



## Legislative & Public Policy Committee Meeting Minutes

April 17, 2018-- 10:00 AM – 12 PM  
Legislative Services Building  
200 E. 14th Ave Denver 80203 Room B  
Denver, CO 80203

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### MEETING AGENDA:

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1. Convene, establish quorum, introductions (Hal)
2. Old business (group discussion)
  - a. Review of last meetings action items
  - b. Review, modify and approve March 20 & April 3 meeting minutes
3. New Business (group discussion)
  - a. Federal public policy update (Bob)
    - i. CMS will revise heightened scrutiny guidance for HCBS Final Setting Rule
  - b. State bills of note (\* denotes new bill)
    - i. (DD Wait List/DSP rate incr) JBC voted to sponsor 4.12.18. Starts in House. Sponsored by Young/Rankin (House) & Lambert/Moreno (Senate)
    - ii. [HB1065](#) (DHS employee discipline) hearing 4.2.18: Senate Judiciary Comm
    - iii. [HB 1106](#) (Minimum wage waiver) Pled (postponed indefinitely "killed")
    - iv. [HB 1192](#) (Application assist SSI SSDI) Pled
    - v. [HB 1223](#) (Autism epidemic) hearing 4.26 @ 1:30, HCR 271, HIE Comm (new date)
    - vi. [HB18-1232](#) (School finance) upon adjournment 4.18, HCR 0112, Ed. Comm
    - vii. [\\*HB18-1364](#) (CO Council PWD) hearing 4.17, HCR 0107, PHC & HS Comm
    - viii. [SB 82](#) (Non-compete rare disorder) Governor signed 4.2.18
    - ix. [SB 96](#) (Modern. term. MR) Governor signed 3.21.18
    - x. [SB 145](#) (Empmt 1<sup>st</sup>) Passed Senate Approp 4.10.18. 2<sup>nd</sup> reading scheduled 4.16.18
    - xi. [\\*SB 174](#) (DD providers) Repassed by Senate 4.4.18
    - xii. [\\*SB 231](#) (Transition task force) 2<sup>nd</sup> reading scheduled 4.16.18
  - c. Other bills of note?
4. Action items (group discussion)
5. Public Comment
6. Adjourn

Next Meeting: May 15, 2018 10-12. Colorado Developmental Disabilities Council Chauncery Conference Room, Second Floor (subject to change).

### DISCUSSION:

1. Quorum was established with five committee members in attendance. Members and guests introduced themselves. Vanessa and Hal are not able to attend today. Hal has requested Bob Chair.

2. a. Bob reported that he had been in communication with the CBS news reporter, Melissa Garcia, who had produced the piece on HB18-1223 and Autism Acceptance Day. The reporter received Mike Hoover's and the Autism Society of Colorado (ASC)'s letters in opposition of the bill as well as an expression of the opinion that the piece may have been misinterpreted as indicating that the ASC was in support of HB18-1223. Ms. Garcia responded with appreciation for the additional background information.

2. b. Michael made a motion to accept the meeting minutes for March 20, 2018 with the elimination of the descriptor for Donna Downing within the attendance section. The motion was seconded by Alicia. The motion passed unanimously. Michael also made a motion to accept the April 3, 2018 meeting minutes with the same change as referenced above. Jessica seconded the motion. The motion passed unanimously.

3.a. Federal updates: CMS will revise heightened scrutiny guidance for HCBS Final Setting Rule (The following information appeared within the Policy Advisor's Report of 4.17.18 and was discussed generally by the Committee) BACKGROUND: Colorado's programs for people with developmental disabilities (Medicaid waiver programs for "Developmental Disabilities" and "Supported Living Services") are provided under the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS). The settings rule for these programs was established in 2014 with the intent that individuals "have the opportunity to receive these services in a manner that protects individual choice and promotes community integration." This was hailed as a significant development in efforts to move the HCBS programs toward greater inclusion and personal choice. While states were originally to be in compliance by 2019, they have recently been provided three additional years to comply.

Those settings deemed as institutional, such as nursing homes, Intermediate Care Facilities for Individuals with Intellectual Disabilities (such as Colorado's Grand Junction, Wheat Ridge and Pueblo institutions, commonly referred to as ICF/IDDs) and hospitals are specifically defined as not consistent with the settings rule. Additionally, "settings that have the effect of isolating individuals receiving HCBS from the broader community," including a setting "designed specifically for people with disabilities" or when "individuals in the setting are primarily or exclusively people with disabilities and the on-site staff that provides services to them" are presumed to have institutional qualities and not be consistent with the rule.

Settings such as those described above may overcome the presumption that they are institutional and non-compliant by the state submitting evidence to CMS demonstrating: 1) the setting does not have institutional qualities and 2) the setting does have the qualities of typical homes and community. This process is referred to as "heightened scrutiny." CMS then reviews the submitted evidence and makes a determination as to whether the setting complies with the HCBS settings rule. Evidence to demonstrate that a setting does not have the effect of isolating individuals would show that the "setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not associate the setting with the provision of services to people with disabilities."

CURRENT ISSUE: The Trump administration is presently requesting public comment on a variety of rules and regulations so that they might be weakened or eliminated altogether. The HCBS setting rule is presently under attack. CMS has drafted revised setting rule standards including modifying or eliminating the heightened scrutiny process. Our national group, the National Association of Councils for Developmental Disabilities (NACDD) has signed onto a letter urging CMS to retain the setting rule as presently written so that it remains consistent with the ADA and the Supreme Court's Olmstead

Ruling. Other groups like the Coalition for Community Choice, Voice of the Retarded and "ACCSES: The Voice of Disability Service Providers" are advocating that the HCBS setting rule be changed so that current standards are significantly weakened. This would potentially allow current segregated settings to remain and would likely result in the states being increasingly subject to Olmstead-based lawsuits. For views on the two sides of the issue please see <http://nosmag.org/disability-community-faces-a-housing-crisis-modern-asylums-not-a-solution-hcbs/> and <https://www.usatoday.com/story/opinion/2018/04/02/dont-let-my-son-plunge-off-disability-cliff-column/443138002/> (Sources: CMS, HCBS Advocacy, NOS Magazine: a news and commentary source for thought and analysis about neurodiversity culture and representation, USA Today)

3.b. State bills of note (The following information appeared within the Policy Advisor's Report of 4.17.18 and was discussed generally by the Committee):

i. **Senate Bill 145: Employment First Recommendations passed second reading** on Monday, April 16<sup>th</sup> and is scheduled for final passage in the Senate on Tuesday, April 17<sup>th</sup>. It is projected to not have opposition in the House. This bill would require training or certification of job coaches, would add "discovery" to the DVR fee schedule and would require HCPF to collect employment and day service outcome data. The Council strongly supports this bill and has assisted extensively in developing its content and in facilitating its passage.

ii. **Wait list reduction and direct service provider rate increase bill language has been changed** consistent with the Policy Advisor's language recommendation. New language has focused the rate increase on direct service providers (not case managers) and has included a clause for families and people with intellectual and developmental disabilities to have input on wait list management policy. The Council strongly supports this bill that would provide 300 HCBS-DD ("comprehensive") resources to people presently on the wait list. Additionally it would provide a 6.5 percent rate increase to be used specifically to improve compensation for direct care staff.

iii. **House Bill 1223, Declare Autism Epidemic, has a new hearing date** of April 26<sup>th</sup>, 1:30PM, House Committee Room 271. The Council opposes this bill and has submitted a letter written by CDDC LPP Committee member Michael Hoover to the bill sponsor. Michael has reported that he is planning to provide testimony.

iv. **House Bill 1364 sunsets the Colorado Advisory Council for People with Disabilities (new bill)**. This is a basic FYI and is being supported by the Colorado Cross Disability Coalition.

v. **Senate Bill 174, Liability for Developmental Disability Service Providers (new bill), cleans up definitional language and requires that person-centered planning be used** if a person is considered at risk of mistreatment, abuse, neglect or exploitation (MANE). This is also being supported by the Colorado Cross Disability Coalition.

vi. **Senate Bill 231, Transition Task Force (new bill), creates a task force on transition from educational settings to the Home and Community Based Services waivers programs** for people with intellectual and developmental disabilities. The Policy Advisor is recommending we support this bill.

3. c. Other bills of note: It was suggested the Committee track HB 18-1288 on Conflict Free Case Management and HB18-1376 on Host Home Safety. Both bills will be added to our Colorado Capitol Watch listing. Michael Hoover stated that he felt he needed to make sure people in host homes were safe.

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#### 4. Motions/Actions:

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- a. Bob and Mike Hoover plan to testify in opposition to HB18-1223 when it is heard on April 26<sup>th</sup>.
  - b. Bob will keep committee members informed of bills of interest as the session comes to an end May 9<sup>th</sup>.
  - c. Meeting minutes for 3.20.18 and 4.3.18 were approved.
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5. Public Comment: Steve Miller suggested that the Council enter into a discussion of the CMS Settings Rule. Steve believes that public dollars should be used to support congregate housing options if families have determined that such options best match their family members. Committee members expressed interest in such a discussion.

Council Committee Members Present: Alicia Eakins, Kristen Erby, Jessica Howard, Julie Schleusener.

Community Committee Members Present: Michael Hoover (disability rights representative and past Colorado Developmental Disabilities Council member).

Guests: Benu Amun-Ra, Donna Downing, Amanda Jensen, Steve Miller, Klaus Weickman.

Staff Present: Bob Lawhead.

Council Committee Members Absent: Sen. Irene Aguilar, Deborah Williams, Hal Wright.

## MEETING DOCUMENTS

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1. Draft Agenda for 4.17.2018 Meeting
2. Draft Minutes for 3.20.2018 LPP Meeting
3. Draft Minutes for 4.3.2018 LPP Meeting
4. Policy Advisor's Report for 4.17.18
5. SB 18-174 interview with Rep. Bob Gardner

**Next Meeting: May 15, 2018 10-12. Colorado Developmental Disabilities Council  
Chauncery Conference Room, Second Floor (PLEASE NOTE: MEETING TIME, DATE  
AND LOCATION ARE SUBJECT TO CHANGE. NOTIFICATION OF REVISIONS WILL  
OCCUR ASAP!)**

**ADDENDUM: Updates on bills of interest**

**HB18-1223 Autism Epidemic was killed in committee on 4.19.18. Both Michael Hoover and Bob Lawhead provided testimony in opposition to the bill.**

**HB18-1407 Wait list reduction and direct service provider rate increase – passed Senate third reading 5.4.18 (today) and is on it's way for the Governor's signature!**

**SB18-145 Employment First was heard 5.4.18 (today) by House Committee on Appropriations referred amended to House Committee of the Whole.**