

**Meeting Summary  
Disability Commission  
September 30, 2003**

**Background**

The Disability Commission meeting, rescheduled due to Hurricane Isabel, was called to order by Lieutenant Governor Kaine at 1:00 PM on September 30, 2003 in House Room C of the General Assembly Building. This was the second meeting of the 2003-2004 interim season. Two additional meetings are planned in order to finalize the Commission's Legislative Agenda for the 2004 General Assembly Session: October 24 and November 19, 2003

**Meeting Attendees**

Members present included: Lt. Governor Kaine, Delegates Bloxom, Van Landingham, McQuigg, and Mayer, Senators Puller, Miller and Nolen, and gubernatorial appointees, William Howell, James McDonald, and Karen Michalski-Karney. Dr. Fred Orelove was able to attend the second half of the meeting. Staff in attendance included Carey Friedman (Director of Policy, Lt. Governor's Office), Heidi L. Lawyer, Director, Virginia Board for People with Disabilities, and Janet W. Hill (VCU/VBPD Research Consultant).

	<b>Agenda Item</b>	<b>Discussion and Actions</b>	<b>Follow-up</b>
<b>1.</b>	<b>Welcome and Overview of the Agenda</b>	The Chairman reviewed the agenda and explained that, with the previous request of the Commission, this meeting had been arranged to provide a focus on financial issues. The agenda to allow review and analysis of service priorities in preparation for budget development and the 2004 GA session. He asked each presenter to spend some time on helping the Commission prioritize programs most in jeopardy due to loss of funding or in need of enhancements.	<b>None</b>
<b>2.</b>	<b>Olmstead Task Force Status Report and Budget Planning Information</b>	<p>Julie Stanley, Olmstead Taskforce Coordinator, Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) provided a PowerPoint presentation for the Commission including:</p> <ul style="list-style-type: none"> <li>• An overview of the Olmstead Supreme Court case,</li> <li>• A summary of the Task Force work,</li> <li>• A summary of the final report (drawing attention to those recommendations involving the Disability Commission), and</li> <li>• Next steps.</li> </ul> <p>Delegate Mayer stated his concerns that the Olmstead report seems to be more of a "wish list" than a blueprint for the Commonwealth to come into compliance with the</p>	

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<p><b>Olmstead Task Force Status Report and Budget Planning Information (Continued)</b></p>	<p>Olmstead Decision. He asked Ms. Stanley to discuss priorities for compliance.. Ms. Stanley stated that the Task Force elected to develop a plan that would be broad based in nature. Delegate McQuigg asked why this approach was taken. Ms. Stanley stated that the Task Force believed that a narrowly constructed plan, aimed only at providing services for people currently residing in institutions, would not address the community based infrastructure that would provide a defense for the Commonwealth with respect to Olmstead based litigation.</p> <p>The Chairman asked Ms. Stanley to clarify the expectations of the President and the Supreme Court regarding the speed at which States must implement Olmstead plans. Ms. Stanley cited two timing guidelines within the intent of Title II ADA Law: 1) a state must have an effectively working plan, and 2) waiting lists for community placements must proceed at a reasonable pace.</p> <p>The Chairman stated that he considered the waiting lists as the factors placing the State most at risk legally. He asked what would be required for the Commonwealth to "get on the right side of the law," avoiding legal action, if reasonable waiting lists were defined as 6 months to a year. Ms. Stanley and other Commission members agreed that enormous state resources would be required to provide adequate community services to eliminate waiting lists in VA as well as a major shift in direction of resources toward community infrastructure building.</p> <p>Ms. Stanley stated that the Governor has indicated that he will be forming a team of state agencies to cost out the recommendations in the Report, but there is no firm date for that yet. The funding recommendations will then be forwarded to the Governor, the House Appropriations and Senate Finance Committees, and the Joint Commission on Health Care who all received the original report.</p> <p><b>Commission Work Session on Olmstead Report:</b></p> <p>The Chairman asked how the Commission wished to support the Governor's Olmstead efforts. Consensus was quickly reached that identifying core compliance issues that will empower the Commonwealth to come into compliance with the Olmstead decision would be the most appropriate contribution to the process from the Disability</p>	<p><b>Staff will provide available waiting list numbers at the next meeting.</b></p>
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<p><b>Olmstead Task Force Status Report and Budget Planning Information (Continued)</b></p>	<p>Commission this year. Delegates Van Landingham and Mayer asked that waiting list information be made available at the next meeting to help members to cull down items from the Report's "Wish List." Delegate Van Landingham stated that with accurate waiting lists that Commission can prepare to make recommendations when the economy recovers.</p> <p>Commissioner Michalski-Karney stated that the VA Centers for Independent Living (VACIL) have collaborated on a letter to Secretary Jane Woods and a report that prioritizes the Olmstead Task Force recommendations. The VACIL report seeks to identify priorities that will be cost neutral, or nearly so, and that advance consumer-directed service options and community services rather than costly institutional options services.</p> <p>The Chairman reviewed some of the complexities regarding the State's continued operation of large state facilities including:</p> <ul style="list-style-type: none"> <li>• The politics within localities where the facility operates (jobs, local income, etc.),</li> <li>• Lack of alternative providers immediately available,</li> <li>• Department of Justice settlements requiring the maintenance of specific staffing levels in some facilities unless whole sections are closed and consolidated, and</li> <li>• The component of the Olmstead decision that includes choice as a critical factor for determining placement, meaning that some persons may choose institutional placement.</li> </ul>	<p><b>Staff will send each member a copy of the VACIL report, which prioritizes the Olmstead Task Force recommendations.</b></p> <p><b>The Commission members decided to review Olmstead and VACIL reports, as well as waiting list information, and make final decisions on budget recommendations to support Olmstead compliance at the next meeting, on October 24, 2003.</b></p>
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3.	<b>Commission Community Program Initiatives and Waiting Lists Review</b>	<p>James A. Rothrock, Commissioner, Department of Rehabilitative Services (DRS)- Mr. Rothrock reviewed the history of the Commission's efforts to develop a foundation of services for those who have traditionally been unserved in VA, that is, persons with physical, sensory or developmental disabilities other than mental retardation. He said thousands of persons would have no services in VA if not for funding appropriated through the Commission. Mr. Rothrock suggested that in relation to the Olmstead Compliance issues that the Disability Commission should to continue to remain focused on those populations cited in the Commission's original charge.</p> <p>Within time constraints, Mr. Rothrock reviewed portions of the Community Initiatives Matrix and available waiting lists. It was explained that the current DRS Waiting lists have been closed because no movement on lists has occurred for several years due to lack of resources and the fact that no relief is in sight. The Chairman and members stated that they understood the frustration and the rationale for closing waiting lists; however, they requested that the DRS open waiting lists so that more accurate data can be collected to inform policy and understand the extent of need. Delegate Mayer reinforced that continued support of the DSBs as essential because the DSBs, when developed fully, are able to collect more accurate need data at local levels.</p> <p>Special presentation: Michael Scione, Assistive Technology Loan Fund Authority— Mr. Scione played a Public Service Announcement (PSA) for the Assistive Technology Loan Fund Authority, recently developed at no cost to the Commonwealth by G. E Financial Services. The PSA features the Chairman of the Disability Commission as the spokesman.</p>	<b>DRS will consider establishing a new protocol(s) for keeping waiting lists.</b>
	<b>Commission Initiatives (ATLFA Continued)</b>	<p>Mr. Scione also informed the Commission that the Authority has received a \$5 million dollar Federal grant for assistive technology and another \$2.5 million Federal grant to advance telework and telecommuting. This brings \$7.5 million in federal dollars for loans to Virginians with disabilities into the state. Mr. Scione indicated that this is possible due to the unprecedented collaboration with DRS, the CNI, VHDA and Children's Hospital, which provided cash match for the federal grants. He was particularly gratified by the VHDA funding resources (\$500,000) that were committed to ATLFA in just two days prior to the grant deadline. This was accomplished due to the leadership of Susan Dewey, VHDA Director and Dr. Bill Fuller, VHDA Disability</p>	<b>Mr. Scione will inform the Commission staff on the schedule for the release and playing of the PSA.</b>

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		<p>Specialist. ATLFA total resources are now \$12.5 million, yet the ATLFA has only had two General Fund appropriations totaling \$900,000. He thanked the Commission for its ongoing support over the years.</p>	
<p><b>4.</b></p>	<p><b>Developmental Disabilities (DD) Waiver Waiting List Review and Cost Estimates for Brain Injury Services Medicaid Waiver</b></p>	<p>Tammy Whitlock, the Program Manager for Long Term Care Operations, Department of Medical Assistance Services (DMAS)- Ms Whitlock provided the Commission with two updates:</p> <p>1) <u>DD Home and Community Based (HCB) Medicaid Waiver Update</u></p> <ul style="list-style-type: none"> <li>• 323 individuals enrolled; no slots available</li> <li>• 473 individuals on the waiting list today (already qualified as needing services)</li> <li>• Average cost of individual on DD Waiver based on actual billing claims data: \$18,284 (290 recipients) (50 % GF/50% NGF).</li> <li>• Average cost of individuals on DD Waiver based on expected “plans of care” was \$33,565 (323 recipients) (50%/50%).</li> </ul> <p>Ms. Whitlock assumed that the differential in billing claims for services versus the expected level of services on the plans of care was due in part to the lack of service providers. She expected that as the provider community matured the average cost of claims will also increase because Waiver participants will be able to find providers.</p> <p>2) <u>Development planning for a Brain Injury Services HCB Medicaid Waiver</u></p> <p>Ms. Whitlock updated the Commission on the BI stakeholder group working to develop a waiver design for community and residential services for Virginians w/ brain injuries. She reminded the Commission that DMAS cannot submit the waiver application to CMS without a new appropriation. DMAS also recommended that any appropriation would need to be adequate for enough slots to establish a “provider base.” She stated that the team estimated this waiver may cost \$45K per consumer</p>	<p><b>The Commission will review information and make recommendations for these programs at the next meeting.</b></p>

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		<p>because 24 hr. congregate residential services such as group homes are needed for some. If, for example, DMAS requests 100 slots, the total cost needed would be \$4.5 million with a SGF match of \$2.5 million. (Note: the DD waiver has lower average because congregate residential is not an allowable service under the DD Waiver).</p>	
<p><b>5.</b></p>	<p><b>Services for Persons with Autism</b></p>	<p>John Toscano, Director of Autism Program of Virginia (TAP-VA). Mr. Toscano explained that this program is funded in-part by the Virginia Legislature and carries out major family support activities for persons with autism and their families throughout the state. He explained his coordination with state and local agencies to <u>help develop much needed DD Waiver Providers with expertise in autism</u>. Mr. Toscano requested Commission support of the continuation General Assembly funding of the program in case of any potential cuts.</p> <p><u>State Autism Planning Council</u> -At the encouragement of the Commission, two years ago the TAP-VA brought together Autism experts and families in VA to try to increase their interdisciplinary communication and develop an agreed-upon training curriculum and/or certification program for DD wavier providers and other professionals working with children and adults with autism. The Commission decided to support this council, by asking state agency heads to assign senior staff members to participate on the Council with the goal of improving training in autism for professionals/waiver providers in VA. Mr. Toscano/TAP-VA chairs that council. State agencies, especially DOE, have contributed resources to allow the Council to:</p> <ul style="list-style-type: none"> <li>• Finalize an Autism Awareness Level training curriculum,</li> <li>• Conduct Autism Provider and new Teacher Training throughout the state,</li> <li>• Develop an on-line web course with this curriculum through GMU,</li> <li>• Develop a special autism training website,</li> <li>• Continue the development of agreed-upon, advanced level Provider and Teacher Training.</li> </ul> <p>A Parent’s Point of View—Richard Foster (Editor, Richmond Magazine) Mr. Foster described the cost benefits and positive effects of early intervention for young children diagnosed with autism and illustrated such need through the story of his</p>	<p><b>A letter will be prepared for the Chairman's signature to Secretary of Education to confirm the need for this program and need for the continuation of the provider development activities conducted by TAP and the State Autism Council. (TAP is funded through an administrative arrangement as part of a VCU University Center).</b></p> <p><b>The staff will arrange for a presentation on ABA intervention by</b></p>



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	<p>as designed, will meet budget neutrality requirements</p> <p>In addition, the State's 1115 research waiver will be designed to examine the efficacy of enhanced services that may be needed for waiver participants including comprehensive employment support services and intensive case management services. Providing those services in VA without bolstering the DRS Long Term Case Management staffing would be difficult at present due to last year's staffing cuts. Mr. Rothrock stated that approximately \$100,00-200,000 would be needed to provide staffing for this service within in the previously reduced, DRS case management section.</p> <p>Delegate Van Landingham inquired about cost benefit analyses being planned. Mr. Quigley described some efforts that are underway analyzing current VR consumer information collected in VA, which can be compared to waiver participant outcomes in the future. Mr. Quigley stated that the University of Nebraska offered to replicate the cost benefit analysis done for their state for approximately \$250,000 and existing MIG funding could not support such an undertaking.</p>	
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7.	<p><b>Commission Work Session: Discussion of Budget Recommendations</b> <i>Group Discussion</i></p>	<p>The Chairman opened the floor for discussion of budget issues and financial needs related to essential services for Virginians with disabilities. Delegate Bloxom volunteered to go first by cautioning that without more emphasis on the revenue side, base services within the Commonwealth may erode. He reminded the Commission of upcoming salary increases, which will also require adjustments in revenue. He recommended that the Commission focus on agencies and basic service programs.</p> <p>Delegate Van Landingham agreed and stated that advocates and consumers can help by educating the public that revenue adjustments and budget cuts directly affect people in every community. Senator Miller also asked professionals in the field to use their influence to help consumers and advocates understand revenue adjustment needs and their relation to meeting service needs in the community.</p> <p>Delegate McQuigg reiterated that without clear outcome data documenting the efficacy of services and their impact on peoples' lives, revenue growth will be difficult to sell to the public and the General Assembly.</p>	<p><b>Advocates will work to educate their own communities regarding the relationship of services and revenue adjustments.</b></p> <p><b>DRS and DMAS will seek to provide more consumer outcome data.</b></p>
8.	<p><b>Other Commission Business</b></p>	<p>Commissioner Michalski-Karney directed the Commission's attention to the State of Tennessee v. Lane, et. al., in which Tennessee asserts that Title II of the Americans with Disabilities Act (ADA), guaranteeing fair treatment of disabled citizens in the provision of governmental services, is unconstitutional. In the case that gave rise to this appeal, the parties challenged their own state for the failure to provide courthouses and courtrooms that are accessible to everyone. The district court and the 6<sup>th</sup> Circuit Court of Appeals both ruled in favor of the citizens with disabilities of Tennessee.</p> <p>Ms. Michalski-Karney made a motion that a letter be prepared from the Commission to the Governor and the Attorney General requesting that Virginia file an amicus curiae brief in this critical case in the United States Supreme Court regarding the ADA. Senator Puller seconded the motion and the Commission unanimously passed a resolution.</p>	<p><b>The Office of Lt. Governor will prepare a letter to the Governor and Attorney General requesting immediately.</b></p>

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		<p>Senator Nolen briefly described the therapeutic equestrian services for persons with disabilities available at the Virginia Horse Center, a private, nonprofit program. He asked that the Commission consider hearing more about the program in the future and he emphasized the importance of therapeutic recreation and leisure skills in the lives of all.</p>	<p><b>Staff will seek to arrange a presentation for the Commission from program staff and users for a future meeting.</b></p>
<p><b>9.</b></p>	<p><b>Public Comment</b></p>	<p>The Commission received comments from members of the public which included the following topics:</p> <ul style="list-style-type: none"> <li>• A young boy who now benefits from a respite program called "Mary's Family" reminded the Commission of the on-going needs for respite care and family support in VA. The new Special Education Director from Facquier County, who accompanied the child and his mother, thanked the Commission for their work.</li> <li>• An advocate described his concerns that all schools "are not equal," in terms of their special education services and responsiveness to families. He asked the Commission to listen to the story of a single mother from his county. The mother described her problems getting the transportation services she needed for her 15-year-old daughter to and from school.</li> <li>• A CD waiver participant who requires an accessible apartment to accommodate wheelchair mobility described her frustrations with VHDA rules on maximum rents when using a Section 8 housing voucher in Winchester. She stated that the federal regulations appear to allow more flexibility on maximum rent and VA polices appear more restrictive than need be.</li> <li>• The staff from the VA Alliance for Brain Injury Services and two consumers of Mill House (Brain Injury Program in Richmond) program urged the Commission to continue funding these vital services and to support the BI budget proposal that will be submitted.</li> <li>• A Center for Independent Living Director reiterated the problems perceived by the VACIL with the Olmstead Task Force report. He encouraged the Commission</li> </ul>	<p><b>The Lt. Governor asked one of his staff to assist this mother after the meeting to resolve the problems with Frederick School Div, Transportation office.</b></p> <p><b>Staff will also provide assistance to review this case.</b></p>

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		<p>focus on the priorities described in the VACIL report, which delineates many no cost priorities. The report is entitled <u>Virginia Association of Centers for Independent Living: Comments on the Draft Final Report of the Task Force to Develop an Olmstead Plan for Virginia.</u></p> <ul style="list-style-type: none"> <li>• The Director of the Brain Injury Association of VA stated that he believed some of the estimates provided by DMAS staff for the initiation of a Home and Community Based Waiver for persons with Brain Injuries were incorrect.</li> </ul>	<p><b>As previously stated, the report will be mailed to members for their review.</b></p>
<b>10.</b>	<b>Adjourn</b>	<p>The Lt. Governor excused himself to depart for a meeting in Charlottesville at 4:30 p.m. and the meeting was adjourned upon completion of public comment by the Vice Chairman Bloxom at 5:00 p.m.</p>	