

**Minutes of the Meeting of the
Illinois Long Term Care Council
September 15, 2009
Springfield and Chicago, Illinois
(Video teleconference meeting)**

Members Present:

Members in Attendance: Eva Hall, Nancy Flowers, Margaret Niederer, Phyllis Mitzen, John Hosteny, Pam Edelman-Sall, David Sutor

Members not Present: Ann Ford, Pat Comstock, Ben Perkins, Dave Vinkler, Sue Kerrigan, Barbara Craig,

Guests: Warren Hall, Ms. Holmsay (graduate student), Donna Ginther

State of Illinois Staff: William Bell, Sgt Debra Dell, Sally Petrone, Lee Beneze, and Neyna Johnson

Call to Order: The Illinois Long Term Care Council was called to order at 10:15 a.m. by Co-chairs Lee Beneze and Nancy Flowers. The first order of business was a round of introductions.

Minutes: The Council then reviewed the minutes from the July 29, 2009, meeting. The following corrections were noted: Sue Kerrigan and Ann Ford both should be listed as attending the July meeting. John Hosteny was mistakenly listed as a state employee. Matt Hartmon was listed as "surrogate" for Pat Comstock. This was questioned, as the term "surrogate" had not been defined. Lee explained what was meant by the term, and it was decided that it would remain in the minutes, which were then approved.

Briefing by Bill Bell: Bill Bell, of the Department of Public Health, stated that there were no planned layoffs. All hiring has been frozen with 40 surveyor positions left vacant.

Bill also discussed and provided clarification on the reduction of CMP funding to the LTCOP (which had been \$750,000 annually) for FY2010. It was noted that there had been negative news articles in the Springfield Journal-Register about the loss in funds. It was noted that this was all a consequence of the of the budget problems facing the State. This caused various specialized funds to be "swept". Plus, with less fines received, the balance of the fund was extremely low.

The FY2010 LTCOP fund starts 10/1/09 at a level of \$350,000. In December or January, IDPH will look at the funds available, and see if additional funds can be awarded to the LTCOP. Nothing is definite, and it is unknown what the balance will be. FY2010 looks bleak – considering current balance is \$400,000 and for FY09 there was \$1.3 million in obligation (included the \$750,000 for LTCOP) .

Bill emphasized how the Long Term Care Ombudsman Program had been a useful asset to the IDPH. But he said that it difficult to know what the future holds regarding the fund sweeps and future funding reductions.

He stated that lawsuits and other factors might also have a future impact on the funds as well as other fund sweeps. Initially, idea for the LTCOP to regularly receive CMP funds was never planned. It was considered a “one-time” funding gift, and never intended to be a permanent funding source to the LTCOP.

Council members expressed concerns over the reduction in the IDPH surveyor force, noting that this could lead to limited visits and slower responses to complaints. The funds sweep affected the Monitoring and Receivership Fund was especially worrisome because receiverships are established by the court.

Bill then addressed the *Rosewood* case, which involved a circuit court decision in Sangamon County, in which the court capped the amount of the fines that Public Health could levy against a nursing home to a maximum of \$10,000. The Department of Public Health has appealed the Rosewood decision (this appeal may well take two years).

The Council requested Bill to bring an update on that case and any other cases involving Public Health to the next meeting.

Briefing by Deb Dell: Deb Dell of the Illinois State Police (ISP) discussed how the ISP is working to find replacements for all the contractual workers whose contracts were not renewed. ISP has lost approximately 30-40 investigators. It was noted that the LTCOP and the Department of Public Health has historically made a large number of referrals to the ISP Medicaid Fraud Unit.

Update on the State LTCOP: Sally Petrone updated the Council on the State Long Term Care Ombudsman Program. She noted that the Program had received a letter from the IDPH Director Arnold about the \$400,000 reduction in CMP funds for FY2010. After receiving the letter, a response letter from Director Johnson was sent requesting that the funds be fully or partially restored. As a result of these reductions, the Regional Ombudsman Programs (ROPs) will be forced to reduce staff and services. The Office has developed and disseminated program modifications to deal with the GRF and CMP funds reductions.

These program modifications are designed not to reduce standards and services and encourages Regional programs to maintain regular presence in all facilities. Sally highlighted the modifications: LTCO will limit involvement in facility bankruptcy cases; the 2010 statewide LTCOP meeting would be cancelled; the deadline to submit the 2010 Annual Service Plan was extended; the regional program's role in investigating financial exploitation cases would be reviewed; and the deadline to complete Level 1 and 2 training for all ombudsmen was extended to 7/2011.

Some ROPs are holding fund raisers for their programs.

Sally also reported that the Office is reviewing whether to apply for a grant to the Illinois Criminal Justice Authority, to provide training to law enforcement on how to deal with abuse and sexual assaults in long term care facilities.

In response to an inquiry as to whether the SLTCO would or should be seeking the Department's approval for the grant, Sally stated that the SLTCO is not asking for Departmental approval, but is simply notifying IDOA Director Johnson as a courtesy measure.

It was recommended that the Council encourage as many people as possible, including the SLTCOP, advocates, stakeholders, and others, to send a letter to the Governor requesting an end to the sweeps of the Monitor and Receivership fund. The letter should note that the reduction of CMP funds has a drastic impact on the LTCOP and on long term care facility residents whom they serve.

Motion: A motion was made and seconded that the SLTCO should draft a letter to the Governor stressing the unintended consequences of the fund sweep of the state Monitor and Receivership Fund, the impact of that action on the viability of the LTCOP, and the resulting negative impact on the long term care residents of Illinois. It was further resolved that the Council would also draft and send the Governor a similar letter.

The resolution also stated that the letter should include: the significance and impact of the 40% cut; that program funds must be restored to make the program whole; that the State should meet its obligation to fully restore funding to serve the most vulnerable elders in long term care facilities; and to eliminate the fund transfers from the Monitor and Receiver Fund.

The motion was adopted.

Old Business

By-laws Revision: There was a brief discussion of the proposal to reform the by-laws of the Council. Lee submitted some ideas for changes.

Motion: A motion was made and adopted (Niederer/Mitzen) to establish a workgroup to review the By-laws and the proposed revisions. All members would be welcome to participate on the

review. The committee chair would be responsible for the review process, completion of the process, and presentation at the next meeting.

Legislative Update: There was a brief discussion of the status of several key bills which the Council had been following.

Lee said that he would submit, as part of the materials for the next meeting, a summary legislative report for 2009.

Council members are encouraged to go to the Illinois General Assembly website for full review of individual bills and public acts, including their full text and status.

Ohio Bed Fee Program: The State Long Term Care Ombudsman had several contacts with the Ohio State Long Term Care Ombudsman for information on their Ohio "bed fee". See attachment.

Motion: A motion (O'Donnell/Sall) was made and seconded to assign to the Legislative Committee the task of exploring the feasibility of levying a fee on long term care facilities, in order to provide a source of stable revenue in support of the LTCOP, and, further, to draft appropriate legislation for submission in the 2010 legislative session.

Following the discussion, the motion was adopted.

Mike O'Donnell and the legislative committee will draft language on a bed fee law, based on the Ohio model.

Some discussion of the proposal followed. It was pointed out that the Ohio bed fee is not subject to Federal law (this covers the state franchise fee). The Illinois proposal would be (like Ohio) a separate bed fee; the Ohio bed fee was created in 2005, and is currently \$6.00 per bed, per year. The funds generated goes into a special fund, created by the Act.

Such a bed fee in Illinois would generate (on 137,000 beds) the amount \$882,000 annually. It was noted that Ohio had once increased the fee to match a reduction in Ohio's LTCOP funds.

All of the funds under the Ohio law are distributed to the Regional Ombudsman Programs. It was noted that Illinois might wish to do this differently.

Under the Ohio law, the state attorney general helps collect the bed fees. A similar provision could be added to any proposed Illinois legislation.

There is also a separate fee imposed in Ohio, to generate funds for their "Consumer Guide," which is placed on Ohio's Department on Aging website. For this purpose, each facility pays \$400 per year.

The scope of the coverage of such a bed fee was discussed. The Ohio law covers the facilities served by the Ombudsman program and that the Illinois Ombudsman Program should follow by example.

Donna commented that she was not certain how the nursing home industry would react, as nursing homes are already strapped for cash. She stated that the current Illinois bed tax is \$1.50 per bed, collected quarterly; if a nursing home fails to pay, they are assessed a fine. Thus there may be significant objection to the introduction of said legislation by the nursing home industry. This was related to expected reductions in federal Medicare funding that would flow to long term care facilities.

There was some concern expressed about a future "funds sweep" if the fund that held the receipts from this bed fee held substantial sums. One suggestion was made to add a fund protection clause to the legislation.

Phyllis asked whether this bed fee was designed to make up for CMP cuts. She asked: if we lose CMP funding for an already under-funded program, where does the Program go? She suggested that we should never be surprised the funding was cut. She asked: what is our strategy? Is it for a constant revenue funding stream? She pointed out that you can always negotiate down, but it is harder to negotiate up.

The SLTCO stated that late notice of the funding reductions blind-sided the LTCOP, and kept the Program from regrouping and seeking recourse to such a significant loss of funds. Sally spelled out the consequences to the Program: decrease in regular presence visits and attendance at family and resident council meetings, cut in salaries & benefits for paid ombudsmen, layoffs, regional programs not having paid volunteer coordinators.

It was asked whether the legislation could be structured such that "bad" facilities would be assessed a higher bed fee, since ombudsmen spend more time in poor performing facilities. It was noted that facilities that consistently provide poor care should go out of business.

Pat Comstock via Donna on cell phone stated that the Illinois Health Care Alliance would have to oppose any recommendation for a proposed bed tax or fee, in light of the anticipated Medicaid budget cut of \$21 billion which she said would occur over the course of several years to come.

2004-2008 Council Annual Draft Report: A second draft of this report was laid before the Council. The first draft, done last March, was considered to be deficient. There was a discussion of how the report should be formatted, its usefulness in reaching its intended audience, and the substance to be included in the report.

Motion: A motion was made and seconded (O'Donnell/Flowers) to recommend that the Annual Report reflect the activities of the Council in the time frame: September 2004 – Dec, 2009. Following the discussion, the motion was adopted.

The motion also suggested that the format be one in which a list of the statutory mandates of the Council would be to break down the long list of actions and activities and placed under the heading of "The Purposes, Authority, Composition and Organization of the Council."

In addition to a list of statutory mandates and the activities of the Council, it was recommended that the Annual Report include sections on:

- what did the Council do to impact the LTCOP?
- what were the outcomes?
- a strong statement regarding funding cuts and their impacts

The Report would also include narrative and summaries, and a list of adopted motions (as the appendix).

The consensus of the group was that it needed to be written to provide a historical record of the Council, but it also needed to be a report with impact on the targeted audiences, among which included the legislature. The Report should include a statement as the impact of the funding reduction, and include case a justification for the proposed bed fee.

Based on the comments from the group, the Co-Chairs recommended another rewrite of the Report. The motion for a rewriting of the Report (along the lines suggested by the discussion) was adopted.

PNA Increase: The Council held a brief discussion of the issue of seeking an increase in the "personal needs allowance" of residents.

Motion: A motion was made and seconded (Eva Hall/ O'Donnell) to instruct the Council's legislative committee to proceed with a proposed increase to the personal needs allowance (PNA) in the 2010 legislative session. The increase would be in the range \$50 to \$75 per month. The motion was adopted.

Motion: A motion was made and adopted (Niederer/Hall) to instruct the Council legislative committee to provide direction on how to proceed with high impact legislative issues. This direction would include: how should it be communicated to the Council members, how they would be kept abreast of current legislation, and how the Council should present and impact the General Assembly, resident's families and the general public.

The motion was adopted.

Additional Items for Discussion:

State Auditor Findings: According to a recent State Auditor-General's finding, there are problems with how the Department of Health Care and Family Services with cost of living

increases for Medicaid residents. O'Donnell serves on the Medicaid Advisory committee and will keep the Council abreast of this issue.

H1N1: The question was asked as to what preventive steps and precautions should be taken when visiting long term care facilities. Nursing home residents are low on priority list for H1N1 virus vaccine, as it is believed that many already have some level of immunity. The push is to target children and health care workers, who are seen as being the most at risk, as well as persons with multiple health issues. The expectation is that there will be some vaccines available in mid-October. At that time, facilities will begin immunizing nursing home workers. The CDC is recommending only one dose, and is recommending that everyone get regular flu vaccine.

SLTCOP recommends every ROP have a protocol for entering/not entering NHs w/flu outbreaks. They are not encouraging ombudsmen to enter facilities that have flu outbreaks. It was recommended that ombudsmen should be vaccinated as well.

Nancy Flowers stated that she was willing to prepare a script for everyone to give the same, clear message.

Suggested Panel Presentation: Council members suggested that the next meeting feature a panel presentation on powers of attorney. There are many different perspectives, and it was suggested that clarification is needed.

Vacancies on the Council: There are a number of current vacancies on the Council, and the slate is open for recommendations. The governing statute of the Council requires that members be appointed by the Director of the Department on Aging. The filling of these vacancies was briefly discussed.

Motion: There was a motion made and seconded to submit a letter to Director Johnson, to inform him of the need to fill vacancies on the LTCOP Council, and further, to make inquiries whether the vacancies on the Council should be posted on the Governor's Office of Boards and Commissions website.

The motion was adopted.

Annual Reports: There was a discussion of reviewing the annual reports of the agencies involved in long term care.

Motion: A motion was made and seconded (Niederer/O'Donnell) to invite a representative(s) from various agencies, including the Long Term Care Ombudsman Program, the Department of Public Health, the Department of Healthcare and Family Services, and ask each to present and discuss their annual reports. It was suggested that this would help the Council in fulfilling our mandated responsibilities.

It was noted, in the discussion of the motion, that the Council is mandated to evaluate annual reports; however, the Council cannot mandate other agencies to present or defend their reports to the Council. It was also noted that not every program produces an annual report. It was suggested that perhaps a template for an annual report could be developed for the Council to consider.

Margaret suggested that it would be sufficient to look at the various annual reports. She said she assumed that the annual reports are public information.

The motion was adopted.

Meetings over the Next Year: The Council then set the meeting dates for 2010: January 12th, April 13th, July 20th, and September 21st.

Adjournment: The Council meeting was then adjourned, at approximately 3:00 pm.