

2004 Annual Report of the

VIRGINIA DISABILITY COMMISSION

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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MEMBERS OF THE COMMISSION

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Delegate Marian Van Landingham
Mr. Bev Fleming
Mr. William F. Howell
Thomas Mosca, III, Ph.D.
Fred P. Orelove, Ph.D.
Mr. C.W. Van Valkenburgh

Staff:

Jeffrey S. Gore, *Staff Attorney, Division of Legislative Services*
Amy Marschean, *Senior Attorney, Division of Legislative Services*
Iris A. Fuentes, *Senior Operations Staff, Division of Legislative Services*

Patty Lung, *Senate Committee Operations*

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I. EXECUTIVE SUMMARY

In 2004, the Virginia Disability Commission continued in its role as the leading policy forum in the Commonwealth for developing and reviewing services and funding related to Virginians with physical and sensory disabilities, and identifying and recommending legislative priorities and policies for adoption or examination by the Virginia General Assembly. After having been reconstituted by legislative resolutions several times over its fourteen-year history, the Commission was finally codified as a legislative commission during the 2004 General Assembly Session. With this new standing for the Commission came the responsibility of securing its own appropriations from the General Assembly beginning in 2005, and the transfer of staffing duties from the executive to the legislative branch of state government. These changes, in addition to many new member appointments, made 2004 a year of transition and new beginnings for the Commission. However, the Commission was still able to examine many important issues for Virginians with physical and sensory disabilities, their families, and indeed all Virginians.

The Commission held three meetings in the fall of 2004 [under its new format,] and one meeting in January of 2005, continuing its recent emphasis on employment, housing, and transportation, among other issues. This report contains summaries of presentations, testimony and discussions from those meetings as well as links to the Commission's website and other agency and organizational websites where more detailed information can be obtained.

Several items carried over from the previous year's deliberations were examined in depth, such as the status of the Medicaid Buy-In Program and the potential for a Medicaid brain injury waiver in Virginia. The Commission also monitored the work of its housing work group and the Inter-Agency Transportation Council, which was awarded a federal grant in 2004 to perform the first comprehensive inventory of Virginia's specialized transportation network. Other issues studied include public housing assistance, the accessibility of polling facilities, the impact of the Governor's 2005 budget proposals on the disability community, the status of Virginia's Olmstead Initiative, access to assistive technology, the status of Virginia's Centers for Independent Living, and the increasing rate of autism. Meanwhile, the Commission continued its tradition of welcoming comments from the public. Drawing from these deliberations, the Commission made several budgetary, legislative and policy recommendations, which are set forth in this report.

II. COMMISSION BACKGROUND

Originally founded in 1990 pursuant to House Joint Resolution (HJ) 45, the Commission on the Coordination of the Delivery of Services to Facilitate the Self-Sufficiency and Support of Persons with Physical and Sensory Disabilities (referred to as the "Beyer Commission" after then Lieutenant Governor and Commission chairman, Donald S. Beyer, Jr.) established a ten-year plan of action in its 1992 report. The action plan called for the development of a system of programs and services within an infrastructure designed to be consumer-focused and community-based. With [House Joint Resolution 274](#) in 1994, the General Assembly renamed the "Beyer Commission" as the Disability Commission ("Commission") and authorized it to continue its work in developing and reviewing recommendations for service program changes

and funding until the 2000 General Assembly Session. In 2000, the General Assembly again continued the Commission through [House Joint Resolution 34](#) for a four-year period in order to continue providing evaluation and legislative recommendations to enhance the provision of services to those Virginians who have physical and sensory disabilities.

The Commission was finally reconstituted as a codified (statutory) legislative commission during the 2004 General Assembly Session with the passage of [House Bill 817](#) and [Senate Bill 381](#). **(Appendix A)** The purpose of the Commission is "to identify and recommend legislative priorities and policies for adoption or examination by the General Assembly in order to provide ongoing support in developing and reviewing services and funding related to Virginians with physical and sensory disabilities."¹ In addition, the Commission is charged with the following powers and duties:

1. Serve as the primary forum in the Commonwealth where the needs and issues of people with disabilities are addressed through the collaboration of members of the legislative and executive branches of state government, and citizens of the Commonwealth;
2. Evaluate and advance budget proposals and policy issues oriented towards a service system that maximizes the self-sufficiency of Virginians with disabilities;
3. Develop and review recommendations for service program changes and funding related to services for persons with physical and sensory disabilities; and
4. Advise on local, state and federal policies and programs relevant to citizens with disabilities.²

Commission membership consists of six legislators, five citizen appointees, and the Lieutenant Governor, who serves as chair. After the current chairman's term in office expires, subsequent chairs shall be legislators. Staffing duties, which had previously been provided by the Virginia Board for People with Disabilities, became the responsibility of the Virginia Division of Legislative Services. Administrative duties are provided by the Office of the Clerk of the Senate. The Commission must be reconstituted by legislation after three years, and it must receive its own appropriations from the General Assembly for each fiscal year, beginning in 2005, in order to continue. Interim funding came from the operating budgets of the Clerk of the Senate and the Clerk of the House of Delegates, as approved by the Joint Rules Committee.

¹ The statutory provisions for the Disability Commission are set forth in Chapter 35 of Title 30 ([§§ 30-232 et seq.](#)) of the Code of Virginia.

² § 30-230, Code of Virginia.

III. MEETINGS

A. OCTOBER 29, 2004

1. Introduction. The first meeting of the Commission under its new format began with remarks on the recent work of the Commission by Chairman Tim Kaine, introductions of the other members, and the election of Delegate Michele McQuigg as vice-chair of the Commission. Subsequently, to provide historical context from which the Commission could resume its deliberations, Virginia Department of Rehabilitative Services (DRS) Commissioner Jim Rothrock provided an overview of the Disability Commission since its inception, reviewing programs established, priorities of the various renditions of the Commission, and Commission related or sponsored legislation.³

2. Housing Choice Vouchers. Denise Goode of DRS, and the Chair of the Disability Commission Housing Work Group provided a brief overview of the work group's efforts and noted that the accessible housing registry would be "rolled out" at the Governor's Housing Conference, beginning on November 15. Ms. Goode also reported that at its last meeting, the Virginia Housing Development Authority (VHDA) agreed to investigate the possibility of collecting and maintaining information for the public housing agencies in Virginia that administer the Housing Choice Voucher Program. VHDA is in the process of collecting the following data from each voucher agency: number of vouchers allocated to the public housing authorities (PHA); number of vouchers on PHA waiting list; number of voucher waiting list consumers that are elderly, homeless, or have a disability.

3. Medicaid Brain Injury Waiver.

a. Background. The Department of Medical Assistance Services (DMAS) has identified possible services and target population for the waiver. Potential services include, but are not limited to, adult companion services, assistive technology, environmental modifications, family/caregiver training, and skilled nursing. The target population for a brain injury waiver would include individuals who, among other prerequisites, (i) were between the ages of 16 and 65 when the brain injury occurred, and (ii) are diagnosed with a brain injury that is acquired through traumatic injury or non-traumatic insults such as, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Click [here](#) for background on the Brain Injury Waiver from the DMAS website.

b. Testimony. An update on the needs of brain-injured consumers was provided by the Virginia Alliance of Brain Injury Service Providers. Harry Weinstock and Anne McDonnell of the Brain Injury Association spoke about the continued need for a brain injury waiver. They discussed their decision last year to support a delay of the waiver in favor of ensuring funding for programs that were about to lose funding under the Cognitive Neurotrauma Initiatives. Diana Thorpe from DMAS responded to questions from Commission members regarding costs and alternative institutional placements. The cost of the waiver, approximately \$65,000/year per

³ This presentation on the history of the Virginia Disability Commission as well other presentations and materials referenced in this report, including previous annual reports, can be accessed from the Commission website: <http://dls.state.va.us/disability.htm>.

person, was developed by averaging the Intermediate Care Facility (ICF) and nursing home alternative placement costs. The waiver would pay for services in congregate living.

Testimony was provided by Reverend Clyde Shelton, the parent of a brain injury survivor. He was concerned that with his advancing age, he will soon be unable to care for his son at home. He discussed a home being developed for adults with brain injury, the costs the home would entail and the need for these and other support services for persons with brain injury. Lieutenant Governor Kaine asked Diana Thorpe to provide some detailed information on costs and other details for the next meeting. The members expressed a consensus that Brain Injury Waiver should be one of the Commission's work priorities this year.

4. Accessibility of polling facilities. Doug Rueff from the State Board of Elections presented on the accessibility of polling facilities. He discussed the money received under the Help America Vote Act and work with the Centers for Independent Living (CILs) to survey polling places and try to make them fully accessible. Delegate Reese identified the expansion of availability of absentee voting as a potentially cost-effective alternative to full poll accessibility.

5. Member Discussion of Work Plan. The members settled on some basic issues to be prioritized for the next two meetings. These included housing, transportation, Virginia Olmstead compliance, voting, and the Assistive Technology Loan Fund Authority (ATLFA). Mr. Howell suggested that the Commission review the program/funding matrix of past Disability Commission initiatives at the next meeting in order for the members to assess the status of the various ongoing initiatives and identify other priorities for the Commission. Future meeting dates were set for November 15 at 9:30am and December 17 at 1:00pm.

6. Public Hearing. A public hearing was held. Several speakers representing the brain injury community spoke about the need for a brain injury waiver and other services.

- ◆ The Virginia Alliance of Brain Injury Service Providers sponsored a reception after the meeting adjourned.

B. NOVEMBER 15, 2004

1. Commission Appropriations. The Commission approved the Chair sending a letter to the Governor requesting that a \$25,000 appropriation for the Commission be included in his 2005 budget to cover per diems, travel expenses for members, etc. This amount is consistent with other legislative commissions.

2. Transportation. Neil Sherman from the Virginia Department of Rail and Public Transportation (DRPT) provided an update on the work of the Inter-Agency Transportation Council, including the background of the committee and current work, including the federal United We Ride Grant. He noted the role of the public transportation division of DRPT, which administers and manages state and federal grant programs, conducts performance evaluations, provides technical assistance, and works to improve transit ridesharing operations and alternative commuting options. DRPT manages grants for approximately fifty public transit systems. The

newest is in Pulaski and began operating in October of 2004. Mr. Sherman noted that DRPT will be administering the United We Ride Program in Virginia. The goals of this program are to:

- develop an education plan for coordinated human service transportation resulting in enhanced customer access at the local level for persons with disabilities and individuals with lower incomes;
- simplify access to transportation services and enhance customer service through development of a comprehensive and coordinated transportation system;
- reduce restrictive and duplicative laws, regulations and programs related to human service transportation at the federal level;
- ensure comprehensive planning for the coordination of human service transportation for individuals with disabilities, older adults, and persons with lower income;
- standardize cost allocation processes; and
- document successful strategies in coordinating human service transportation at the federal, state, tribal, and local levels.

The program will initiate a framework for action, state leadership awards, national leadership forums, state coordination grants, and technical assistance programs. Virginia is making efforts to:

- increase awareness of transportation needs;
- establish baseline data regarding transportation services (including Medicaid Brokerage services);
- develop and implement a coordinated plan to provide ongoing technical assistance;
- work collaboratively with stakeholders at the national, state and local levels;
- identify barriers and solutions to accessing transportation services; and
- work together to better coordinate and provide funding.

By the date of this meeting, through the efforts of the Inter-Agency Transportation Council, DRPT had applied for a \$35,000 United We Ride Grant. The primary goal will be to develop Virginia's Action Plan for Coordinating Human Service Transportation. An accurate and complete inventory of the state's human service transportation system would be conducted under the grant. Click [here](#) for more information on the United We Ride Program.

3. Housing. The Department of Professional and Occupational Regulation (DPOR) Director, Louise Ware, gave a presentation on architectural universal design project and marketing efforts underway with respect to encouraging and educating builders, contractors, architects and realtors on universal design principles. DPOR is working with the state architectural universities (Hampton, UVa and Virginia Tech) to promote a universal design competition and to promote the addition of more accessibility and universal design components into the curriculum and professional standards.

4. Employment Issues/Medicaid Buy-In Program.

a. Background. Once implemented in Virginia, the Medicaid Buy-In Program will allow working people with disabilities to pay a premium to participate in the Commonwealth's Medicaid program as though they were purchasing private health coverage. The development of Medicaid Buy-In programs by individual states was authorized under the Balanced Budget Act of 1997 and the Ticket to Work and Work Incentives Improvement Act of 1999. The goal of the program is to remove the current disincentive to work for individuals with disabilities who are willing and able to work, but who risk the loss of important Medicaid benefits if they earn too much income. A Medicaid Buy-In can permit higher income and resource levels while ensuring the continuation of needed health coverage, thus providing opportunity and incentive to seek gainful employment. DMAS is seeking employer and consumer involvement as it develops this program in Virginia and seeks approval from the Centers for Medicare and Medicaid Services (CMS). For more information on Medicaid Buy-In from the DMAS website, click [here](#). To learn more about this issue and other Medicaid disability issues from the Centers for Medicare and Medicaid Services, click [here](#).

b. Testimony. Jack Quigley, DMAS and Joe Ashley, DRS, updated the Commission on the Ticket to Work Act, Virginia's Medicaid Infrastructure Grant, and efforts in Virginia with respect to the Medicaid Buy-In, which began in 2002 when the legislature directed DMAS to study the development of a Medicaid Buy-In Program.

The past year focused on development of a research waiver proposal under Section 1115 of the Social Security Act, which would enroll up to 200 participants in the first year; allow income up to 175% of federal poverty level and include earned and unearned income requirements. In 2004, the Governor included funding for the waiver in his biennial budget. Since that time, there have been interactions with the CMS and questions regarding the research waiver. The proposal that was submitted had a minimum gross earned income requirement of \$85/month with a tiered employment requirement if gross monthly earnings were below \$412 in 2004. The CMS has proposed changes to the minimum gross earned income requirement, suggesting a \$412 minimum versus the proposed \$85.

DMAS' assessment of the impact of this proposed change is that it would reduce some workers' ability to participate, it would eliminate the tiered employment approach and proposed research concepts and it would be difficult to justify budget neutrality. The Commission members were concerned with the proposed changes and Lieutenant Governor Kaine asked whether he needed to intervene with CMS or coordinate intervention with the Governor's office. The Commission agreed that it was important to continue this effort and move forward even if it was not the way initially envisioned, particularly since the Governor committed money to it. Since it is just a pilot, even acceding to CMS wishes would still give the Commonwealth important information on which to proceed in the future.

5. Program/Funding Matrix. Jim Rothrock, Department of Rehabilitative Services (DRS) Commissioner, provided an update on the Disability Commission funding matrix that will now be maintained by the Commission staff. He discussed programmatic areas supported by the

Commission, which included Personal Assistance Services, Centers for Independent Living, Long Term Case Management, the Consumer Services Fund, the local Disability Services Boards, the Brain Injury Direct Services Fund, the Rehab Incentive Services Fund, and the Virginia Assistive Technology System (VATS).

6. Medicaid Brain Injury Waiver. Diana Thorpe Director of Long-Term Care Services at DMAS, presented on the proposed Brain Injury Waiver. The discussion included background information on waivers and their requirements, the alternate institutional placements, costs associated with this waiver, and options for a brain injury waiver in Virginia. Key points included:

- 25 states currently have a home; and community-based waiver for people with brain injury. Most states serve fewer than 500;
- Virginia can serve people with brain injury (acquired by age 22) under the Developmental Disability (DD) waiver;
- The alternate institutional placement for persons with brain injury before age 22 is an Intermediate Care Facility for the Mentally Retarded (ICF/MR), which costs approximately \$105,000 per year;
- If the injury was sustained after age 22, the alternate institutional placement is a nursing facility brain injury unit at a cost of \$62,059. Due to patient pay and stays of less than a year, the cost to Medicaid would be lower;
- Steps needed for Virginia to develop a brain injury waiver include the following:
 - Legislation to allow DMHRSAS to license services
 - 2 staff at DMAS, and 1 staff at DMHMRSAS to administer the program
 - Funding for the waiver
 - Emergency regulatory authority if the waiver is developed in 2005;
- To fund 200 slots with the services recommended would be a cost of \$4.3 million General Funds in 2005 and \$6.8 million GF in 2006;
- To lessen the cost there are two basic options: (1) place limits on service to assure a lower cost per person (which could mean that people might not get the services they needed and although you could control waiver costs, you could not control other Medicaid costs) or (2) fund fewer waiver slots. Under this proposal, administrative costs and activities would remain the same. However, there might be a need to target the waiver to a specific geographic location in order to build a sufficient provider base.

7. Accessibility of Polling Facilities. Doug Rueff from the Board of Elections presented on current Virginia requirements for absentee ballots in comparison to other states. He referenced several Virginia initiatives on “No Excuse Absentee Ballots” that have been tabled by the General Assembly in the past. The members seemed to agree that the ability to vote absentee does not replace the need for accessible polling facilities. However, the members also discussed the possibility of legislation that would authorize "no excuse" absentee voting for older Virginians.

8. Commonwealth Neurotrauma Initiative. Marianne Talbot presented on behalf of the National Rehabilitation & Rediscovery Foundation, Inc., a grant recipient of the

Commonwealth Neurotrauma Initiative (CNI), which operates a program for persons with brain injury. She stated that the funding from the CNI grant will run out next year, and urged the Commission to consider pursuing \$100,000 in general fund appropriations to ensure the continuation of the program, and to slightly expand the program to meet the current demand.

9. Public Hearing. The public comment session included Maureen Hollowell of the Endependence Center. She asked the Commission to consider the need for transition funding for persons exiting nursing homes (to pay for rent and utilities deposits, etc.). Two citizens urged the Commission to support funding for the brain injury waiver.

C. December 17, 2004

Lieutenant Governor Kaine and the Commission members opened the meeting by acknowledging the passing of long-time advocate, Barbara Gilley, who had been an instrumental member of the Disability Commission Housing Work Group and a frequent presenter at Commission meetings.

The Lieutenant Governor also announced that Governor Warner had included \$25,000 in Commission appropriations in his proposed budget. This is the amount requested by the Commission in a letter sent to the Governor on November 30, 2004.

1. Assistive Technology Loan Fund Authority. Michael Scione, Executive Director of the Assistive Technology Loan Fund Authority (ATLFA), explained the background of the Fund, which was established in 1992, codified in 1995, and received its first allocation of \$500,000 in 1996. In 1997, the first loans were made. In 1999, SunTrust became a partner of ATLFA. Assets have grown substantially from the initial \$500,000 to nearly \$14,000,000. Funding sources have included DRS, VATS, the Commonwealth Neurotrauma Initiative (CNI), Children's Hospital, and most recently, VHDA and the Virginia Department of Housing and Community Development (DHCD).

ATLFA makes low-interest loans for adaptive equipment, home modifications, vehicle modifications, and guaranteed loans and loans to families on fixed incomes. ATFLA also lends money for telework computers, office equipment and other assistive technology. Repayment rates are extremely high. It is hoped that the types of loans will be expanded in the future to address disability-related needs other than assistive technology. A public service announcement with the Lieutenant Governor was made and has been highly visible and successful, according to Mr. Scione. In addition, a marketing specialist has been hired.

Recently, the ATLFA has embarked on successful collaboration efforts with the VHDA and the DHCD. Susan Dewey, Executive Director of VHDA, spoke about the \$1,000,000 committed by VHDA to provide down payment assistance on homes, a new partnership for the fund. DHCD has committed \$350,000 for home modifications, as explained by Basil Gooden, Ph.D., from the agency.

Members requested information from Mr. Scione regarding the financing of ATLFA loans and any long-range planning being made. After some discussion of these issues, Mr. Scione agreed to submit more information for the Commission to review.

2. Virginia's Olmstead Initiative; Review and Recommendations.

a. Background of Olmstead v. L.C., 527 U.S. 581 (1999). The United States Supreme Court decided in an opinion issued on June 22, 1999 that a state is required under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, to provide community-based treatment for persons with mental disabilities when (1) the State's treatment professionals determine that such placement is appropriate, (2) the affected persons do not oppose such placement, and (3) the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with disabilities. The Court further stated that nothing in the ADA or its implementing regulations requires community placements for persons unable to handle or benefit from community settings.

The Court upheld the Eleventh Circuit decision that Georgia had violated the ADA by forcing two mentally retarded women to remain in a state mental hospital after their treating professionals had determined them ready for discharge, but remanded the case to the district court for further consideration of the appropriate range of relief available. Although the Olmstead case involved two individuals with a mental disability, the decision is broad in its scope and can be read to apply to all persons with disabilities covered under the ADA.

The Court held that under the ADA a state must provide community-based services to qualified individuals and must make "reasonable accommodations" in its programs to do so, unless such alterations would constitute a "fundamental alteration" in the services provided. The Court found that the Eleventh Circuit's determination that "a cost justification was permissible only in the most limited of circumstances" was too restrictive and would leave the state practically defenseless. The Court instead found that if a state could demonstrate that it has a comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list exists that moves at a reasonable pace not controlled by the state's endeavors to keep its institutions fully populated, the fundamental alteration prong of the reasonable accommodations standard would be met.

b. Testimony. Julie Stanley, Director of Community Integration for People with Disabilities, presented to the Commission on Virginia's efforts to comply with the Olmstead decision. She began with background on the Olmstead decision and discussed the Virginia Olmstead Task Force, the Task Force Report, Executive Order 61 (2004) and the role of Virginia's Olmstead Implementation Team and Oversight Advisory Committee. She explained that the effort includes 18 state agencies under four Secretariats as well as consumers, advocates, family members, and providers. Ms. Stanley also noted progress on the cost-out of Phase I recommendations (there are a total of 201 recommendations), submission of a report by the Implementation Team to the Oversight Committee and the Governor, submission of the Oversight Committee's report to the Governor, the joint meeting between the Implementation Team and Oversight Committee, and a meeting between the Implementation Team and state agency ADA coordinators.

Ms. Stanley reviewed the budget amendments approved last year related to Olmstead implementation as well as those in the Governor's current proposed budget just released. These include:

- Housing supplement (\$1.5 million for FY 06) for 200 people with disabilities who want to and can live in more integrated community settings;
- Transition waiver benefits for persons leaving institutions (\$370,000 GF for FY 06)--\$4,000 per person, one time expense for such things as security deposits, utility deposits, furniture;
- \$150,000 in increased funding to the Long Term Rehabilitation Case management program to prevent institutional placements and assist with discharges (FY 06);
- Increased funding to Centers for Independent Living (CILs) of \$150,000 for FY 06;
- Expansion of crisis stabilization units as part of mental health restructuring (\$2.9 million for FY 06); and
- Expansion of public guardianship program (\$150,000 for FY 06).

Ms. Stanley's presentation can be found on the Commission's website. Additional information is available on Virginia's Olmstead website: <http://www.olmsteadva.com>. The background information above was provided by the Office of the Attorney General and obtained from the Olmstead website.

3. Housing Work Group Presentation. Denise Goode gave an update on the work of the Housing Workgroup, noting that the group would begin meeting again in early 2005, and one of the issues still under discussion is the definition of origin of income with regard to housing assistance programs. Ms. Goode and Bill Fuller, Ph.D., VHDA, gave an update on the Virginia Accessible Housing Registry, noting it is online (<http://www.accessva.org>), describing its components and future steps to be taken to enhance the registry. The Housing Registry has three main components, as described by Dr. Fuller: 1) apartment finder/listing features with information on accessibility; 2) universal design information; and 3) relevant fair housing and other regulatory information. The Commission chair thanked the Virginia Board for People with Disabilities for funding this endeavor.

4. The Autism Council of Virginia. Linda Oggel, from the Training and Technical Assistance Center gave a presentation on behalf of the Autism Council of Virginia. She requested that the Commission consider funding for the Council to continue its critical work in provider training and curriculum development for those working with children and adults with autism. It was noted that support had been provided by the Department of Education but was not likely to continue. The increased incidence of autism was discussed as were the variety of education and treatment methods and controversial aspects surrounding these efforts. Commission members asked a number of questions regarding treatment modalities.

5. Commission Discussion of Recommendations. The brain injury waiver was briefly discussed. It was noted that legislation to establish DMHMRSAS as the licensing authority for providers that would deliver services under a waiver was underway. Funding for the waiver was not included in the Governor's proposed budget and the Commission will continue to examine this issue in January.

Status of the Medicaid Buy-In was also discussed. There have been challenges in obtaining approval for the waiver program, which Virginia submitted to CMS for approval. There has been additional discussion on possible new directions for the waiver, including an examination of health savings accounts. Additional discussion is ongoing.

At the December 17, 2005 meeting, the Commission endorsed:

- [HB1582](#) (2005), which had already been introduced by Delegate Reese. This legislation would allow voting through "no excuse absentee ballots" for Virginians aged 65 and older. Current law provides this option for Virginians with disabilities.
- Delegate VanLandingham's [HB 2113](#) (2005), which would add planning for areas of accessible housing to localities' comprehensive plans.

Funding to replace the Commonwealth Neurotrauma Initiative (CNI) Grant will be discussed at the January meeting.

Following the presentations and discussion, the Commission agreed that it would defer budgetary recommendations until the January meeting. The Commission asked for additional information on which agencies currently provide funding for autism-related initiatives and what these initiatives are so that they could make an educated decision on the request.

D. JANUARY 13, 2005

1. Review of Governor's Proposed Budget: Impact on Programs for Persons with Disabilities. Joe Flores, legislative fiscal analyst for the Senate Finance Committee, discussed the Governor's proposed budget impact on people with disabilities. He reviewed the 2004 Health and Human Resources budget decisions, including funds allotted for Olmstead-related activity, such as Medicaid Developmental Disabilities (DD) Waiver slots, services to persons with brain injury, restoration of funds to Centers for Independent Living, and restoration of funds to community rehabilitation workshops.

Mr. Flores noted that the majority of money proposed as amendments to the 2004-2006 biennial budget was for Medicaid. Of the \$259.2 in additional spending proposed, \$241.4 was for Medical Assistance Services. This was due to a combination of increased enrollment and increased utilization of services. The budget amendments include \$209.6 million to fully fund projected caseload and cost growth in Medicaid; \$16.6 million to increase Medicaid reimbursement rates for obstetrical services by 34%; \$9.4 million for additional families

qualifying for TANF and mandated child day care services; \$6.9 million to offset shortfalls in prescription medication for individuals served by Community Services Boards (CSBs) and state facilities; and \$4.5 million for Part C.

Discretionary spending accounts for the remaining 10 percent (\$30.9 million) of new general fund support in health and human resources. This includes a proposed \$150,000 for Centers for Independent Living; \$150,000 to reduce the Department for Rehabilitative Services (DRS) Long Term Rehabilitation Case Management Program waiting list; \$150,000 to create a web-based information system for families; \$20,400 to support Olmstead Advisory Council activities; \$1.3 million for start-up costs related to the 700 new MR waiver slots; \$740,000 for one-time costs associated with transitioning from a nursing home or ICF/MR to a less restrictive community setting; \$1.5 million to subsidize community housing options for persons living in restricted settings who could not transition to the community without such assistance; and \$2.3 million to increase the auxiliary grant payment from \$894 to \$944/month.

Mr. Flores noted that activities on the federal level are being monitored as they may negatively affect the state. This includes federal scrutiny of entitlement spending and the assignment of auditors to various programs, as well as discussion of entitlement reform for Medicaid and Medicare.

2. Brain Injury Waiver. Diana Thorpe, Director of the Long-Term Care Services Division at (DMAS), provided a follow-up presentation on a potential brain injury waiver. At the December meeting of the Commission, Ms. Thorpe was asked to present various options related to the waiver since it was not included in the Governor's proposed budget and is a Commission priority. Two options were discussed. The first involved a waiver that would serve persons 200 persons, ages 16 and over (the age at which many brain injuries occur) and would cover congregate living service—a service needed by the brain injury community. The cost would be \$65,000 per person. The second option would be to serve 200 persons ages 22-65 without congregate living services at a cost of \$40,000 per person.

The Commission asked a number of questions regarding incidence, who would qualify, whether it was better to start with more people and less service or less people but comprehensive services. Ms. Thorpe provided information on the cost of providing the two options to a lower number of individuals. Costs for serving 50, 75, and 100 people were provided. She indicated that providing comprehensive services to fewer people and starting at age 16 would be better than less services to more people, potentially in a limited geographic area in order to build a provider base.

Following the discussion, Harry Weinstock, Executive Director of the Brain Injury Association, notified the Commission that a budget amendment for the 200 slots (per option 1) had been had just been put in. Therefore, the Commission determined that it would simply lend its support to the budget amendment already submitted.

3. Public Hearing. Public comment supporting the brain injury waiver was provided by several individuals, including the wife of a *Washington Post* reporter who had covered the General Assembly until last year when he suffered an anoxic brain injury that resulted in

significant loss of his long and short-term memory. She provided testimony regarding the impact of this disability on her husband and her family and the fact that they had to go to North Carolina to obtain appropriate services at one point in his ongoing recovery.

Carol Schall from the Virginia Autism Resource Center provided public comment that included information in response to questions the Commission had in December about the Virginia Autism Council. At the December meeting, Linda Oggel gave a presentation on behalf of the Autism Council of Virginia, requesting that the Commission consider funding for the Council to continue its critical work in provider training and curriculum development for those working with children and adults with autism. It was noted that support had been provided by the Virginia Department of Education (VDOE) but was not likely to continue. The Commission asked for additional information on which agencies currently provided funding for autism-related initiatives and what these initiatives are so that they could make an educated decision on the request. Ms. Schall provided information on what the Council had been able to accomplish to date; although it has been very active in providing training to school staff, limited funding has restricted the Council's ability to provide training to waiver providers, adult service providers, day care providers and families. The lack of a "home" for autism was discussed.

Commission members were reluctant to recommend funding specifically for the Council and suggested that they consider recommending that Olmstead funds be used for this purpose since the work of the Council was directly related to one of the Olmstead recommendations. A Commission member suggested that there be a recommendation, potentially via a letter to the Governor that a home for autism services be found so that there could be executive branch accountability for monies provided on behalf of this population. It was also recommended that a letter be sent to the members of the interagency council to encourage their fiscal support of the Council's activities since, at the current time, only VDOE is providing such support and without assistance was likely to withdraw it.

Katherine McCary of SunTrust Bank and a former Commission member, provided public comment to inform the Commission that a web-based employer tool kit entitled: "Social Security Work Incentives: An Employers' Guide to Benefits Planning and Management for Employees with Disabilities" had been completed and was now online. She noted that it is very employer-friendly and could be accessed at www.vabln.org. In addition, it will be on the national one stop website at www.onestoptoolkit.org.

Two advocates, Kelly Hickock, on behalf of the Richmond Center for Independent Living, and Maureen Hollowell, on behalf of the Virginia Association of Independent Living Centers, encouraged the support of additional funding for CILs.

The members reached consensus on several recommendations, and discussed looking into the possibility of expanding the Personal Assistance Services program at the Department of Rehabilitative Services, but did not make any official recommendation on this issue.

IV. COMMISSION RECOMMENDATIONS

A. DECEMBER 17, 2004 MEETING; THE COMMISSION FORMALLY ENDORSED THE FOLLOWING ITEMS:

1. **Absentee voting.** The Commission endorsed [HB1582](#) (2005), which had already been introduced by Delegate Reese. This legislation would allow voting through "no excuse absentee ballots" for Virginians aged 65 and older. Current law provides this option for Virginians with disabilities. *This bill did not pass.*

2. **Accessible housing.** The Commission also supported Delegate VanLandingham's [HB 2113](#) (2005), which would add planning for areas of accessible housing to localities' comprehensive plans. *During the legislative session, this bill was incorporated into a similar bill, [HB 2407](#) (Delegate Phillips), which passed.*

B. JANUARY 13, 2005 MEETING; THE COMMISSION FORMALLY ENDORSED THE FOLLOWING ITEMS:

1. Brain Injury Waiver.

a. The Commission supported a budget amendment to fully fund 200 Brain Injury Waiver slots (\$4.3 million in 2005 and \$6.2 million in 2006). *This initiative was not included in the budget.*

b. Brain Injury Waiver licensing legislation, which is required for DMHMRSAS to have the authority and staffing necessary to administer the waiver. *Commission members, Senators Puller and Miller ([SB 1237](#)), and Delegate Orrock ([HB 2826](#)) sponsored successful legislation.*

2. **Autism.** The Commission approved the drafting of letters to the Governor suggesting that some Olmstead funds be directed at autism, and to the respective heads of Virginia's health and human resources agencies urging that agencies take part in and direct resources toward dealing with autism, and expressing the need to find a "home" for autism concerns in state government. **(Appendices B and C)**

3. **Centers for Independent Living.** The Commission supported \$475,000 in additional funding for Centers of Independent Living, for the establishment of new centers in the New River Valley and Petersburg, and satellite centers in Loudoun County and the Middle Peninsula. *No funding for new CILs was included in the budget. However, an additional \$300,000 was appropriated to aid seven existing CILs in underserved regions.*

V. MATERIALS

To access presentations and other materials from the October 2004-January 2005 (and previous) deliberations of the Virginia Disability Commission, please visit the website at: <http://dls.state.va.us/disability.htm>

VI. APPENDICES

Appendix A⁴

CHAPTER 992

An Act to amend the Code of Virginia by adding in Title 30 a chapter numbered 34, consisting of sections numbered 30-226 through 30-233, relating to the Virginia Disability Commission; report.

[H 817]

Approved April 21, 2004

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 30 a chapter numbered 34, consisting of sections numbered [30-226](#) through [30-233](#), as follows:

CHAPTER 34. VIRGINIA DISABILITY COMMISSION.

§ [30-226](#). *Virginia Disability Commission; purpose.*

The Virginia Disability Commission (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to identify and recommend legislative priorities and policies for adoption or examination by the General Assembly in order to provide ongoing support in developing and reviewing services and funding related to Virginians with physical and sensory disabilities.

§ [30-227](#). *Membership; terms; vacancies; chairman and vice chairman.*

The Commission shall consist of 12 members that includes six legislative members, five nonlegislative citizen members, and the Lieutenant Governor. Members shall be appointed as follows: four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Rules; three nonlegislative citizen members, one of whom shall be a consumer with a disability, one shall be a member of the medical, insurance, or rehabilitation professions, and one shall be a citizen at large, to be appointed by the Speaker of the House of Delegates upon consideration of the recommendations of the Governor, if any; two nonlegislative citizen members, one of whom shall be a consumer with a disability and one shall be a member of the medical, insurance, or rehabilitation professions, to be appointed by the Senate Committee on Rules upon consideration of the recommendation of the Governor, if any; and the Lieutenant Governor. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth of Virginia. Unless otherwise approved in writing by the chairman of the Commission and the respective Clerk, nonlegislative citizen members shall only be reimbursed

⁴ Please see footnote 1 for the current Disability Commission sections in the Code of Virginia. Also, please note that this text is taken from the Acts of Assembly version of HB 817 as it passed during the 2004 General Assembly Session and was subsequently signed into law by Governor Warner; SB 381 (2004) passed in identical form to HB 817. The subsequent changes in Code section assignments were made by the Virginia Code Commission.

for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings.

Legislative members of the Commission and the Lieutenant Governor shall serve terms coincident with their terms of office. Nonlegislative citizen members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Legislative and nonlegislative citizen members may be reappointed. However, no nonlegislative citizen member shall serve more than four consecutive two-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

The Commission shall elect a chairman and vice chairman from among its legislative membership.

§ [30-228](#). Quorum; meetings; voting on recommendations.

A majority of the members shall constitute a quorum. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

No recommendation of the Commission shall be adopted if a majority of the House members or a majority of the Senate members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

§ [30-229](#). Compensation and expenses.

Legislative members of the Commission shall receive such compensation as provided in § [30-19.12](#), and nonlegislative citizen members shall receive such compensation as provided in § [2.2-2813](#) for the performance of their duties. All members shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). However, all such compensation and expenses shall be paid from existing appropriations to the Commission.

§ [30-230](#). Powers and duties of the Commission.

The Commission shall have the following powers and duties:

- 1. Serve as the primary forum in the Commonwealth where the needs and issues of people with disabilities are addressed through the collaboration of members of the legislative and executive branches of state government, and citizens of the Commonwealth;*
- 2. Evaluate and advance budget proposals and policy issues oriented towards a service system that maximizes the self-sufficiency of Virginians with disabilities;*

3. *Develop and review recommendations for service program changes and funding related to services for persons with physical and sensory disabilities; and*

4. *Advise on local, state and federal policies and programs relevant to citizens with disabilities.*

§ [30-231](#). *Staffing.*

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates or the Office of the Clerk of the Senate as may be appropriate for the house in which the chairman of the Commission serves. The Division of Legislative Services shall provide legal, research, policy analysis and other services as requested by the Commission.

All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

§ [30-232](#). *Chairman's executive summary of activity and work of the Commission.*

The chairman shall submit to the General Assembly and the Governor an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ [30-233](#). *Sunset.*

This chapter shall expire on July 1, 2007.

2. That for its first year of existence, if the Commission is not funded by a separate appropriation in the appropriation act, the Commission may be funded from the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon the approval of the Joint Rules Committee. If the Commission is not funded by a separate appropriation in the appropriation act for any year thereafter, this chapter shall expire on July 1 of the fiscal year in which the Commission fails to receive such funding.

3. That notwithstanding the provisions of the first enactment of this act, the Lieutenant Governor shall serve as chairman of the Commission, the Commission shall elect a vice chairman from among its legislative membership, and the Office of the Clerk of the Senate shall provide administrative staff support until January 14, 2006. Thereafter, the election of the chairman and vice chairman and the determination of the administrative staff support shall be in accordance with the provisions of the first enactment.

Appendix B

COMMONWEALTH of VIRGINIA
Office of the Lieutenant Governor
900 East Main Street, 1st Floor West
Richmond, Virginia 23219

Timothy M. Kaine
Lieutenant Governor

(804) 786-2078
Fax (804) 786-7514
TTY/TDD 1-800-828-1120
ltgov@ltgov.virginia.gov

July 7, 2005

The Honorable Mark R. Warner
Governor of the Commonwealth of Virginia
3rd Floor, Patrick Henry Building
Richmond, Virginia

Dear Governor Warner,

As you may know, the Virginia Disability Commission has long been concerned with the increasing incidence of autism, the lack of waiver providers and teachers with expertise in autism, and the widely divergent opinions on best practices.

Since no one agency ‘owns’ autism and all human services agencies in Virginia serve persons with autism to greater or lesser extent, multiple agency involvement in cost effective autism training and education is important. This is especially true when we factor in the emergence of autism as the “4th most prevalent disability” behind mental retardation, learning disabilities and behavioral disabilities.

Therefore, it is the hope of the Disability Commission that you will work to ensure that autism continues to be addressed as the Commonwealth implements its mandate of community integration under the Olmstead decision, and that resources will be brought to bear on this issue, especially with regard to early intervention services for autistic children. This would not only be consistent with Virginia's Olmstead Initiative, but will also reap cost and quality of life benefits in the future.

The Disability Commission stands ready to assist you in increasing the Commonwealth’s attention to the multitude of challenges faced by the growing autistic community, encouraging state agencies to collaborate in providing assistance to autistic Virginians and their families, and easing Virginia families’ access to information and help with autism.

On behalf of the Disability Commission, thank you for your attention to this important matter.

With warm regards, I remain

Sincerely,

Timothy M. Kaine
Lieutenant Governor of Virginia

Appendix C

COMMONWEALTH of VIRGINIA
Office of the Lieutenant Governor
900 East Main Street, 1st Floor West
Richmond, Virginia 23219

Timothy M. Kaine
Lieutenant Governor

(804) 786-2078
Fax (804) 786-7514
TTY/TDD 1-800-828-1120
ltgov@ltgov.virginia.gov

July 7, 2005

James Reinhard, M.D.⁵
Commissioner
Virginia Department of Mental Health,
Mental Retardation, and Substance Abuse Services
P.O. Box 1797
Richmond VA 23218-1797

Dear Commissioner Reinhard,

As you may know, the Virginia Disability Commission has long been concerned with the increasing incidence of autism, the lack of waiver providers and teachers with expertise in autism, and the widely divergent opinions on best practices.

Since no one agency 'owns' autism and all human services agencies in Virginia serve persons with autism to greater or lesser extent, multiple agency involvement in cost effective autism training and education is important. This is especially true when we factor in the emergence of autism as the "4th most prevalent disability" behind mental retardation, learning disabilities and behavioral disabilities.

Therefore, it is the hope of the Disability Commission that you will consider increasing your agency's attention to the multitude of challenges faced by the growing autistic community.

One vehicle for agencies to cooperate to address autism's challenges is the Virginia Autism Council. The Council has produced some outstanding results with a small allocation of funds from the Virginia Department of Education. Examples of the Council's work in 2004 include:

- An On-line Web Course ("Autism Foundations 101") hosted through George Mason University: 110 teachers/teachers aides/parents have successfully completed the course. Tuition stipends now exist for teachers/school staff; other professionals may register @ \$50./person;

⁵ This letter was sent to the respective heads of: the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department of Rehabilitative Services, the Department of Social Services, the State Health Department, the Virginia Board for People with Disabilities, the Virginia Department of Education, and the Secretary of Health and Human Resources.

- A tuition reimbursement program for approved college-credit course work: 14 teachers or assistant teachers received full tuition reimbursement to complete 3-credit graduate or undergraduate college courses in autism at VCU and Lynchburg College;
- New staff training within VA Public Schools: In the fall 2004, 8 regional workshops in Autism Awareness were held for 541 new teachers, regular education teachers, and related school personnel;
- The Council's Autism Awareness Curriculum and a VA Autism Resource Manual was also disseminated to 800 teachers, school systems, Community Services Boards, Early Intervention programs;
- Staff Resource Website was developed containing autism resources for all disciplines and training calendar showing training approved by the VA Autism Council on a month by month basis—
>www.AutismTrainingVA.org

On behalf of the Disability Commission, thank you for your attention to this important matter. Please let me know if there is any assistance the Commission can provide in this regard.

With warm regards, I remain

Sincerely,

Timothy M. Kaine
Lieutenant Governor of Virginia