarantine. An IT solution tied to contact tracing was one of the requests for CARES funds. The divisions were asked to submit CARES funds request to the Governor's Office. IFC created a subcommittee to help the Governor's Finance Office (GFO) disperse CARES funds. She added more requests are PPE for field workers, sustain telecommuting, to ensure services remain in the community and continue essential services. Lastly, from a federal perspective the increased FMAP could be very beneficial to proposed budget reductions.

Mr. Gold asked about DHHS sending money to nursing homes for tablets, where did the money come from? Ms. Schmidt responded it came from the CARES funds and was issued to the Long-Term Care Ombudsman Program (LTCOP). They assessed the largest need for that program and to prevent social isolation, support the nursing facilities and keep people connected. The LTCOP is facilitating that effort.

Mr. Gold and Mr. Klein discussed the HEROES act regarding virtual visitations, nursing homes, long-term care, and residential care funding. Mr. Klein stated he does not hear much on the P4 funding.

Mr. Klein asked Ms. Schmidt how the legislative subcommittee can help with recommendations for spending and policy priorities for ADSD. She stated to continue with current efforts and to advocate for Home and Community Based Services (HCBS) and what they array of services are. Helping share the message with the administration, and the legislature. Ms. Liveratti asked if they have numbers for outbreaks in facilities. Ms. Schmidt said she will send her the link for the nursing home information. Discussion ensued about COVID-19 hospital discharge into nursing homes.

Ms. Liveratti asked if there is an action to be taken? Mr. Klein stated he would like to be supportive of the division and funding. Ms. Schmidt closed with the discussion and advocacy are enough and no further action will be needed at the time.

10. Nevadans for the Common Good Meeting Update

Mr. Klein provided the following updates

- Political Briefing,5/28 1:30pm-2:30pm
- Action Assembly 6/30 set the agenda for the coming session
- Weekly Action Team Meetings starting June 4th ,
- New lead organizer Anna Ang. Invite to join at the next meeting.
- Preliminary actions on variety of issues, including addiction, AG assures Purdue Pharma proceeds are directed towards victims' families and resources for victims, homelessness, senior homelessness.
- 3 major initiatives moving forward. Will send to Miles to disseminate.

11. Discuss the dementia Crisis, Regulations, Dementia Crisis Definition, Process and Oversight for Recommendations to the Commission on Aging

Dr. Leon Ravin presented on the dementia crisis. (See Attachment C)

Ms. Liveratti asked about cases with a cooccurring disorder or having a mental illness before dementia, what do you do in those cases? Dr. Ravin responded that a risk and benefits analysis is completed. He provided an example of anesthesia, the risk being a one in a million chance and the risk and benefit analysis. Secondly, explain to patient the nature of the off-label prescribing (prescribing for unapproved reasons) Lastly, if the patient can appreciate the nature of their condition, explain the risk and benefits. If not, they will look for substitute decision makers or legal guardian. The problem is if they refuse medications, they must go through an extensive court process which may or may not resolve the matter.

Ms. Liveratti commented when she was working, people who had mental health issues and dementia, ended up in jail and that became the mental health service. When they are older, ~~and~~ the jail does not know where to discharge as it is usually a case of them being combative, or very difficult behaviors they cannot control. This makes it hard for their families to maintain them at home and find a facility to help them.

Mr. Ravin in response mentioned the following:

- Easier in jail for those with severe mental illness to find a bed in correctional than a psychiatric facility
- After the symptoms have been addressed it is difficult. Nevada has very few options that can accept patients for long term care. One of the hesitations the psychiatric hospitals are reluctant with dementia even if there is not a psychiatric illness present and address psychotic symptoms for a few weeks but stuck with them for months due to the lack of placement options.
- No service to the individual, rather disruptive to state of mind and not giving the patients the best care, they deserve.

- Other states have the same issue, the problem is mental health capacity. Some states provide inpatient psychiatric services with dementia. Mr. Ravin referred to the attachment with list of states with long term care facilities.
- Some have specialized units and there is private psychiatric care but not at the state level under Department of Public and Behavioral Health DPBH.

Mr. Klein provided an example of allergy medication and emergency visit which triggers an in-patient hospitalization and weeks of institutionalization and the perception of a behavioral effect versus medical effect.

12. **Review, discuss, and approve tentative agenda for the next meeting.**

- Supplemental items with agenda. Nevadans for the Common Good. Legislation
- Follow up AB122
- Settings Rule
- Review of last session materials
- Report follow up to committee
- COVID-19 Report (Dena and Jeff)
- Training opportunities for HCBS
- Invite Anna Ang from Nevadans for the Common Good

Larry Weiss commented HCBS what can we do to help train stuff in senior living communities, requirements of any kind of facilities. Implement best practices, educating healthcare, and respite care.
Miles will circulate a draft agenda in advance of the next meeting.

13. **Next Meeting Date** August 31, 2020

14. **Public Comment** (No action may be taken upon a matter raised under public comment period unless the matter itself has

Been specifically included on an agenda as an action item. Comments will be limited to three minutes per person. Persons making comment will be asked to begin by stating their name for the record and to spell their last name and provide the secretary with written comments.)

- Barry Gold – AARP Tele Townhall, more 3k participate across the states, Dena Schmidt did a phenomenal job at providing information and people stayed online a lot longer. Commending Dena Schmidt and Jeff Duncan. Mary Liveratti added the survey helped.

15. **Adjournment** – Meeting adjourned at 12:56pm

Attachments:

A. Assembly Bill 122 Presentation

B. Home and Community Based (HCBS) Setting Rule

C. Presentation- Treatment Considerations for Patients with Neurocognitive Disorders