

Exchange

A quarterly newsletter of Michigan Protection and Advocacy Service, Inc. (MPAS)
Spring 2012

Inside This Issue:

Ask the Advocate

Services Available for Those Interested in Moving Out of Nursing Homes

New Federal State Education Rules Issued

Saturday Special Education Trainings

Masseau Leaves MPAS to Head Up Wisconsin Disability Rights

Results of Surveys from Parents of Children with Behavior-Related Disabilities

What are Peer Review Documents and Why are They Important?

MPAS v. Caruso Prison Lawsuit Closed

MPAS Legal Team Takes Action

Filing a Complaint with the State of Michigan's Wage and Hour Division

Are You Prepared to Cast Your Vote?

MPAS Public Policy Platform Fiscal Year 2011-2012

From the Executive Director

MPAS Follows up on Abuse and Neglect in Michigan Nursing Homes

Mark, Legal Director

Perhaps you read the news coverage that resulted from the report issued by MPAS concerning abuse, neglect, and mistreatment of nursing home residents.

A fair question to ask is what follows this report? The answer is that MPAS remains firmly committed to working toward a day when the only residents of nursing homes are the ones who want to live there and each and every resident is treated with dignity and respect and receives necessary services and supports. Without disclosing all of the legal strategies that are under consideration, here are a few first steps that MPAS is taking:

- ◆ Referring nursing home administrators who attempt to cover up abuse/neglect or who retaliate against employees who cooperate with state inspectors to law enforcement for prosecution
- ◆ Referring cases of abuse/neglect by facility staff to law enforcement for prosecution under the Vulnerable Adult Abuse Act
- ◆ Monitoring those prosecutions to make certain that charges are brought
- ◆ Filing licensing complaints against nurses, doctors, aides, and others who abuse, neglect, or mistreat residents
- ◆ Referring cases of abuse, neglect, and mistreatment to attorneys experienced in litigating against nursing homes
- ◆ Advocating for expanded MiChoice services

- ◆ Educating policy makers
- ◆ Examining the current oversight process to identify deficiencies and advocating for changes within the system to end abuse, neglect, and mistreatment

As MPAS explores these options, it is important that abuse, neglect, and mistreatment is reported and addressed. Please see the *Ask the Advocate* column in this edition of *Exchange* for information on reporting options.

Ask the Advocate

Q: My mother lives in a nursing home, and our family is concerned about the quality of care she receives. We have tried to address this with the nursing home administrator and nursing supervisor with no success. What are my mother's rights and are there other options we should explore?

A: When your mother began living in the nursing home, she did not give up any rights or civil liberties she had before becoming a resident of the facility. This includes the right to be treated with dignity and respect, as well as the right to actively participate in her care (self-determination). Other rights include, but are not limited to:

- ◆ Timely and appropriate medical and personal care based on her needs and preferences
- ◆ Reasonable accommodations appropriate to her needs
- ◆ Protection from abuse and neglect
- ◆ Freedom from physical or chemical restraint used for convenience or discipline
- ◆ Participating in choices about health care and other services including choosing a doctor
- ◆ Visits from relatives, friends, personal physician, and others
- ◆ A clean environment

At the time your mother became nursing-home eligible, were other options or alternatives explored? Those options could have included in-home services and/or eligibility for a Medicaid waiver program such as the MiChoice Waiver Program. To find out more about these programs and to determine the appropriateness for your mother, you can contact the local Area Agency on Aging or Disability Network (center for independent living) in the county where she resides.

Nursing homes are required to post the name, title, location, and telephone number of an individual who is responsible for receiving complaints and conducting complaint investigations. If previous attempts to resolve quality of care issues for your mother have not been successful, there are agencies available to help.

The **Long-term Care Ombudsman's Office** assists residents of long-term care facilities who have concerns and complaints about their care or services. This program is funded by the federal

Older Americans Act, and a network of ombudsmen is authorized to investigate complaints and resolve problems. They can be reached by calling **866.485.9393**.

Also, long-term care facilities, including nursing homes, are licensed by the State of Michigan. Consequently, complaints are filed with the **Michigan Department of Licensing and Regulatory Affairs (LARA), Bureau of Health Systems, Complaint Investigation Unit**. To obtain a Nursing Home Complaint Form, you can call **LARA** at **517.334.8408** or our agency at **800.288.5923**. If there is suspected abuse or neglect, call **Michigan Protection and Advocacy Service (MPAS)** at **800.288.5923** and ask to speak to an Information and Referral advocate.

If the nursing home tells your family or mother she can no longer remain in the facility, they must provide 30 days notice. Your mother has a right to remain in the facility unless it is not in her best interest and is inappropriate for medical reasons. The 30 days notice must include the date when discharge will occur, the place to be discharged, and information on appeal rights.

If a decision is made to seek another facility, it is important to visit the facilities prior to your mother's transfer and to review any past Licensing complaints. Licensing complaints are found at www.michigan.gov/lara. Click on *Health Systems and Health Professionals*. Also, information on the Centers for Medicare and Medicaid Services (CMS) Five Star Quality Rating can be located at this Web site or by visiting www.Medicare.gov. The CMS' star quality rating is based on three performance measures – health inspections, staffing, and quality measures.

For additional information regarding nursing home rights, suspected abuse and neglect, and/or filing nursing home complaints, call MPAS and ask to speak to an Information and Referral advocate at **800.288.5923**.

Services Available for Those Interested in Moving Out of Nursing Homes

Michelle, Director of Advocacy

If you or someone you know is living in a nursing home and is interested in moving into the community, you could be eligible to receive Nursing Facility Transition Services. This program provides alternatives to nursing home living and also helps link you with services to support you in your community of choice. Funding for this program is provided through the **Michigan Department of Community Health (MDCH)**. If you receive Medicaid and would like to move into your own apartment, live with someone else, or reside in a different community-based setting, this program may be able to help.

Anyone can request transition services on behalf of themselves or someone else. Services can be requested by calling several different agencies including your local **Area Agency on Aging, the Michigan Department of Community Health, the Long-Term-Care Ombudsman, or your local Center for Independent Living**. Once a referral for services has been made, someone will meet with you to discuss your wants and needs and to begin developing a plan. The plan can include information about medical needs, transportation services, accessible housing options, and in-home supports and services.

This important program has already helped hundreds of people transition back to a community setting of their choice. So what are you waiting for? **Call Michigan Protection and Advocacy Service** for additional information at **800.288.5923**.

New Federal, State Education Rules Issued

Mark, Information & Referral and Education Director

Both the federal and state governments have issued new education rules affecting special education, Early On, and privacy. The recently-issued changes amend the Michigan Administrative Rules for Special Education (MARSE), federal early intervention services (34 CFR Part 303), and Family Educational Rights and Privacy Act protections (34 CFR Part 99). Please contact Information and Referral, and Education Services at MPAS, **800.288.5923** or www.mpas.org for more information on specific changes.

Saturday Special Education Trainings

Mark, Information & Referral and Education Director

Coming to your part of the state this spring: Saturday special education rights trainings from Michigan Protection and Advocacy Service, Inc. (MPAS) and the Michigan Alliance for Families (MAF). Here is the calendar:

3/24/12	University of Detroit Mercy School of Law, Room 226, 651 E. Jefferson Ave., Detroit
4/28/12	Alpena, TBA
5/12/12	Berrien County, TBA
5/19/12	The Arc Muskegon, 1145 E. Wesley Ave., Muskegon

Each training will start in the morning, but starting times vary by location. Participants will receive a free copy of *MPAS' Special Education: An Advocate's Manual*. Lunch will be provided at most of the trainings.

The trainings are free of charge and open to anyone. Pre-registration is strongly encouraged. To pre-register and get the starting time for your training, please contact MAF at **800.292.7851**.

These trainings are a small sample of the larger special education rights training schedule offered by MAF. For complete information on rights trainings, please call MAF or visit their Web site at www.michiganallianceforfamilies.org.

Masseau Leaves MPAS to Head up *Wisconsin Disability Rights*

Rhonda, Editor

In January 2012 – after nearly 25 years with Michigan Protection and Advocacy Service – Tom Masseau left his position as director of government and media relations to become executive director of Disability Rights Wisconsin. He replaces Lynn Breedlove, who retired after 31 years.

Masseau began his career at MPAS as a high school co-op student. After completing his degree in Public Administration, he joined MPAS full time. Over the years, he developed extensive experience in legislative advocacy and policy development – most notably as chairperson of the legislative committee of the National Disability Rights Network and as trustee of the Charter Township of Lansing.

He collaborated with numerous disability agencies, served on many committees and was chairperson for the Michigan Statewide Independent Living Council (MiSILC).

“I am proud to have worked with Tom over the past ten years,” says MPAS Executive Director Elmer L. Cerano. “He has left a positive and indelible mark on services and supports for people with disabilities in Michigan.”

At his send-off party, Masseau told well wishers how appreciative he was of their support and friendship over the years and spoke of how fulfilling his career has been. “The most rewarding part is knowing that I’ve played a role – whether big or small – in helping to change the life of at least one person. That is my reward here at Michigan Protection and Advocacy Service.”

MPAS has begun a search to replace Masseau as government and media relations director.

Help us Reach our Goal: Become a Fan of MPAS Facebook

Many regular readers of *Exchange* know that Michigan Protection and Advocacy Service (MPAS) is now on Facebook. It’s a great way to connect with others like you who are interested in disability issues and want to keep up on the latest news and legislation affecting the disability community.

If you haven’t already, MPAS would like to challenge *Exchange* readers to join Facebook. Get your friends to join, too!

Get your *Exchange* Newsletter via e-mail!

If you enjoy *Exchange* newsletter each quarter and would like, instead, to receive it via e-mail, let us know. We can send it to you in Microsoft Word, .txt, or pdf format. Just tell us what works best for you.

Results of Surveys from Parents of Children with Behavior-Related Disabilities

Mark, Information & Referral and Education Director

MPAS began surveying parents of children with disabilities in November 2010 through our information and referral service. We asked parents if their children were having problems related to behavior, including problems that could suggest future behavior challenges such as academic struggles, retention, or multiple absences.

MPAS callers have completed over 1,100 surveys since April 2011. MPAS received more than eight surveys on 23 school districts – a total of 333 surveys (about thirty percent) came from these districts.

More than 460 (forty-four percent) of the parents responding reported they had been called to pick their children up from school or asked to keep their child home from school because of behavior problems. More than 130 of the children sent home (thirty-one percent) were 10 years old or younger. This information calls into question a recent finding by the state's **Special Education Advisory Committee (SEAC)** that the problem of *de facto* suspension should not be given priority in Michigan because it is impossible to quantify. Children with disabilities who are sent home from school or asked to stay home from school often miss out on important school and instructional time and, as a result, are at risk of not receiving a free appropriate public education. They are, in effect, excluded from school in spite of their right to receive an education. Worse, their absences are usually not counted as suspensions.

Individual survey responses have also been used to screen and identify cases for investigation for possible complaints. Through December 2011, MPAS had filed 31 state complaints and obtained favorable findings or agreed-upon resolutions in 17 of them, with several more pending.

The survey is not intended to produce scientifically valid data but is designed as an informal measure of the scope of current or possible future behavior issues facing students with disabilities in Michigan. Stay tuned for future updates.

What are Peer Review Documents and why are They Important?

Mark, Legal Director

What are peer review documents? Almost all health care providers, including hospitals and community mental health services programs, use what is referred to as a *peer review process* to evaluate the work of their staff and organization. The process is meant to provide a means for health care professionals to comment on their colleagues in a candid fashion. For example, if there is an adverse reaction to a medication, a review of that decision would be made and

physicians could state their concerns and offer suggestions on how to avoid similar problems in the future. These observations and suggestions are noted in the peer review documents.

Are peer review documents ever disclosed? Normally, peer review documents are not disclosed to individuals outside the organization and are not available through a subpoena.

Does MPAS have access to peer review documents? As the designated protection and advocacy agency for Michigan, MPAS takes the position that it has access to peer review documents. This access is found in state and federal law. Protection and Advocacy systems around the country have litigated their right to access peer review documents and prevailed in virtually every decision. Until recently, MPAS hadn't needed to go to court to enforce its rights to peer review documents in court. However, that changed when we were denied peer review documents that were created in response to an incident in a state hospital. MPAS filed suit and the Michigan Department of Community Health soon conceded that MPAS does, in fact, have access to peer review documents.

Why are peer review documents important to MPAS? Peer review documents can offer important information on how a consumer was abused, neglected, or mistreated and are, therefore, critically important in completing investigations. Furthermore, peer review documents should also be used by the provider in preventing future problems and they are helpful to MPAS in its monitoring role.

Does MPAS preserve the confidentiality of peer review documents? When MPAS receives peer review documents, they are separated from other documents in a file. Any request for re-release of the peer review documents will be denied and MPAS will ask a court to deny any subpoenas for those documents. Only if there is evidence in the documents of a criminal action or a violation of a professional license rule will those documents be released by MPAS to the proper authorities.

MPAS v. Caruso Prison Lawsuit Closed

Mark, Legal Director

In 2005, after extensive monitoring of a privately operated facility for youthful offenders, MPAS concluded that the facility did not provide adequate mental health and special education services and supports. A lawsuit was filed in 2005 in the United States District Court. Shortly after the suit was filed, the governor canceled the State's contract with the private provider, the facility was closed, and the inmates transferred to facilities operated by the **Michigan Department of Corrections (MDOC)**.

However, that did not end the lawsuit. MPAS met with inmates who were in MDOC custody and concluded that the MDOC facilities were still not offering adequate mental health services. After extensive litigation and under the supervision of a Magistrate Judge, an agreement was entered into between MPAS and MDOC that resulted in significant changes in the treatment of inmates with mental illness. The implementation of this agreement was monitored by two experts, one of whom was chosen by MPAS. After several years, the experts presented a report

to the court that concluded that the terms of the agreement had been substantially complied with and the Judge ordered that the case be closed.

Some of the results of the litigation include:

1. Overarching efforts

- ◆ Increase in identification of inmates with serious mental illness from eight percent to approximately 20 percent
- ◆ Training of over 9,000 staff in identification of mental illness
- ◆ Increase in annual funding for mental health services by about six-million dollars per year

2. Improved access to mental health services

- ◆ Inmates have easier time processing requests for mental health services
- ◆ Mental health staffing at virtually all facilities
- ◆ Inclusion of youth, individuals with traumatic brain injury and/or CI in coverage for certain protections

3. Specialized units for individuals with developmental and mental illness

4. Punishment

- ◆ Inmates who are receiving mental health services are to be evaluated for criminal responsibility for actions that could result in treatment, and certain punishments (detention) may not be used if found to be counter therapeutic

By no means is the system perfect. Diligence on the part of all who are concerned about inmates with mental illness will continue to be needed.

MPAS Legal Team Takes Action

Mark, Legal Director

The Legal team has been very active bringing litigation to enforce the access rights of MPAS to timely release of records. Suits have been filed against the **Michigan Department of Community Health, Northpointe Community Mental Health**, as well as several nursing homes. It is important to pursue these suits so that our advocates have the information they need to complete their investigations.

However, not all of our litigation involves access issues. For example, one complaint we often hear is that apartment buildings are not fully accessible, even those that were built after the passage of the **Fair Housing Amendments Act in 1988 and the Americans with Disabilities Act in 1990**. What may seem like a small detail can make a housing unit virtually unusable or at least extremely inconvenient for a person with significant impairments.

Such was the case when a young woman with a mobility impairment called MPAS. She lives in an apartment building where every unit had two means of entering and exiting. One path is through an interior hallway. The other is from the unit's patio to the sidewalk. However, because

of our client's impairment, she is unable to get to the sidewalk as there is about eight feet of grass separating the patio from the sidewalk. This not only creates an inconvenience for our client, it also creates a threat to her safety because she cannot get to the sidewalk in the event of a fire.

The cost of installing a pathway would be minimal, and MPAS attempted to negotiate with the landlord to no avail. In the end, it was necessary to file suit. That litigation is now pending in federal court.

Another complaint that we hear is discrimination against children with disabilities by child care providers. As an example, a three-year-old child with a cognitive impairment wandered away from her child care provider. Fortunately, the child was not harmed. However, the State of Michigan cited the facility for failure to properly oversee the child. In response, the facility attempted to force the parents to pay for an aide for their child, a requirement that would never have been enforced if the child did not have a disability. MPAS brought suit against the facility in federal court.

In the area of employment, MPAS has three complaints pending with the **Equal Employment Opportunity Commission**. One of these complaints alleges that the employer terminated the client because of his disability, another claims that the employer refused to make a reasonable accommodation, and the third is for the nonpayment of wages.

MPAS will keep readers posted on the outcome of these and other issues that affect people with disabilities.

Filing a Complaint with the State of Michigan's Wage and Hour Division

Nicole, MPAS Attorney

In Michigan, employees are protected by the **Payment of Wages and Fringe Benefits Act**, as well as the **Minimum Wage Act**. If your employer is not paying your full wages or is paying you less than minimum wage, you may have grounds to file a complaint with the **State of Michigan's Wage and Hour Division** to force your employer to pay you the money you earned. If you work for a deviated wage but believe you are not being legally compensated, your situation may not be adequately addressed by the **Wage and Hour Division**, and you should contact an attorney. This article provides the steps in filing a complaint as well as information on what to expect during the process.

As always, it is important to act quickly and be aware of the relevant time limits for your potential claims – one year for the non-payment of wages and fringe benefits, and three years for minimum wage. Depending on your situation, in addition to filing claims with the State's **Wage and Hour Division** you may also have remedies through the **Michigan Department of Civil Rights**, the **U.S. Department of Labor**, the **Equal Employment Opportunity Commission**, or **State or Federal courts**. Investigating additional remedies is especially important because the Wage and Hour Division process can take many months, and waiting until the process is

concluded may mean that you have missed other deadlines. Additionally, pursuing a claim through the Wage and Hour Division may mean that you are waiving your right to go to court.

The first step in following through on a Wage and Hour complaint is gathering the relevant documents. This can include paystubs, W-2 forms, contracts, collective bargaining agreements, company policies, and time cards. The Wage and Hour Division is unlikely to make a finding in your favor based solely on your word, so it is important to gather as much information as possible.

The second step is filling out the Complaint Form. You can find the Complaint Form at www.michigan.gov/wagehour. The Complaint Form will ask for you and your employer's contact information, a calculation of your claimed amount, and copies of your supporting documents. It is best if you give the Wage and Hour Division a copy of the original documents and keep the originals in a safe place to avoid having them get lost or damaged.

The third step is filing the Complaint Form along with supporting documents with the Wage and Hour Division. Though the Wage and Hour Division allows you to file in person or online, sending your Complaint Form and documents via U.S. Mail, Certified Return Receipt allows you to best confirm that the Wage and Hour Division received everything without having to go to the Wage and Hour Main Office in Dimondale.

If you have not received any information from a Wage and Hour Division investigator after a couple of weeks of filing your complaint, you may want to ask for a status update by calling the Main Office at **517.322.1825**. Throughout the process, it's important to be polite to your investigator and promptly supply him/her with any requested information. If you move or change your phone number, promptly inform the Wage and Hour Division so they can reach you.

If the Wage and Hour Division makes a finding in your favor, they will ask your employer to send you a check. In the past, if an employer failed to send an employee this check, the attorney general would go after the employer to enforce the Wage and Hour Division's decision. In light of the ongoing cuts to the State's budget, the attorney general is no longer in a position to do this in every case. As a result, if your employer fails to send the check you may be forced to hire a collection agency to obtain payment.

Filing a complaint with the State of Michigan Wage and Hour Division can be a straightforward and relatively easy way to get the money you earned. For more information, go to the Wage and Hour Division's Web site at www.michigan.gov/wagehour, call the Wage and Hour Division at **517.322.1825**, or contact MPAS at **800.288.5923**.

Are You Prepared to Cast Your Vote?

Voting to choose the president is a very important way you can affect change nationally. But now that the presidential primary is over in Michigan, it is time to focus our attention on our

local leaders. Educate yourself about candidates and issues affecting your community and make sure you are prepared for the upcoming elections.

- Am I registered to vote?**
 - Last date to register for the State Primary Election: July 9, 2012
 - Last date to register for the State General Election: October 9, 2012
 - Find out if you are registered by going to: www.michigan.gov/vote

- When do I vote?**
 - State Primary Election: August 7, 2012
 - State General Election: November 6, 2012

- Which seats are open?**
 - US Senate and MI House of Representatives
 - Supreme Court, Appeals Court, Circuit Court, Probate Court, and District Court judgeships
 - Some local library Boards, School Boards, and Community College Trustees
 - Some County, Township, and Village Officials

- Where is my polling place located?**
 - The address and map can be found at www.michigan.gov/vote

- How will I get to the polls?**

- What should I bring?**
 - Photo ID: state or federal ID, drivers license, military/trial/student ID with photo or US passport
 - If you do not have photo ID or forget to bring it, you can still vote as long as you sign an affidavit stating who you are

- What can I expect to be on my ballot?**
 - You can read your ballot ahead of time and make decisions before going to the polls by visiting www.mivote/sos.org

MPAS Public Policy Platform

Fiscal Year 2011 – 2012

Mission and Guiding Principles

The mission of Michigan Protection and Advocacy Service, Inc. (MPAS) is to advocate and protect the legal rights of people with disabilities.

MPAS works to fulfill the mission and address the Board approved priorities by:

- ◆ Working toward systemic changes that advance the rights of all people with disabilities, and
- ◆ Advocating for individual rights in particular cases.

MPAS' systemic and individual case advocacy work is designed to protect and advance the rights of persons with disabilities so that:

- ◆ They can choose where and with whom they live and can determine for themselves what supports are needed.
- ◆ They have equal employment opportunities and full protection under the law.
- ◆ Communities are accessible and inclusive.
- ◆ All children with disabilities are provided a quality education with all supports and accommodations they need to develop marketable skills.
- ◆ They are legally protected from abuse, neglect, and exploitation.
- ◆ They have equal access to affordable, quality, health care.
- ◆ They fully enjoy the rights, benefits, and privileges the law guarantees.

Policy issues for consideration

Ensuring individuals with disabilities are free from abuse or neglect

People with disabilities will no longer be systematically disadvantaged or discriminated against in any aspect of life.

People with disabilities will be free from exploitation, abuse, or neglect.

Activities:

Actively promote federal and state policy to prohibit the use of restraint and seclusion in schools. Actively promote rule change of Child Caring Institution rules to conform to Public Act 116 language – (Limits the use of restraint and seclusion in a child caring facility which receives funds from Community Mental Health).

Actively promote state public policy to strengthening the background check laws preventing staff with substantiated abuse/neglect I or II from working with individuals with disabilities.

Actively promote enforcement of recommendations and violations of nursing home inspections.

Improving the rights protection system

Individuals with disabilities will have viable alternatives to guardianship.

Individuals will have access to independent and effective rights protection systems.

Activities:

Actively promote state policy change within the Mental Health Code to strengthen the accountability of the Recipient Rights system by:

- ◆ Requiring the local Office of Recipient Rights office to report directly to the state Office of Recipient Rights,
- ◆ Require sanction authority to the State Office of Recipient Rights, and
- ◆ Allow the state Office of Recipient Rights to be a separate entity from the Michigan Department of Community Health.

Actively promote state public policy to strengthen the reporting requirements for guardians.

Actively promote federal policy to maintain or strengthen access authority within the protection and advocacy system.

Eliminating employment barriers and enforce rights

Individuals with disabilities will have increased opportunities to become economically self sufficient by obtaining gainful employment within the community.

Individuals with disabilities with gainful employment will be able to retain their assets and not be penalized by reducing eligibility for essential services and supports.

Activities:

Actively promote federal and state enforcement of employment rights and research options for improvement.

Actively promote federal policy to reauthorize the Rehabilitation Act.

Improving access to necessary services

People with disabilities will no longer be systematically disadvantaged or discriminated against and will have 100% equal access to government and public facilities/services including access to all electronic information and participation.

The right to coordinated home and community based services and supports from local, regional, and state service providers will be maintained.

Every individual will have an equal opportunity to privately and independently participate in the electoral process.

Activities:

Actively promote state policy to require ADA standards are met prior to changing polling locations.

Ensuring the right to high quality education

The right to appropriate school services and supports will be maintained.

Students with disabilities will be integrated into general and special education systems.

Activities:

Actively promote state policy to develop a standard definition of functional behavior assessment and positive behavior support.

Budget issues

MPAS will monitor annual state budget negotiations and advocate as necessary to ensure that the budget is not balanced on the backs of persons with disabilities and to advance the agency's policy platform as listed above.

For more information contact:

Michigan Protection and Advocacy Service, Inc.

800.288.5923

517.487.1755

517.487.0827 - fax

From the Executive Director

Dual Eligibility: Merging Medicare and Medicaid

Michigan is one of 15 states approved for funding from the federal government to design a merger of funding and services for people who are eligible for both Medicaid and Medicare services.

Over the past several months, MPAS has been working with other disability organizations to coordinate ideas and strategies on how best to provide input and advice to the State of Michigan on this initiative. The common agenda of the disability advocacy groups is an overall goal to modernize, streamline, and reduce administrative duplication while maintaining or enhancing program service and support options, availability, and quality.

Although the state's initial statements of eliminating unnecessary duplication of administration that exists in the current Medicaid and Medicare systems sounded exciting, the details of what such changes could mean for people whose lives literally depend on a complex and interconnected array of supports, got pretty muddy, pretty fast.

Even within the disability groups, there were disagreements as to "how" not so much "if" change should be done. However, with the excellent leadership of Dohn Hoyle at The Arc Michigan and

Mark Reinstein at the Mental Health Association in Michigan, the disability groups – including MPAS – successfully (at least as of this writing) bridged their differences by working through hours of tough, honest, and frank dialog.

As compiled by Mark Reinstein and others, the principles upon which the disability groups have agreed and are strongly recommended to the Michigan Department of Community **Health as** they write their proposal to CMS (Center for Medicaid and Medicare Services) for people who are dually eligible, are:

1. Choice: Individuals have the right to choose where, how, and from whom they receive health care, supports, and services. Choice also includes making an informed decision to participate in the program or not.

2. Non-Discrimination: Individuals have a right to receive non-discriminatory and effective health care that fully complies with applicable federal and state law, and which includes physical, electronic, and programmatic accessibility; cultural and linguistic capacity; and appropriate specialist expertise in all aspects and levels of service delivery.

3. Community-Based, Long-Term Supports and Services (CBLTSS): Individuals have a right to CBLTSS that are readily available, consumer-directed to the maximum extent, and of sufficient scope to support independent living in the community. Policy initiatives must address how they will enhance the development and availability of CBLTSS, while also preserving the best features of the state's existing CBLTSS systems.

4. Person-Centered Planning and Care: The individual's needs and experiences are core to every aspect of policy initiative design –

- ◆ from stakeholder outreach and process to integrated service delivery,
- ◆ from beneficiary assessment to establishing provider reimbursement rates,
- ◆ from implementation to monitoring and enforcement.

In particular, care coordination strategies and CBLTSS must consistently inform and build upon individuals' desires and capacity for self-directed care and independent living within their chosen communities. The opportunity to live independently in an apartment or home, to be employed, to be engaged in the community with family and friends, to pursue personal activities, and to set one's own schedule is not to be limited by an individual's physical or mental health or functional capacity.

5. Stakeholder Involvement in Planning: Health care stakeholders, including consumer, family, and advocacy representation, should be formally involved (beyond "work group" participation) in the actual drafting of a project implementation plan to be submitted to the federal government in 2012. Included in this effort should be comprehensive dialogue about respective fee-for-service and capitated managed care funding models for the project before any final decision about what is best for Michigan.

6. Stakeholder Involvement in RFP Processes: Health care stakeholders, including consumer, family, and advocacy representation, should be formally involved in development of the state's Request for Proposal (RFP) for the project and the review of RFP submissions.

7. Enrollment Safeguards: The Department of Community Health (DCH) has stated that all dual-eligible individuals will be "passively" (i.e., automatically) enrolled in the project but will have the opportunity to "opt-out." It would be more consumer-friendly if individuals had the opportunity of choosing whether to "opt-in." Under either approach, consumer options regarding enrollment and subsequent plan or provider choices must be communicated in plain, clear wording in a variety of formats and languages appropriate for the consumer, through a variety of trusted and reliable sources.

- ◆ Consumers must be offered independent, individualized assistance in making timely and informed "opt-out/opt-in" decisions.
- ◆ Assistance should be available sufficiently in advance of any deadline for initial, start-up enrollment decisions, to assure a meaningful opportunity to decide among the available active and passive options.
- ◆ Assistance should be available in-person (including via home visit if necessary), via telephone, or electronically, at the option of the consumer.
- ◆ The assistance should include a comprehensive and individualized review of the person's current Medicaid or Medicare funded providers, medications, treatments, testing, equipment, supports, and other services. It should also include a review of the effects of enrollment in Integrated Care on the individual's continuity of care and services, access to current providers, and access to additional services or supports.
- ◆ Consumers should be offered a written summary of the information provided during the one-on-one session, including individualized comparisons between and among options.
- ◆ The assistance must be provided independent of any individual or entity that has a financial interest in the "opt-in/opt-out" decision.
- ◆ Consumers should have the right to opt out of Integrated Care at any time, including prior to the deadline for initial, start-up enrollment. Consumers should have the right to enroll, re-enroll, or change options within Integrated Care at any time.

8. Piloting & Independent Evaluation: DCH has stated this project will be phased-in across the state. A phase-in is not necessarily the same as a pilot. The project should only be piloted initially, and perhaps be limited during piloting to some but not all dual-eligible beneficiaries (e.g., starting with those who have multiple health conditions). A comprehensive pilot evaluation should be undertaken before expansion to other parts of the state or other dual-eligible sub-groups. The initial pilot region should be one where there are ample and diverse services for

health care (including mental illness, substance abuse, and developmental disability) so there is a safety net for persons who dis-enroll from or do not enroll in the project.

Additionally, given the prominence of mental disability among dual-eligible enrollees, the pilot evaluation – and any subsequent project evaluations – should have a specific component directly related to mental illness, substance abuse, and developmental disability. All project evaluations should be conducted by entities independent of service managers and providers.

9. Evaluation Parameters: The administration must annually assure a standardized formative and summative program evaluation methodology to monitor:

- ◆ system processes and outcomes; and
- ◆ individual processes and outcomes, including quality-of-life indicators and information provided by consumers.

The evaluation methodology must use both quantitative and qualitative strategies. Additionally, the administration must establish a stakeholder participatory evaluation team to oversee the program evaluation design, activities, and findings.

10. Medicaid-Medicare Differences: Medicaid and Medicare do not presently have the exact same rules, policies, and procedures. If the federal government leaves decisions on how to resolve these differences to the state, Michigan's governing principle should be what is most advantageous for consumer well-being in areas such as service access (including medications), treatment-and-support outcomes, and quality-of-life.

11. Grievances, Appeals, and Rights: All grievances, service appeals, rights claims, other beneficiary complaints, and dispute resolution processes under this project should be managed by an independent entity that is separate from service management and provision. This opportunity should be competitively bid on a statewide basis; failing that, such responsibility should be placed in a state government program given Type I (autonomous) status. If permitted by the federal government, service appeals (due process) should primarily utilize Medicaid processes, which are generally simpler than those of Medicare. Service appeals must utilize independent clinical consultation before a final determination is rendered.

12. Do No Harm: The project cannot harm consumer access to service continuity, sufficiency, and quality. Steps must be in place to assure that those who are not participating in this project, but still need Medicaid or other publicly funded safety net assistance, will not lose access to their current scope of services and providers. This is a particularly critical issue regarding the capacity of Community Mental Health Services Programs (CMHSPs), which get up to half their reimbursements from services for individuals who have dual-eligibility.

13. Citizen Oversight: This project, in its pilot phase and any subsequent configurations, should have an advisory oversight committee that includes consumer, family, and advocacy representation. Such involvement must include some degree of experience with mental disability, given its prominence among dual-eligible enrollees.

14. Changes to Law: The legislative and executive branches, in consultation with health care stakeholders, should determine what state law changes (if any) would be needed for this project, and whether any such changes are practical and worthwhile.

15. Health Care Manager Qualifications: Entities bidding to become the health care manager(s) with which DCH would contract must have demonstrated positive experience and capacity to meet the needs of those with mental illness, developmental disability, and/or substance use disorders.

16. Health Care Manager Bidding: The bidding process leading to selection of health care managers to be contracted with the state project management should be transparent, and responses to the state's RFP should be subject to public inspection.

17. Manager/Provider Transparency and Consumer Involvement: DCH's RFP and subsequent contracting should assure that the health care manager(s) ultimately selected by the state (and sub-contractors) will:

- make available for public inspection all financial statements relating to the dual-eligibility program,
- be subject to the Freedom of Information and Open Meetings Acts regarding the program,
- have in place consumer involvement in their governing operations, and
- be able to demonstrate consumer involvement in RFP response development.

18. Savings Reinvestment: The state should assure that savings generated by this project will be reinvested in actual service delivery under the project and/or supports and services funded through Medicaid.

19. Annual Outcome Reporting: For each health care manager contracted with the state, DCH should annually report and publish performance outcomes on uniform, statewide quality improvement criteria. DCH should also report on demographics and other characteristics of individuals who have dropped out of service.

20. Analysis of CMH Service Delivery: The state should use this undertaking as an opportunity to analyze and make any needed changes to statewide CMHSP structure, accountability, and standardization.

21. Lessening Problems of Medicaid Spend-Down: The state should also use this undertaking as an opportunity to explore amelioration of the problem that Medicaid spend-down poses for medical assistance beneficiaries.

As of this writing, the Michigan plan for blending Medicare and Medicaid funding and services is unknown. It is brave of the State of Michigan and the Department of Community Health to take on this significant challenge.

MPAS does not, and never has, opposed change as long as it is for the better. The scope of the pending changes and the serious risks of losing current supports and services are very real and frightening.

MPAS implores the drafters of the Michigan Plan to assure that they do no harm. The lives of people with disabilities literally depend on the successful implementation of a plan to reduce unnecessary costs while enhancing services, treatment and supports.

Michigan has long been seen as a national leader in advancing recovery and full supported community inclusion for people with disabilities. MPAS, other disability advocacy groups, people with disabilities, and their friends and families must never retreat from the demands of national leadership.

Stay tuned; you will hear a lot more on the topic of “dual eligibility.” You will be called on to fight – not to keep what we have – but to improve the conditions for all people with disabilities.

Elmer L. Cerano
Executive Director

Thank You for Your Generous Donations

On behalf of all the people we serve, we thank the many individuals and organizations that have so generously supported the work of Michigan Protection and Advocacy Service.

Due to the fact that most of the agency’s funding comes from government grants, very strict guidelines govern how those funds may be used. To reach beyond those limits and to better respond to the requests of our clients, we need additional resources that can be used to advance our mission.

Gifts to MPAS may take many forms: cash, appreciated securities, and mutual fund shares, matching gifts from the donor’s business, planned gifts, and bequests. To make a cash donation or to discuss provisions for gifts other than cash, please contact us at **800.288.5923**.

Listed here all donors who made gifts to MPAS from January 1 to December 31, 2011. Thank you to all donors who have supported Michigan Protection and Advocacy Service, Inc.

Member

Mr. and Mrs. John Barwacz
Ms. Pamela Bellamy
Ms. Cynthia Church
Ms. Donna DePalma
Mr. and Mrs. Edward Diss
Mr. James Downing
Mrs. Linda Estep

Ms. Callie Harvey
Mrs. Michelle Huerta
Ms. John Hunt
Ms. Dennis McGrail
Mr. and Mrs. John Wiese *in memory of Bethany Eva Wiese*

Advocate

Ms. Sarah Apotheker
The Arc of Livingston County
Ms. Jessica Ball
Ms. Patricia Bowersox
Mr. Nick Boyd
Mrs. Michele Brand
Ms. Margarita Cabada
Mr. & Mrs. Patrick Cavanaugh *in memory of daughter Christina Maria Cavanaugh*
Ms. Julie Cooper
Ms. Myra Dutton-Johnson
Ms. Elizabeth J. Ferguson
Ms. Leslie Hargett *in recognition of Phylis Levine*
Mrs. Michelle Huerta
Ms. Mary Hunt
Ms. Deborah Julow
Ms. Joan Justema
Mrs. Marcia Karlovich
Mr. and Mrs. Thomas Kendziorski
Ms. Abigail Lanting
LaPointe & Butler, P.C.
Mr. William Listman *in memory of Arlene Listman*
Ms. Kristi Long
Ms. Sandra Lundquist
Mrs. Ann Manning
Mr. and Mrs. Francis Markey
Mr. Daniel Matthies
Mr. John McCulloch
Ms. Donna Omichinski
Ms. Stoney Polman
Mr. and Mrs. Charles Press
Mrs. Laurel Robb
Ms. Darlene Segrest
Ms. Kelci Semrow
Mrs. Jennifer Shinska
Mr. and Mrs. Ken Slater
Ms. Jeannine Somberg *in recognition of Dylan Somberg*
Ms. Mary Ellen Stroup
Ms. Barbara L. Sutherland
Mr. and Mrs. Charles Swinehart, Jr.

Mr. Robert Walters
Ms. Regina Whalen
Ms. Agnes White
Mr. and Mrs. W.D. Wisecarver
Mr. and Mrs. Chad Witcher
Mr. Erik Wittrup

Benefactor

Enzo Addari
Ms. Marcia Alling
Ms. Doris J. Bachert *in memory of Edmund C. Ross*
Mr. and Mrs. Arthur V. Belloli *in appreciation of friendship to Ann Manning*
Mr. John Brower
Mr. Ronald Bush
Mr. Mark Craig
Ms. Dorothy Dull
Ms. Elizabeth Janks *in appreciation of Robert A. Janks*
Mr. and Mr. Thomas Landry
Mr. and Mrs. Nicholas Luxon
Ms. Claire Odgers
Ms. Judith Pick
Ms. Stoney Polman
Mr. and Mrs. Jan Schoneman
Ms. Shelley Spivack
Mr. Walter Stillner
Mr. and Mrs. Bob Summers
Ms. Marsha Tuck, Esq.
Mrs. Mary Vandamme *in honor of Sandi McClennen*
Mr. Daniel Vivian
Mr. Duncan Wyeth *in appreciation of Micah Fialka-Feldman*
Mr. and Mrs. Andrew Zweifler

Counselor

Ms. Laura Athens, JD
Mr. Mark Brewer
Ms. Laura Brodeur-McGeorge
Ms. Linda R. Brown
Ms. Beatrice Caldwell
Ms. Diana Censoni
Mr. and Mrs. Elmer Cerano
Ms. Rita Mary Des Armier
Mr. and Mrs. Paul Freddolino
Ms. Diane Kwitoski
Legal Services of Northern Michigan, Inc.
Mrs. Judy Lindstrom
Mr. Tom Masseur

Mr. Mark Shefman
Mr. Jo Sinha
Mr. and Mrs. Donald Smith
Ms. Dana Stevens *in memory of Kelly Watson Palmer Ayer*
Mr. Guy Sweet
Mr. Rick Swegles
Mr. and Mrs. Albert Wallace

Defender

Charles Stewart Mott Foundation
Mr. Dennis Cichon
Mark R. Lezotte
Mr. and Mrs. Douglas McClennen
Mr. Steven Schwartz

Protector

Mr. and Mrs. John Bos
Mr. Richard Ference
Albert & Doris Pitt Foundation
Mr. Todd Jenning
Kate Wolters

Back page

Board of Directors
Michigan Protection and Advocacy Service

Michelle Huerta, Esp.

President
Livonia

Kate Pew Wolters

First Vice President
Grand Rapids

Thomas H. Landry

Second Vice President
Highland

John P. McCulloch

Treasurer
Royal Oak

Mark R. Lezotte, Esq.

Immediate Past President
Detroit

Pamela Bellamy, Ph.D.
Lansing

Mark Brewer, Esq.
Clinton Township

Ronald D. Bush, II, JD
West Bloomfield

Donna DePalma, LMSW
Pinckney

Kathy McGeathy
Flint

Ann E. Manning, BS
Clarkson

Susan L. Odgers
Traverse City

Stoney Polman, LPC
St. Johns

Jane Shank
Interlochen

Frederick A. Swegles
Director Emeritus
Port Huron

Frederick F. (Rick) Swegles, Esq.
Port Huron

Frank Turnage, MLM, MSA
Roscommon

Exchange is an official publication of Michigan Protection and Advocacy Service, Inc. (MPAS).

4095 Legacy Parkway
Suite 500
Lansing, Michigan 48911-4263
Telephone 517.487.1755
TOLL FREE:
800.288.5923

Fax: 517.487.0827
<http://www.mpas.org>

Find us on
Facebook

Voice, TTY, Language and accommodations available. Available in alternative formats upon request.

Rhonda, Editor
Elmer L. Cerano, Executive Director