



BOARD OF MEDICAL ASSISTANCE SERVICES



BOARD RETREAT

Tuesday October 18, 2022
10:00 AM to 2:00 PM

FINAL SUMMARY OF PROCEEDINGS

Present: Michael H Cook Esq., Muareen S. Hollowell, Tim Hanold; Basim Khan; Greg Peters; Elizabeth Noriega; Ashley Gray; Paul Hogan; Ashish Kachru; Kannan Srinivisan

Absent: Patricia Cook

1. Welcome and Introductions by Board Members

Michael Cook, Board Chair, recognized Cheryl Roberts as having just been appointed the Director of the Department. Mr. Cook then welcomed Secretary of Health and Human Resources, John Littel, and asked if he could share some thoughts with the Board.

Secretary Littel thanked Board Members for their service and for the opportunity to speak with them about Governor Youngkin's agenda and priority issues involving agencies within the Office of the Secretary of Health and Human Resources (OSHHR). Secretary Littel then spoke about each of the following priorities:

- Behavioral Health: Secretary Littel indicated reforming the Commonwealth's behavioral health system is the Governor's first and foremost priority.
 - There are 150 studies and Commission reports assigned to the Secretariat and its agencies that must be completed this year; several relate to behavioral health.
 - The overall approach will be to develop a 3-year plan for improving behavioral health.
- Foster Care: This will be a 3-phase initiative, involving the Department of Social Services (DSS), DMAS, the Medicaid managed care organizations (MCOs), private providers, and other stakeholders.
- Opioids: Since 2013, opioid-related overdoses have been the leading cause of "non-natural" deaths in Virginia. The Commonwealth's efforts will include law enforcement, education, and treatment.
- Workforce: Secretary Littel noted that every single issue OSHHR will address has a "workforce" component to it. There are internal workforce issues at some of our state agencies and mental health facilities. Our efforts also will focus on workforce programs within the Secretariat, of which several serve

persons with disabilities. In addition, there are broader health workforce issues across primary care, nurses, specialty care, behavioral health, psychiatrists, social workers, and other professions throughout the health care system. All Secretaries with workforce responsibilities are working together under the leadership of Secretary of Labor, Bryan Slater, on a statewide response to this issue.

- Petersburg: Governor Youngkin has directed each Secretary to identify ways in which the Commonwealth can work with Petersburg to help it respond to the many health-related and other challenges facing the city and its residents. This will be a long-term engagement. DMAS and the MCOs, along with the Virginia Department of Health and other HHR agencies are playing a key role here.
- Medicaid MCO Procurement: The upcoming procurement gives us a great opportunity to address health outcomes (e.g., maternal health) and make sure our incentives and disincentives are aligned. We also want to ensure our managed care program is innovative and is taking advantage of all the best practices that are in place in other states.

Following his comments, Secretary Littel invited questions from Board Members. There was general discussion between Secretary Littel and the Board regarding the priorities he identified and other related matters.

The Board took a 10 minute break at the conclusion of Secretary Littel's presentation.

When the Board reconvened, Mr. Cook invited Director Roberts to offer a few comments. Director Roberts:

- Thanked the Board for all the work it has done throughout the year.
- Noted that the budget development process is underway, including submitting budget decision packages and finalizing the forecast; and
- Mentioned the agency will be focused on two major activities in December which are the unwinding of the Federal Public Health Emergency and the managed care procurement.

Mr. Cook indicated he will be writing a brief resolution to present to the Board for a vote at the December meeting expressing the Board's support for the Governor's priorities identified by Secretary Littel. He then made some introductory remarks related to the next agenda items regarding the Freedom of Information Act (FOIA) provisions related to the Board, the Board's role as a "Policy" Board, the Board's process for identifying the functions/topics it wants to pursue in the coming year, and the Board's structure. He also provided some historical perspective regarding the Board's recent activities which gave rise to the agenda items the Board is about to discuss. He closed his remarks by suggesting it is important for all Board Members to "step away" from our personal/professional roles during Board meetings so that the Board focuses on what is best for the Medicaid program and the Department.

2. Freedom of Information Act (FOIA) Provisions Related to Board

Ms. Beth Guggenheim, Assistant Attorney General with the Office of the Attorney General (OAG), provided an overview of FOIA and explained how it applies to the Board's meetings, documents, and communications among Board Members and with DMAS staff.

Ms. Guggenheim presented on "public bodies" as defined by the FOIA Advisory Council. She highlighted the following points in her presentation to the Board and provided statutory citations for each discussion point:

- What is a "public body?"
- What is a "public meeting"?
 - Ms. Guggenheim cautioned Board Members not to "reply all" to emails as it can be considered a "public meeting" if three or more persons receive the message.
- What is NOT a "public meeting"
- Meeting requirements: Notice, Open, and Minutes
- Closed Session: requirements for having any portion of a public meeting closed to the public
- 2022 FOIA Legislation (House Bill 444) that became effective September 1, 2022
 - Ms. Guggenheim identified those FOIA provisions that did change as a result of HB 444 and those provisions which did not change.
- 10 Requirements regarding "All-Virtual Public Meetings"

At the conclusion of her presentation, Ms. Guggenheim invited questions from the Board. Ms. Guggenheim responded to a question from a Board member and Mr. Cook who requested clarification regarding the process of holding a "closed meeting." Ms. Guggenheim provided additional clarity and also agreed to do further research that will be provided to DMAS staff.

3. The Board's Role as a Policy Board

Ms. Guggenheim reviewed pertinent statutes regarding the Board's role as a Policy Board, and summarized what this means and does not mean in terms of the Board's activities and responsibilities. Brian McCormick, Director of DMAS' Legislative & Intergovernmental Affairs Division, also provided input during this agenda item.

Ms. Guggenheim provided the legal framework and enabling statute for the Board. She indicated the manner in which the Board chooses to operate under that legal framework is probably better addressed by Brian McCormick, and she will refer any questions on those issues to him.

Ms. Guggenheim stated the Board's authority is provided in Virginia Code Section 32.1-325. She cited the specific authorities as well as other responsibilities of the Board that are contained in this section (e.g., promulgation of regulations and development of the State Plan). Additional duties of the Board are outlined in other sections of Title 32.1. Section 32.1-324 states the DMAS Director is vested with all of the Board's authority when the Board is not in session. The Code also stipulates the Board does not have authority to oversee any administrative function of the Department, and that the direction of DMAS is placed under the Director and the Secretary of Health and Human

Resources.

A question was asked by a Board member that if the Board is a “Policy” Board, should it have issues coming before them for a vote. Chris Gordon (DMAS Deputy Agency Director of Finance/Chief Financial Officer) noted that the statutory provisions of the Code are superseded by the Appropriations Act and much of DMAS’ work and responsibilities are contained in the Appropriations Act. Furthermore, much of the regulatory work DMAS is directed to do by the Appropriations Act includes the authority to proceed prior to the enactment of regulations. Director Roberts noted that an even greater amount of legislative direction is now provided in the Appropriations Act. There was further discussion on this topic.

Mr. McCormick noted that this Board is a “Policy” Board because it meets the definition of a “Policy” Board provided in statute. And while part of the Board’s function is to promulgate regulations, the volume of regulations and mandated regulatory timeline (with multiple deadlines) is such that, logistically and practically, it is exceedingly difficult to get Board input during this process.

Ashley Gray noted that individual Board Members may have some particular expertise that could be of benefit to the agency as they are working through a regulatory or state plan issue. She further stated that if Board Members can provide input individually to DMAS on a particular regulation, so as not to run afoul of FOIA, that is something we should not ignore. Mr. McCormick noted that all Board Members, as private citizens, are certainly able to submit comments to DMAS through the public comment period. Ms. Guggenheim emphasized that Board Members submitting comments in this way would be doing so on behalf of a private citizen and not a Board Member.

A Board Member asked what the protocol is for Board Members to communicate with DMAS. Mr. McCormick noted that if the communication is an official communication from the Board, the content of the communication would need to be approved and voted upon by the Board. If the communication is sent from a Board Member regarding Board meetings or activities, Members can send an email to Brooke Barlow, the Board Secretary. If the communication is a personal matter, not on behalf of the Board, but related to DMAS activities or issues, Members can send an email to Sarah Hatton who can coordinate DMAS’ response. Tammy Whitlock (Deputy Director for Complex Care Services) noted that if the Board Member is sending in comments on a particular regulatory action, that communication can be sent to the person identified in the Town Hall notice as the person responsible for receiving comments.

A Board Member asked Director Roberts what her aspirations are for DMAS during her term as Director, and what her “dream vision” would be regarding how the Board would work with DMAS.

There was other general discussion about the communications and operational relationship between the Board and DMAS.

4. Board Functions (Discussion of topics and prioritization)

Patrick Finnerty facilitated this portion of the Retreat which engaged the Board

Members in a process of determining which subject matter/focus areas they want to prioritize in 2023 and subsequent years.

Prior to the Retreat, Board Members were asked to complete a survey and rank-order a list of nine (9) potential priority areas that had been mentioned either in prior Board discussions and/or in the statutory/regulatory functions of the Board that were discussed earlier in Agenda Item 2 (The Board's Role as a Policy Board).

Based on the potential priority areas in the survey and the statutory/regulatory requirements of the Board, Mr. Finnerty presented two categories of "Potential BMAS Areas of Focus" as a framework for the Board to use in determining which topics/areas it wants to focus on both in 2023 and future years.

- Ongoing Focus Areas
 - Regulatory Process
 - Budget Decision Packages
 - Agency Legislative Process
- Year-to-Year Focus Areas
 - DMAS Goals
 - Other BMAS/DMAS priorities as they arise each year
 - Survey topics as prioritized by Board
 - BMAS to champion one or two topics each year

Mr. Finnerty explained that "Ongoing" Focus Areas would be topics in which the Board would be engaged every year as each are critical functions of the Department. The "Year-to-Year" Focus Areas would vary from year-to-year as priorities, new policy developments, and budgetary/legislative initiatives will arise each year. Mr. Finnerty noted that in addition to the Board deciding which topic areas it wishes to prioritize, an equally important task is working with DMAS staff to reach a mutually agreeable process for engaging in these areas. That process would enable contributions by the Board without adding to or complicating the work that must be completed by the agency.

There was general discussion among the Board Members and staff regarding various aspects of Ongoing and Year-to-Year Focus Areas.

Mr. Finnerty reviewed the results of the Board survey in which Members rank ordered the potential priority areas they would like the Board to engage. The ranking of the options from highest to lowest priority were: Unwinding of the Federal Public Health Emergency; Budget Decision Packages; Maternal & Child Health; Outreach & Member Engagement; Behavioral Health; Nursing Home Value Based Payment; Regulations/Manuals; Traumatic Brain Injury; and Incarcerated Population. It was noted by a Board Member that since Secretary Littel indicated behavioral health is the top priority of the Governor, the Board may want to increase the priority ranking for that item. Michael Cook mentioned the MCO Procurement is not on the list and may be something they want to prioritize. Long-term care services and supports as well as workforce were also mentioned as potential focus areas.

There was extended discussion regarding the focus area rankings, other potential topic areas, and how to move forward. Mr. Finnerty suggested that, for today, the Board identify a few of the priority topics it has the most interest in engaging. Then DMAS staff would have internal discussions regarding how the Board may be able to provide input on those topics without it creating an additional burden for DMAS. Having agreed to this approach, the Board continued to discuss which priority topics they should engage during the coming year.

The following priority topics were agreed upon:

1. Unwinding of the Federal Public Health Emergency
2. Behavioral Health
3. Managed Care
4. Maternal and Child Health

The Board also agreed that it consider the following when addressing each of the aforementioned priority topics:

- Consumer Process
- Workforce
- Outreach/Member Engagement
- Value-Based/Other Payment Methodologies
- Long-Term Services and Supports

5. Board Structure

During this portion of the Retreat, the Board planned to discuss and agree on which Subcommittees, if any, will be continued or newly formed in 2023. Two general types of Subcommittees were identified for discussion: Standing Subcommittees and Special/Time Limited Subcommittees. However, given the extended discussions held on prior agenda items and the lateness of the hour, the Board decided to delay its consideration of this topic until its next meeting scheduled for December 13, 2022.

6. Adjournment

Mr. Cook thanked everyone for their contributions to the Board, and indicated the retreat accomplished what he had intended.

Motion to adjourn moved by: Greg Peters; seconded by Kannan Srinivisan.

Voting For: Michael H Cook Esq., Maureen S. Hollowell, Tim Hanold; Basim Khan; Elizabeth Noriega; Ashley Gray; Paul Hogan; and Ashish Kachru.

Voting Against: None