



**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING
7:00 P.M., March 16, 2010
George V. Massey Station
Dover, Delaware**

MINUTES

MEMBERS PRESENT: Chairperson Robert D. Overmiller, Nina Bunting, Al Cavalier, Cathy Cowin, Helene Diskau, Jane Donovan, Karen Eller, Lisa Gonzon, Bernie Greenfield, Terri Hancharick, Brian Hartman, Esq., Chris McIntyre, Bill O'Neill, Jennifer Pulcinella, Barbara Riley, Blake Roberts, Dennis Rubino, Ron Russo, John Ryan, Judy Smith, Lavina Smith, Martha Toomey, Mila Wells Vanessa Withers-Little.

OTHERS PRESENT: Jim Welch/Department of Corrections Health Services Bureau Chief; Ellen Coulston/Brandywine Special Needs PTA; Nick Fina/CHOICES & Hearing Loss Association of Delaware (HLADE); Linda Heller/Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) and HLADE; Betty Martin/HLADE; Doreen McKechnie/HLADE; Dafne Carnright/Autism Delaware; Bill Doolittle/Delaware Aspergers Support Group; Howard Shiber; Tina Frederickson/Statewide Program for Deaf/Hard of Hearing; Della Thomas/ Statewide Program for Deaf/Hard of Hearing; Mark Campano/Statewide Program for Deaf/Hard of Hearing; and Doris Willett, mother of Della Thomas. Staff present: Wendy Strauss, Executive Administrator, Kathie Cherry, Administrative Assistant and Susan Hayes, Operation Support Specialist.

MEMBERS ABSENT: Darlene Arena, Jean Butler, Carma Carpenter, Steve Chang, Nancy Cordrey (Leave), Janet Cornwell, Joanna Francis, Dave Hosier, Julie Johnson, Chris Laniyan, Dana Levy, Janet Milnamow, Beth Mineo, Janella Newman, Brandy Smith.

A quorum being present, Chairperson Robert Overmiller called the meeting to order. The agenda was approved as written. There were no comments during the Public Comment period. The minutes of the February meeting were approved as written. The February financial report was approved after some discussion. Robert then introduced Ellen Coulston, a parent from the Brandywine Special Needs PTA, who spoke to Council on educating students with higher

functioning autism or Asperger Syndrome (AS) and her program called Developing a Social Thinking Program: The Hidden Curriculum.

Ellen thanked Council for the opportunity to speak with them. Ellen started her presentation by explaining that she is a parent in the Brandywine School District and a member of the Brandywine Special Needs PTA. She then asked about the role of the members of the Council who were present. Ellen began the Social Thinking program six years ago to address the needs of her son who was in first grade. She shared information from an IEP meeting that did not provide acceptable training for her son, which led to her asking to provide a social skills/social thinking training class. Ellen provided information on how the program grew and evolved throughout the six years she has been teaching it, with assistance from a fellow graduate of the Partners in Policymaking program. Ellen mentioned that her partner and mentor is a Ph.D. in curriculum and instruction. She helped with lesson planning and curriculum development. Ellen received most of her training from conferences and trainings. There are myths about students on the autism/Aspergers spectrum. It is commonly believed that these students with social challenges do not really care about forming relationships and do not really want to have friends. Ellen explained that this is incorrect. These students do not understand how to develop relationships and friendships. They need a guide map, along with direct, explicit instruction in social thinking and practice in social skills. Social thinking must precede social skills; otherwise the skills would be mechanical responses with little understanding of why and when to use them.

Ellen discussed the evolution of the program and the development of new items each year, such as the agenda that was shared with other teachers in the school her son attended, showing the concepts that her class would be working on that year. This helped the other teachers to be able to embed some of what was being taught in their lessons and also helped Ellen to determine other social settings that the students might encounter throughout the year. Ellen went on to explain how the kids reported out on the program, which made it easier for the teachers, who were also visual learners to accept.

In 4th grade, Ellen continued the classes and added a summary on what was being taught and how it was being taught. The summary was given to teachers and teachers began to provide information on what they saw in their classes. Studies show that programs held in normal classroom settings are more likely to result in positive changes than programs held in other environments. An important implication of a study done at the University of Indiana is that “teachers and other school personnel should place a premium on selecting social skill interventions that can be reasonably implemented in naturalistic settings”.

Monthly newsletters were sent out to parents, telling them about the concepts that were being taught and what the parents needed to do to reinforce the classroom training. The 5th graders Ellen taught connected with a video club in the school, which was very important. The guidance counselors in that school were also being taught. They were totally supportive of the training that was being provided. In sixth grade, the teacher notes that Ellen provided were sent to the Department of Education. Kathy Goldsmith of DOE visited all three of the groups that Ellen was teaching and asked her to replicate the program. Ellen also mentioned the bowling trip that she took the kids on.

The principal hired a videographer who went on the bowling trip with the students and their chaperones. While there, he was able to interview the parents of the seventeen students, the principal and guidance counselors. Ellen went on to discuss Michelle Garcia Winner, author of “Think Social!”, the curriculum that she uses in her classes. The video of the bowling session was sent to Ms. Garcia Winner, who invited Ellen to present at a two day conference.

Ellen then went on to discuss pathways to learning and the difficulties involved in teaching visual learners with communication and language impairments. Communication is transient and fleeting. Rather than repeat a concept orally, these students are taught more effectively by asking them to take out a piece of paper and writing it down. The use of a palm pilot can also be helpful and is something that can help these students. The spectrum of education includes academic development, social development, meta-cognition, emotional adaptive and vocational development. All five of these are in the educational standards in our schools but most people focus solely on academic development. She explained how most teachers and administrators look only at the academics and feel that a student is doing fine if they are doing okay academically. This is not the case. Teachers compartmentalize how things are taught and often do not mesh their teachings in a multi-disciplinary way that will show how the information relates to the real world and our life. She went on to explain how there are social goals in the standards.

Social thinking is our innate ability to notice and adapt to a social situation and be able to navigate it successfully, involving two or more people. Social is an abstract concept. The two forms of communication are verbal and nonverbal. Nonverbal communication involves facial expressions, body language and tone of voice. Body language and tone of voice are extremely important. Ellen works with students to teach them the importance of interpreting and using tone of voice and facial expressions appropriately. She gave examples of expected and unexpected behaviors and how the students are taught to relate. It is very important to teach flexibility to students on the spectrum since they are typically very rigid and unwilling or unable to change easily. She gave an example of the reaction from a student to a change in his schedule and what could have been done to avoid the problems that occurred.

Ellen went on to discuss problem solving. These students do not understand that they are problem solving practically every moment of every day. She also discussed what happens when you get stuck. Scenarios are discussed before they occur in order to help students be prepared to be more flexible. She discussed the use of ‘thinking bubbles’ and ‘conversation bubbles’ similar to the ones that are used in comic strips. The students learn that everyone has a perspective and opinion, rather than believing that everyone shares their perspective.

The hidden curriculum is two-fold and is not written down. Rick LaVoie, author of “Last One Picked ... First One Picked On” talks about the social skills needs of kids on the spectrum and the unwritten language that exists. Most of us understand the social cues that exist but these students do not get them. Everything can be a teachable moment but these students do not learn the social cues by themselves. They are taught that not everyone is their friend, reading the motivation of other people and they learn about friendship charts.

Ellen continued with information from one of the speakers at the LIFE Conference earlier this year. The speaker mentioned that we all need one hundred social hits per day. Students on the spectrum do not receive one hundred hits per day. He also stated that students on the spectrum are doubly disabled. In addition to the disability they have, they also have a social disability, which is extremely difficult to overcome. Students need to learn how to self-regulate and learn how to manage their own emotions.

Ellen then went on to show examples from the content standards and how they relate to being part of a group and recognizing expectations. One example was that students would learn to develop a sense of understanding of how humans interact with each other and how the world is diverse in Social Studies in first and third grade as a part of the Delaware State Standards. In grades four, five and six, critical thinking and problem solving are emphasized in English Language Arts (ELA).

The use of indirect language was discussed. Ellen is currently volunteering at P.S. DuPont in the Brandywine school district. Ellen is not training trainers this year. Discussion ensued on the need to replicate the program in other schools and districts and the need to have training at the high school level. Martha Toomey provided information on similar projects being piloted in the Christina and Red Clay school districts at the elementary level. Al Cavalier commented on the training in classroom management on social and emotional learning being given to education students at the University of Delaware. There are two resource centers on social and emotional learning. Illinois had their curriculum standards and year-end tests include major initiatives for social and emotional learning skills. They changed teacher preparation for the entire state by getting acceptance from the legislators to change the system. Ellen thanked the Council for inviting her to share information on her program and the need to teach social thinking to our students.

Robert thanked Ellen for her presentation.

A question was asked about the request from the Autism Delaware group that presented information to Council last month. Dafne Carnright, who led the presentation, commented that the group would not be able to get their information back to the Council until April. She apologized for the delay.

Robert then introduced Nick Fina who will be presenting information on the CHOICES program. Wendy Strauss invited Nick to present his information during her Staff Report timeframe. Nick began his presentation by stating that his group and presentation are entitled: CHOICES (Making Language CHOICES Available to Delaware Families of Children with Hearing Loss). Nick explained that he would not be doing the formal presentation that he had done at the State Council for Persons with Disabilities meeting earlier this week but would be speaking from his heart instead. Nick stated that he is an individual with hearing loss and attended the public school in Ohio in the 1950's. He feels that he did better being educated before the push for special education.

Nick is a member of the SCPD, Hearing Loss Association of Delaware (HLADE) and the State Rehabilitation Council (SRC). His group, CHOICES is interested in addressing the need for improvements in the education of children who are deaf or have hearing loss. CHOICES is made up of approximately twenty to twenty-five people, with a core group of seven members. Nick stated that this is a subject that has a lot of emotion involved with it. Most people are aware that Alexander Graham Bell had a strong interest in hearing loss. He was an advocate of eugenics as a way of curing the human race of deafness. His name is associated with oral education, which was very prominent in the 1950s. Oral Education has a bad name due to people who were deaf being forced to learn how to speak under extreme duress. Nick went on to discuss the development of deaf culture, which is an offshoot from the black civil rights movement and women's liberation movement. Deaf culture says that there is nothing wrong with being deaf and there is no need to try to 'fix' the deaf person. Nick went on to talk about the need for a continuum of services and the continuing need for the Delaware School for the Deaf or Sterck School because individuals who are deaf need to have options available to them.

Parents of children who are born deaf are looking for services that are not readily available. He went on to discuss the rise in the number of cochlear implants and the need for training programs for infants, as young as twelve months, who are receiving cochlear implants. Delaware does not offer this intensive auditory verbal therapy. CHOICES has been developed to address these unmet needs. Families that the group has spoken to have stated that they feel they have not been well served by the services provided in Delaware. The group has also visited programs in other states to see what other models are available and how those programs are working. A position paper will be ready in the next few weeks and a website is under construction. After eight months of homework, the group is beginning to make public statements, such as the presentation to SCPD. The presentation was made by Roberta Michnick Golinkoff, Ph.D. who is a professor of education, psychology and linguistics. She is a world-renown expert on language acquisition. Mia Papas, Ph.D. co-presented with Dr. Michnick Golinkoff. Dr. Papas is an epidemiologist, adjunct professor of public health at Drexel University, and the mother of a young child who is deaf. Mia shared her story and how she felt she had to take her child to the Clarke School in Pennsylvania in order to access the services her child needed.

Nick went on to explain that the group has drafted a letter to Secretary of Education Lillian Lowery, which has been approved by the SCPD, which asks questions on what Delaware is doing to address the needs of children with hearing loss, particularly the need for early intervention services in the Statewide Services for Deaf/Hard of Hearing program. The parents that the group spoke with over the summer stated that they felt their children were not getting appropriate services or services that were individualized and well-suited to their needs.

Nick also mentioned that the group would be participating in the Delaware's Still Listening Conference on hearing loss on March 18, 2010. A question was asked on the specific choices that parents feel they do not have. What would they like as a range of choices that they do not currently have? Clarity is needed on what exactly is being offered. Nick mentioned that Della Thomas, director of the Statewide Deaf/Hard of Hearing Programs and Tina Frederickson, Coordinator of Statewide Deaf/Hard of Hearing Programs are in the audience and may be more able to discuss the range of choices currently available. When asked to continue, Nick responded

that one of the specifics is the lack of strictly auditory verbal therapy. The Statewide Deaf/Hard of Hearing Program in Delaware is a bilingual approach that alternates between American Sign Language (ASL) and English. CHOICES feels that what is needed is strictly auditory verbal therapy which involves intensive work on developing the hearing function of newly implanted infants. That is the major thing that the group is looking for. People are going to make different choices for themselves.

Nick went on to discuss the Delaware chapter of the Hands and Voices program, which recently was started. This program is made up of parents of children with hearing loss or deafness. In this program, parents of children with hearing loss or deafness contract with Delaware to provide the "Guide by Your Side" program. "Guide by Your Side" will allow experienced parents to provide and receive training on providing counseling to individuals so they can make informed choices for their family members. This is a very important step forward.

Martha Toomey commented that Nick is right in saying that there are lots of choices for auditory verbal therapy for kids who have received cochlear implants. It has been done on almost an ad hoc basis. Districts have sent teachers to be trained so services can be delivered. This is another example of the problem that Delaware struggles with in trying to have all of the experts on staff that are needed to provide choices and be able to deliver those services.

Tina Frederickson commented that auditory verbal therapy is a very strict, intense therapy, that has been developed for cochlear implanted children. Normally, it is done right after implantation, with very strict guidelines that must be adhered to. She also mentioned that it is no longer referred to as auditory verbal therapy but is known as Listening and Spoken Language Specialists or LSLs. A.I. DuPont provides it to their implanted patients only. It will not provide the training to patients who are implanted elsewhere. Tina went on to say that a good speech pathologist working in ad hoc with the speech pathologists at A.I. are able to instill those skills into their speech language therapy sessions in a school setting. The trouble is in trying to get the schedules of those speech therapists to mesh. It was mentioned that there is an extreme shortage of speech therapists in Delaware.

Nick went on to discuss the possibility of having intermediate units to share resources within the Statewide organization. He also mentioned moving the program to Dover would be a good idea. His understanding is that half of the districts in Delaware have itinerant teachers and half do not. Informal sharing may be taking place but sharing could be done more efficiently if there were a statewide organization with some real power to manage itinerants as a group. Nick went on to say that he doesn't see how the needs of the deaf/hard of hearing community, which is considered a low incidence disability, differ greatly from other disability groups in the State. There is a lack of trust between the school districts and people in the CHOICES group.

Della Thomas asked how many parents of deaf/hard of hearing children are a part of the CHOICES group. Nick responded that there is one parent in the group. Della continued by stating that most of the group members are individuals working in the field, such as audiologists working at A.I. DuPont Hospital. The group also includes a professor who does not work in deaf

education. Della stated that she just wanted to clarify for the Council that the CHOICES group is not really representing parents necessarily, just a parent.

In response to a question on why there is such intensity involved in the question of how services are delivered, Della commented that there is no resistance to choices from the current administration of the Statewide Programs. She believes that interviews that were conducted were of five parents who had children who went through the school previously and are not reflective of the sentiments of current parents. Nick commented that this is a situation that has a lot of history and that the current administration needs to be aware of that history. He also mentioned the presentation done by Linda Heller at a GACEC meeting five years ago and nothing has changed in that time. CHOICES is supportive of Della and Tina and is not trying to pick on them.

GACEC member, Judy Smith, commented that she is the parent of a child who is deaf and a student at the State School for the Deaf. She says she does not understand the presentation because they have always been given options. That has never been a problem. Unfortunately, her child is not a candidate for a cochlear implant but they were always given options at the school. She remembered the presentation by Linda Heller from several years ago and felt it was an attack on the school. There are students there who have cochlear implants, along with children like her daughter who are profoundly deaf. There are students who attend the school to learn sign language, along with children who are mainstreamed into regular classes. She feels that the school has always tried to be fair and has provided them with the best services available.

Nick commented that they have heard different stories from different people. He continued by stating that the fact that they could find people who did not feel that they were well served is an indication that something is not right.

Lavina Smith commented that there are always going to be those who feel that they are not getting the services they need. There are no perfect programs. There are always going to be flaws in any programs. Martha commented that there is a need to address the fact that more and more children are getting cochlear implants. There is a need to ensure that the appropriate services are in place for them. This is a conversation that is taking place and she is not aware of any opposition from the school in ensuring that options are available. Sharing of resources has to be arranged and an arrangement needs to be worked out with A.I. DuPont to get them to bend a little in providing therapy to children other than those they implant. We have to keep up with available technology.

Jennifer asked if Julie Johnson is a part of the CHOICES group. Nick commented that she is not a member of the core group but has been a participant in some of the discussions. Jennifer commented that Julie is the chair of the GACEC Infant/Early Childhood committee and chair of the Delaware chapter of Hands and Voices.

Brian stated that he just wanted to echo the comments made by Martha that this is all about choices and technology is getting better and better. This will need to be addressed. We cannot allow the shortage of speech language pathologists to impede this process. He would conceptually like to see more attention being drawn to this situation.

Robert thanked Nick for his presentation.

DOE REPORT

Martha Toomey commented that this is the time of the year when DOE applies for its federal funding. We are obligated to submit the application to the public for comments. She shared the application with the group, along with the actual proposed use of federal dollars. This information is on the DOE website, in public libraries and as a public notice in newspapers. It must be published for sixty days. The categories of use are described by the federal DOE and are very general. She went on to explain more on some of the categories.

Martha went on to provide an update on the DCAS (Delaware Comprehensive Assessment System) and stated that there is a possibility that the State may receive additional funding for assessments.

COMMITTEE REPORTS

CHILDREN AND YOUTH COMMITTEE

Chair Karen Eller reported that this committee reviewed their goals and have decided to focus on obtaining information on interpreters for the remainder of the year. They would like to receive additional information on interpreters in schools. They would also like to request the Speech Language Taskforce Report from Martha Toomey. They have discussed ideas on possibly working with the Parent Information Center (PIC) on polling parents and getting feedback from them on how they feel about the services their children are receiving, with a focus on speech therapy services. The committee was really happy to have a number of guests this evening and hope to see them again at future meetings. On March 31st, Autism Delaware will be hosting a Meet and Greet at Fraziers in Dover with legislators to discuss current issues in the autism community. Dafne Carnright and Nina Bunting will be sharing a list of issues with the committee so they can determine what they can do to assist in their efforts.

Karen commented that they appreciated the presentation by Nick Fina and asked what he would like to see the Council do to support the CHOICES initiative. Nick responded that Council may wish to review the SCPD letter that is being sent to Secretary Lowery and determine if it would like to co-endorse or co-sign the letter. Nick will send the letter to Wendy for distribution. Al Cavalier commented that there were twelve people at the committee meeting this evening.

ADULT TRANSITION SERVICES COMMITTEE

Terri Hancharick reported that this committee heard from Jim Welch, bureau chief of the Department of Corrections Health Services. Jim spoke about DOC health services. They have an

RFP out for a new vendor. There are a total of 24,279 people in the adult prison system including incarcerated, parolees, and home confinements. They are renovating a few of the infirmaries and starting to think about heart healthy diets and exercise. Mr. Welch also stated that there are a few accessible cells and therapies are given to people with disabilities. Robert thanked Terri for her report.

INFANT/EARLY CHILDHOOD COMMITTEE

Vice Chair Jennifer Pulcinella reported in the absence of Chair Julie Johnson. This committee wanted to remind everyone that April 1st is the beginning of Child Abuse Prevention Month. There is a legislative event on Thursday at 1p.m. to show support for Child Abuse Prevention Month called “Blue Bows”. The committee also discussed ASTM standards after receiving an e-mail relating to playground equipment and standards. The committee would like to get a copy of the ASTM standards for playground equipment since the e-mail stated there were discrepancies between the standards for inside and outside equipment. The group also reviewed the comments from Janet Cornwell on the Pre-Early Learning Foundation (ELF). They need to combine those comments with comments from Lisa Gonzon in order to submit comments to Jim Lesko. Robert thanked Jennifer for her report.

POLICY AND LAW COMMITTEE

Brian reported in the absence of committee chair, Jean Butler. The committee reviewed seven items that were addressed in the legal analysis provided to them and to the Council earlier this month. Items 7, 8, 9, and 10 were adopted by the committee as written in the memorandum provided by Brian Hartman. The analysis for those items is as follows:

13 DE Reg. 1181 Department of Insurance Proposed Long Term Care (LTC) Insurance Claim Processing Regulation. The Department of Insurance proposes to adopt standards for the prompt, fair, and equitable settlement of claims for long-term care insurance. Brian shared the following observations.

First, in §4.5, second sentence, the word “an” should be “a”.

Second, most of the definitions in §3.0 are extraneous since they are not used in the text of the regulation. Specifically, the terms “institutional provider”, “policyholder”, “insured”, “subscriber”, and “provider” are absent from the balance of the regulation.

Third, overall, the regulation is less comprehensive and “weaker” than the comparable Department of Insurance “Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services” codified at 18 DE Admin Code Part 1310. The following are examples.

A. Section 6.0 of the “Health” regulation requires an insurer to pay an undisputed part of a claim and to notify the provider or policyholder why the remaining portion of the claim

is not being paid. In contrast, Section 4.0 of the “LTC” regulation effectively authorizes an insurer to simply deny an entire claim even if it only questions a small part of it.

B. Section 7.0 of the “Health” regulation establishes a rebuttable presumption of an unfair practice based on three instances of the failure of a carrier to comply with the regulation within a thirty-six month period. In contrast, Section 4.7 of the “LTC” regulation has no rebuttable presumption and will be more difficult to enforce.

C. Section 4.0 of the “Health” regulation lists some claims that are “clean claims” as a matter of law (e.g. those using Medicare forms). The “LTC” regulation contains no such standards.

D. Section 5.0 of the “Health” regulation clarifies that both a “provider” or “policyholder” may submit a “claim” to which the regulation applies. There is no analog in the “LTC” regulation.

The Policy and Law committee recommends that the Council share these observations with the Department of Insurance and encourage it to adopt standards analogous to the Part 1310 standards. Most of the insureds under LTC policies will be senior citizens who need the protection of comprehensive regulatory protections more than the general population. The Council may wish to share a courtesy copy of the commentary with the Senate Insurance Committee and the House Economic Development, Banking, Insurance, and Commerce Committee.

Motion to submit comments on **13 DE Reg. 1181** to the Department of Insurance, with courtesy copies to the Senate Insurance Committee and House Economic Development, Banking, Insurance, and Commerce Committee was **approved**.

The next item for discussion was **13 DE Reg. 1174 DSS Proposed Cash Assistance Overpayments and Food Supplement Program (FSP) Household Claims** Regulations. The Division of Social Services (DSS) currently has a single set of regulations covering overpayments and recovery in the contexts of cash assistance programs (e.g. TANF; GA) and the Food Supplement Program (FSP). DSS is proposing to adopt separate regulatory standards in these contexts. A revised “7000” section will cover cash assistance and a new “9095” section will cover the FSP. The Policy and Law committee reviewed the following observations.

First, in Section 7003.1, the word “claim” should be deleted.

Second, in other contexts, it is common to waive recovery of overpayments if relatively small in amount or collection is not cost effective. For example, the Social Security Administration will waive an overpayment up to \$1,000. The FSP authorizes non-collection if the overpayment is \$125 or less [§9095.5] or a claim balance is less than \$25 [§9095.11C]. This concept is absent from Part 7000. Therefore, DSS staff would have no discretion but to process small overpayments of even \$1.00. DSS should consider incorporating an authorization to disregard overpayments if the amount is small and/or collection would not be cost effective.

Third, §7003.1 is confusing. It could be interpreted in two ways based on the use of bullets and co-equal references to “and” and “or”:

A. One interpretation is that there are three independent bases for referral to the Department of Justice (DOJ):

1. intentional violation and net overpayment exceeds \$1000; or
2. interstate fraud; or
3. repeat offender of \$500 or more.

B. Other interpretation is that there is one basis for referral with three subparts. Referral would occur only if there is intentional violation characterized by one of the following: 1) net overpayment exceeds \$1,000; 2) interstate fraud; or 3) repeat offender.

A repeat non-intentional offender over \$500 would be referred to the DOJ under the first interpretation but not the second interpretation.

Fourth, the FSP regulation (§9095.10) includes an authorization to “compromise a claim” to facilitate DSS collection within a reasonable period of time. This concept is absent from the Part 7000 regulation for cash assistance overpayments. DSS should consider incorporating an authorization in Section 7004.1 (which covers restitution and reimbursement) to consider “compromise of claim”.

Fifth, the committee believes the reference to “7004.2 Case Changes” should be deleted. Moreover, there are duplicate references to “7004.1 Methods of Collecting Cash Assistance Overpayments”.

Sixth, §9095.1C) recites that each adult member of a household is responsible for paying an “overpayment” claim. This is based on 7 C.F.R. 273.18(a)(4). See also §9095.6D.2. Section 9095.6C recites that notice of the claim is effected by providing “the household with a one-time notice of adverse action...”. This is based on 7 C.F.R. 273(e). The concern is that a single notice to a “household” may not reach an eighteen year old adult living with parents or relatives. The eighteen year old would not be notified of the time period to request a hearing which then lapses. The eighteen year old would then be subject to wage attachment, state tax intercept, etc. based on §9095.13G without effective notice and opportunity to challenge the underlying “claim”. Recognizing that DSS is adopting the federal regulation verbatim, it still may be the better practice to send separate notices to each adult member of a household. Otherwise, there may be a lack of due process.

The committee recommend sharing the above observations with the Division.

Motion to submit observations on **13 DE Reg. 1174** to DSS was **approved**.

13 DE Reg. 1174B DSS Proposed FSP Income Deductions Regulation. The Division of Social Services proposes to amend the income deduction standards of the Food Supplement Program. As the “Summary of Proposed Changes” indicates, there are two major changes.

First, DSS is opting to treat child support payments as an income exclusion from gross income rather than a deduction from net income. This favors the obligor and expands eligibility. The relevant federal regulations, 7 C.F.R. 273.9(b)(17) and 273.9(d)(5), provide states with this option.

Second, DSS is opting to allow a shelter deduction of \$143 for homeless households with limited shelter expenses. This should result in an increase in benefits to affected households.

The changes appear in the initial section (bottom of p. 1177) and Par. E.

Since the changes benefit recipients, Brian and the committee recommend sharing an endorsement of these amendments with DSS subject to clarifying that references to income in the initial section refer to “gross” income, not “net” income. Note that the superseded regulation (e.g. §9060B) explicitly referred to “gross” income.

Motion to submit comments on **13 DE Reg. 1174B** was **approved**.

13 DE Reg. 1166 DMMA Proposed Medicaid Prior Authorization Regulation. The Division of Medicaid and Medical Assistance (DMMA) proposes to amend a Medicaid prior authorization “policy”. It proposes to delete an existing policy with specific standards in favor of revising a general policy which then cross references sixteen separate policy manuals (§1.21.6).

Brian and the committee reviewed the following observations.

First, DMMA is required to issue its standards as regulations in conformity with the Administrative Procedures Act. See Title 29 Del.C. §§10161(b), 10111, and 10113. The preface to the proposal indicates that DMMA is amending “the Delaware Medical Assistance Program (DMAP) General Policy Provider Manual.” At 1166. The preface then invites comments on “the proposed new regulations”. *Id.* Unfortunately, it is, at best, unclear that the Manual is a regulation.

The Delaware Administrative Code is available on-line and contains an index for “Title 16 Health & Social Services” at <http://regulations.delaware.gov/AdminCode/title16/index.shtml>. The index lists the Division of Developmental Disabilities Services (DDDS), the Division of Long Term Care Residents Protection (DLTCRP), Department of Public Health (DPH), Division of Social Services (DSS), and Division of Substance Abuse and Mental Health (DSAMH), but not DMMA. The DSS site includes the Delaware Social Services Manual (DSSM) (containing Medicaid regulations) but does not include DMAP provider manuals. If someone accesses the DHSS website, clicks DMMA, and then clicks “regulations”, you are referred to the Administrative Code (which lacks a DMMA entry) and the DSSM. Only if you click “manuals”, then “downloads”, then “manuals” again on the DMMA website will you discover the 186-page

General Provider Manual and thirty-one (31) policy provider specific manuals containing a host of prescriptive, substantive standards.

There are multiple problems with this system:

- A. The manuals should be adopted as regulations consistent with the APA since they contain many substantive standards. If they are regulations, they should appear in the Administrative Code.
- B. The manuals are very difficult to locate without an extensive search.
- C. If the manuals are not regulations, they can be changed without the benefit of publication for public comment.

Second, Section 1.21.6 contains a list of sixteen contexts in which prior authorization is required. However, it also recites that the list is “not all-inclusive” and directs the reader to the twenty-one manuals for more specific information. This is not very informative or “user-friendly”. A Medicaid beneficiary will often be unable to determine whether prior authorization is required due to the “maze” of standards and the catch-all recital that the list is “not all-inclusive.” A provider who fails to obtain prior approval when required by these obtuse standards is not paid. See §1.21.2. The unpaid provider may then pressure the beneficiary to pay. Although an informed beneficiary could rely on §1.16.1 protections, this presupposes the beneficiary somehow locates the manual. Moreover, providers can nevertheless pressure payment through other means (e.g. threatening to “drop” as patient).

Brian and the committee recommend sharing these observations with the Division.

Motion to share observations on **13 DE Reg. 1166** was **approved**.

The following items were approved by the committee, based on information in the legal analysis, with additional comments from the committee:

13 DE Reg. 1164 DDDS Proposed Appeal Process Regulation. The Division of Developmental Disabilities Services (DDDS) proposes to adopt a regulation defining its appeal process. Brian and the committee shared the following.

First, DDDS is to be applauded for publishing a proposed regulation in this context as juxtaposed to a “policy”. Although its enabling legislation [Title 29 7909A] contemplates DDDS issuance of regulations, it has only adopted a single regulation since its inception, i.e., its eligibility standards which have been amended a few times. See 16 DE Admin Code 2100.

Second, DDDS should consider overlapping appeal processes apart from Medicaid. For example, if DDDS proposes action covered by the long-term care bill of rights (Title 16 Del.C. §1121) (e.g. changing a roommate in group home or Stockley), the client could initiate a “grievance” with Delaware Health and Social Services (DHSS) pursuant to Title 16 Del.C.

§1121(28) and 1125. Moreover, if an applicant desired institutional versus Home and Community Based Services (HCBS) care (covered by §2.1 of the DDDS policy), and the decision was Preadmission Screening and Annual Resident Review (PASARR)-related, a DSS hearing is available to even non-Medicaid beneficiaries. See 16 DE Admin Code Part 5000, Section 5304.1. Therefore, it would be prudent to include a non-supplanting provision in the DDDS regulation. Consider the following amendment to §11.0:

11.0 A DDDS Appeal shall not be a pre-requisite for requesting a DSS Medicaid Fair Hearing nor shall the availability of a DDDS appeal supplant or preclude access to appeal and review processes otherwise available under law or Departmental policy.

Third, §3.0 could be interpreted as categorically requiring exhaustion of informal resolution methods prior to appealing to DDDS. This could be problematic since it could result in dismissal of an appeal based on perceived “insufficient efforts” to resolve the dispute informally. Moreover, literally, it would require a client dissatisfied with the outcome of a rights complaint to try to negotiate a different disposition with Chris Long prior to appeal. It would be preferable to “encourage” but not categorically “require” resolution efforts prior to filing for appellate review.

Fourth, in §3.0, the reference to “an appeal DDDS” makes no sense. Consider substituting “an appeal under this regulation.”

Fifth, in §9.0, the comma after the word “appealed” should be deleted.

Sixth, in §10.0, the comma after the word “disposition” should be deleted.

Seventh, in §4.0, consider adding the following amendment: “The implementation..., unless it has already been implemented *or by agreement of the appellant and DDDS.*” There may be situations in which the parties agree to “roll back” action pending the processing of the appeal. It would be preferable to authorize DDDS discretion in this context.

Eighth, under §5.0, the 90 day time period to request a Medicaid hearing is not tolled during the pendency of the DDDS appeal. It would be preferable to reach an accord with DSS that would allow tolling. A January 27, 2000 policy letter from Medicaid Director, Phil Soule, authorizes tolling of the 90 day Medicaid fair hearing request period during pendency of internal MCO review.

Ninth, in §2.4, it would be preferable to insert “limitation” after “reduction,”. Compare 18 DE Admin Code Part 1403, §2.0, definition of “adverse determination” and 18 DE Admin Code Part 1301, §2.0, definition of “adverse determination”.

Tenth, in §2.0, it would be preferable to include the following: “2.6. Decisions involving the content or implementation of an ELP”.

Eleventh, in §2.0, it would be preferable to include a “catch-all” such as “2.7 . Other adverse DDDS action or refusal to act with significant impact on appellant.”

Motion to submit recommendations on **13 DE Reg. 1164** was **approved**.

13 DE Reg. 1158 DOE Proposed Unit Count regulation. Information on the Department of Education proposal to adopt several revisions to its unit count regulation was sent out to the GACEC Board prior to submission to the State Board of Education meeting. The committee recommended the Council share the following observations.

First, §§1.3, 4.1.4., and 4.1.11 disallow counting of a student with a disability unless the student has an IEP in effect during the last week of school in September. There is some “tension” between this requirement and 14 DE Admin Code Part 925, §23.2 which provides schools thirty days to develop an IEP after initial identification. Thus, a student could be identified in early September, be awaiting development of an IEP, and not be counted as a student with a disability resulting in lack of qualification for federal IDEA funds. The requirement that a student have an IEP to be counted as a student with a disability also squarely conflicts with 14 Admin Code Part 925, §6.5.1, which recites as follows:

6.5.1. A child shall be entitled to receive special education and related services, and shall be eligible to be counted as a special education student for purposes of the unit funding system established under 14 Del.C. Ch. 17, when the child’s team has determined that the child meets the eligibility criteria of at least one of the disability classifications in this section, and by reason thereof, needs special education and related services.

At a minimum, the DOE may wish to consider allowing newly identified students to be counted pending development of an IEP.

Second, §2.2 recites that “students with multiple disabilities shall be reported in the category that corresponds to their major eligibility category.” To conform to 14 DE Admin Code Part, 925, §6.5.3, as well as to conform to historical language, the DOE should consider referring to “primary disability classification” or “primary eligibility category”.

Third, in §1.3, the DOE deleted the requirement that students be reported by grade level. However, §2.4 still requires reporting by grade level. The DOE may wish to consider whether an amendment is necessary to reconcile these provisions.

Fourth, §3.1.3 misstates the legal standard for “good cause” transfer of an initial year charter school student to another public school. Section 3.1.3 recites as follows:

3.1.3. Districts and Charter Schools enrolling an intra-state transfer student during the last 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or first year charter agreement before enrolling the student. If said obligation exists, “good cause” must

be agreed upon by the sending and receiving district/charter school before the receiving district/charter school can enroll the student.

[emphasis supplied]

In contrast, Delaware statutory law identifies “good cause” for initial year transfer from a charter school as including several bases apart from the mutual agreement of the sending and receiving schools. See Title 14 Del.C. §506(d). An initial year charter student can withdraw from charter school “as of right” and irrespective of approval of the exiting charter school and the receiving school based on changes of residence, marital status, guardianship, etc.

Fifth, §4.1.6.2, as amended, is unclear. A word or words may be missing. It reads as follows:

4.1.6.2. Students shall the level of special education services as defined by the current IEP.

Sixth, the word “and” is duplicated in §4.1.11. It reads “(s)tudents who have been properly identified; and and have an IEP...”

Seventh, §6.2.1 disallows inclusion of students placed in distance education/twilight programs for behavioral reasons unless “currently suspended indefinitely or expelled by the district and enrolled in the district’s alternative placement program.” The reference to “indefinite suspension” is odd. Suspensions of students, particularly special education students, cannot be indefinite. See 14 DE Admin Code Part 926, §30.2. Moreover, students may be enrolled in an alternative placement program for behavioral reasons without being suspended or expelled. See Title 14 Del.C. §§1604 and 1605.

Eighth, §6.2.3 is convoluted and difficult to understand.

Ninth, Council would like the DOE to consider promoting a fall and spring unit count.

Motion to share observations with DOE on **13 DE Reg. 1158** was **approved** by the Board.

The last item reviewed by the Policy and Law committee, with additions to the information supplied in the Legal Memorandum was **Senate Bill 204 (Autism Spectrum Disorders Insurance Coverage)**. This bill is patterned on a national model promoted by Autism Speaks. Consistent with an update from February 23, 2010 reviewed by the committee, fifteen states have now passed similar legislation, including Pennsylvania and New Jersey. In a nutshell, the bill requires private health insurers to cover the costs of diagnosis and treatment of autism spectrum disorders. Coverage of up to \$50,000 for applied behavior analysis (defined at lines 21-24 and 111-114) for persons with such disorders would be required. Consistent with the articles reviewed by the committee, the advantages of early identification and intervention for persons with autism spectrum disorders are well documented.

The Disabilities Law Program (DLP) provided technical assistance to Autism Delaware in editing earlier drafts of the bill. It is generally well written and merits endorsement subject to the following minor suggestions.

First, lines 46 and 136 ignore the authority of an advanced practice nurse to prescribe medicine pursuant to Title 24 Del.C. §1902(b). It would be preferable to substitute “practitioner” for “physician”.

Second, in lines 83 and 172, the word “and” before the phrase “individual plan for employment” should be “an”.

Third, the definitions of “psychological care” in line 50-52 (covering individual policies) and lines 140-141 (covering group policies) are different. The former reference includes services provided by “a school psychologist appropriately licensed in their state of employment”. Delaware does not license “school psychologists”. They are “certified” by the Department of Education. See Title 24 Del.C. §3519(d). A Delaware licensed psychologist requires a doctoral degree [Title 24 Del.C. §3508] while a Delaware certified school psychologist does not require a master’s or doctoral degree [14 DE Admin Code Part 1583, §3.0]. The sponsors should consider an amendment to effect consistency in the definitions of “psychological care”.

The committee recommended endorsement of the bill accompanied by identification of the technical oversights noted.

Motion to endorse Senate Bill 204 was approved.

Robert thanked Brian for his report.

MEMBERSHIP COMMITTEE

Bernie Greenfield reported that no one left the Council this month. Bernie commented that this is the largest group that he has seen in the past year to come out to be a part of the meeting.

PERSONNEL COMMITTEE

Judy Smith commented that the Council is fully staffed and that is all that she has to say.

NOMINATING AD HOC COMMITTEE

Judy Smith reported that current chairperson, Robert Overmiller and current vice chairperson Dave Hosier agreed to be nominated for another term of office. Secretary-treasurer Nancy Cordrey declined to continue as she has recently submitted a request for a one year leave of absence. Carma Carpenter had been nominated for the position and was unopposed. Terri

Hancharick agreed to be nominated for the position of chairperson and Judy Smith agreed to be nominated for the position of vice chairperson. Ballots were distributed to all GACEC members present, folded and given to Wendy Strauss and Susan Hayes. After counting the ballots with Susan, Wendy Strauss announced that Judy Smith is the new vice chairperson and that there was a tie for the office of chairperson. After discussion, since this has never happened in the known history of the GACEC, it was decided that a new ballot will be provided at the April meeting.

CHAIR REPORT

Council is still looking to recruit parents of children with disabilities to ensure that we are in compliance with the Individuals with Disabilities Education Act (IDEA).

A link to the 2009 Interagency Collaborative Team (ICT) Annual Report was sent out on February 22, 2010, with a request for comments.

Robert listed members who were unable to attend this evening.

Robert then listed the guests for the evening. Guests listed were: Jim Welch/Department of Corrections (DOC) Health Services; Ellen Coulston/Brandywine School District; Nick Fina/CHOICES and the Hearing Loss Association of Delaware (HLADE); Linda Heller/HLADE and the Division of Services for Aging and Adults with Physical Disabilities; Betty Martin/HLADE; Doreen McKechnie/HLADE; Dafne Carnright/Autism Delaware; Bill Doolittle/Delaware Aspergers Association; Howard Shiber/parent; Tina Frederickson/Statewide Program for Deaf/Hard of Hearing; Mark Campano/ Statewide Program for Deaf/Hard of Hearing; Della Thomas/ Statewide Program for Deaf/Hard of Hearing and Doris Willett, guest of Della Thomas.

Responses have been received to GACEC letters that were sent out last month and may be found in the Letters and Responses binder on the cart in the back of the room. The letters and responses are in date order, beginning with the most recent at the beginning of the book. If you would like a copy of any of the responses or the letters, please see GACEC staff.

The meeting was adjourned at **9:12p.m.**