

MANAGEMENT AND OPERATIONS COMMITTEE MINUTES
SOUTHWESTERN VIRGINIA MENTAL HEALTH INSTITUTE
MARION
NOVEMBER 9, 1998

The meeting was called to order by the Chairman, The Honorable Steve Martin, at 10:14 A.M. Senator Martin welcomed everyone and introduced the members.

Members present were: **Steve Martin**, *Senate of Virginia*; **Emmett Hanger**, *Senate of Virginia*; **Olivia Garland**, *First Health Services, Corp.*; and **Vickie Fisher**, *Mental Health Association of Virginia*.

Also attending were: Joy Yeh, *Internal Audit Director DMHMRSAS*; Jane Hickey, *Senior Assistant Attorney General*; Bill Atkinson, *Policy Deputy, Department of Employee Relations Counselors*; Burt Lowe, *Executive Director Chesterfield CSB*; Henry Altice, *Hammond Commission*; and Fran Sadler, *Administrative Staff, Hammond Commission*.

Jerry Deans, *Director of the Southwestern Virginia Mental Health Institute*

Mr. Deans welcomed the Committee and gave a brief overview of the facility and the area it serves. The region has a low tax base and few private providers. SWVMHI was founded in 1887, reached a peak population of 1,493 in 1964, and today houses 262. It is a full service facility serving all patient populations from adolescent to geriatric. They have started family support groups and a nationally recognized telepsychiatry network. The Southwest Virginia Mental Health Board was formed in 1992 composed of Mr. Deans, the Executive Directors of the eight local CSBs, and family and consumer representatives to work together to improve and integrate the services between the facility and community. HJR 240 recognized this Board as a model for planning and problem solving.

Mr. Deans reported that SWVMHI has a staff that is generally stable and caring, but the facility is marginally staffed, and there is an urgent problem of attracting and retaining psychiatric aids. He feels that the reasons are compensation and the acuity of the patients.

Senator Martin asked that the agenda be considered. Senator Hanger moved that the agenda be amended to include time to hear from community representatives. Ms Garland seconded the motion and it carried with no opposition.

Steve Eller, *Assistant Director Smyth County Social Services*

Mr. Eller expressed his concern about the J&E Report's recommendation to close the adolescent unit at SWVMHI and transfer the patients to Staunton. He feels that families and children should be kept close together. SWVMHI is already two or three hours from some service areas, and Staunton would add another two hours. Mr. Eller said that a year ago a group was formed to recommend to the General Assembly that the adolescent program be expanded, but no action by the Legislature was taken. Long term residential services are needed in addition to the existing short term. There is no private alternative, and he feels strongly that it is not in the best interests of the community to close this unit. A study has shown that \$20 million has been spent on placements, and he believes that SWVMHI can provide better care more cost effectively. *Copies of letters and materials in support of Mr. Eller's position are attached to these minutes*

Dale Stover, Foster Care Supervisor, Wise County

Ms Stover believes that SWVMHI does a wonderful job with the children and wants the facility to remain open. She feels that SWVMHI provides better service than the expensive placements.

Old Business:

Senator Hanger moved that the minutes from the October 16 meeting be approved as submitted. Ms Garland seconded the motion and it passed. Senator Hanger also moved that the minutes from the November 2 meeting be approved as submitted. Ms Fisher seconded the motion and it carried.

New Business:

Presentation by: **Neil A. G. McPhie, Director of the Department of Employee Relations Counselors**

Mr. McPhie said that his role in the Department was to provide the best process available for employees and management to resolve employment disputes. He described the grievance process that is available for all non-probationary classified employees. They have vested interest, may not be fired except for cause, and have notice and opportunity to confront accusers. The state's grievance procedure provides more employee protection than required by federal due process.

There are three successive management steps within the agency that are available to resolve the grievance. If not settled, the employee may appeal to the DERC for a ruling on whether the issue is referred to a Hearing Officer. Employees are always free to retain an attorney or file suit in court during or after the process. Agencies are required to meet the burden of proof by a preponderance of evidence. Hearing Officers are lawyers who must be certified by the Virginia Supreme Court and undergo training with some DERC input. They are not state employees and are expected to be objective and fair. Their decisions are final and binding unless they are contrary to law or policy. If an employer refuses to implement a decision to reinstate a fired or reassigned employee, the case goes to circuit court. If it is shown that compelling reasons exist, employees could be reassigned to a different job.

Mr. McPhie discussed some of what he perceives are weaknesses in the grievance system and areas where it could be improved:

- There is no monitoring of the hearing officer system. The quality of Hearing Officers ranges from excellent to poor, and many don't understand the department and issues. All certified officers are supposed to be used in turn, because the system is designed to be independent. Mr. McPhie is hesitant to drop any because they are also protected by vested interest;
- The appellate process is undefined. The statute doesn't define who determines whether the hearing officers' decisions are according to law;
- An in-house hearing officer system administered by DERC should be investigated;
- Mitigating circumstances may allow patient abuse or neglect to be ignored;
- There should be more balance between the needs of the employee and employer to do their jobs. Currently there is more emphasis on the employee;
- Supervisors need better training in conducting investigations and preparing written notices;
- Human Resources should coordinate with DERC and use the services available for advice and help in resolving cases;

- Department Instruction #33 currently has no flexibility to allow for gradations of punishment. Jerry Deans said that he was serving on a committee to review DI33 and that will be one of their recommendations;
- The grievance procedure process, as all personnel issues, is conducted in private and no information may be released. Mr. McPhie feels that there should be some public release of information. This might help with consistency in hearing officers' decisions by developing a cumulative body of case law. It might encourage settlement or be a deterrent against filing some grievances.

After a lunch break the Committee discussed **possible recommendations to present to the Full Commission on November 18.**

Recommendations on Grievance Procedures:

1. Strengthen DERC to implement their role as outlined in the Code of Virginia;
2. Encourage Human Resources to coordinate with and utilize the services of DERC;
3. Provide better supervisor training in conducting investigations and preparing written notices;
4. Encourage greater use of mediation to resolve employee disputes;
5. Develop a DERC administered in-house Hearing Officer system on pilot basis;
6. Allow Hearing Officer decisions to be appealed to DERC to settle questions of law;
7. Appropriately staff DERC to provide these services;
8. Support changing DI33 to allow gradations of punishment.

The Committee also discussed but made no recommendations on allowing grievance decisions to be made public and requiring CSBs through performance contracts to provide the same training in investigations as recommended for facilities.

Other Recommendations:

9. Move the Department for Rights of Virginians with Disabilities from Health and Human Resources to the Secretary of Administration; *Vickie Fisher abstained.*
10. Carry out the intent of 1998 Legislation and provide the appropriate central office staffing to oversee CSBs' performance contracts. Contracts for 2000 will include outcome data and allow for sanctions;
11. Change the status of facility directors from classified employees to contract employees under the Commissioner. Contract terms such as time and grandfathering need to be determined;
12. Encourage enforcement of the Code requirement for the Commissioner's qualifications;
13. Increase the employment grade and salary for psychiatric aids in order to attract and retain the quality of workers needed;
14. Encourage and support the development of standardized best practices for quality care and treatment.

There was discussion concerning providing patient administrative data from public facilities to Virginia Health Information. This information can be obtained from the admission form UB-92. The data would be combined with the private sector data that they already have, and provide statistical information. The Committee recognized that such data could be helpful in serving as a check on quality of outcome from the facilities but wanted further information on patient confidentiality, what the information is used for, and how such data can be collected before recommending that action be taken.

Joy Yeh was asked to draft the recommendations discussed and fax to the Committee members for their review and comments. Senator Martin will report on the Committee's progress at the Full Commission meeting on November 18 in Richmond. The Committee may need to meet again before the final report is due on November 30. The meeting was adjourned at 3:00 P.M.