



ILLINOIS DEPARTMENT OF PUBLIC HEALTH  
OFFICE OF HEALTH CARE REGULATION  
**DEVELOPMENTALLY DISABLED FACILITY ADVISORY BOARD MEETING**  
**November 7, 2018 • 10:00 AM – 12:00 PM**

**APPROVED MEETING MINUTES**

**I. CALL TO ORDER AND INTRODUCTIONS**

Daniel Levad facilitated the meeting, in Connie Jensen’s absence. The meeting was called to order at 10:03 a.m. Dan introduced the new Bureau Chief, Aimee Isham. Aimee gave the Board a brief overview of her work history. She has been with the State of Illinois for over 20 years and her background was in Hospital Billing with some background in Long-Term Care.

***MEMBERS PRESENT:*** Michael (Mike) Bibo, Dr. Geunyeong Pyo, Jeff Stauter, Meg Cooch, Dale Simpson (non-voting member), Julie Vryhof (proxy for Fabricio Balcazar), Deborah Kennedy and Lois Sheaffer-Kramer

***MEMBERS NOT PRESENT:*** N/A

***IDPH REPRESENTATIVES:*** Aimee Isham, Dan Levad, Sean Dailey, Pam Winsel, Sherry Barr, Sara Wilcockson, Debra Bryars, Michelle Millard, Andrew Schwartz and Tena Horton

***GUESTS:*** Marie Rucker, Rob Lewis, and Sara Myerscough-Mueller

A quorum was established.

**II. APPROVAL OF MEETING MINUTES**

Mike Bibo made a motion to approve the May 9, 2018 meeting minutes; seconded by Lois Sheaffer-Kramer. Meeting minutes were approved unanimously. Mike Bibo made a motion to approve the August 8, 2018 meeting minutes; seconded by Jeff Stauter. Meeting minutes were approved unanimously.

**III. MEMBERSHIP UPDATE**

**A. Membership Vacancies:**

- (1) Physician Member
- (1) Resident Advisory Council Member

**B. New Membership:**

- i. Public Member – Appointed Margaret (Meg) Cooch, ARC of Illinois
- ii. IL Department of Healthcare & Family Services (IDHFS) – Appointed Rob Lewis, IDHFS

**C. Expired Terms – N/A**

#### IV. OLD BUSINESS

- A. Mike Bibo wanted to know where IDPH stood with the issue of restraints. He stated that the Board agreed to go with the Federal regulations. He stated that there is still some restraint language and wanted to know the Department's intent. Is the Department going to leave the language the way that it is or clean up? The State regulations conflict with the Federal regulations.

Sean Dailey recalled the discussion a couple of Board meetings prior where everyone agreed amend the rules to go with the Federal regulations. He stated that it is in the works.

- B. Mike Bibo also had a question regarding the Board's discussions on the Psychotropic Medications Informed Consent Form. The Department had proposed a format. The IDD Community Care refers to the Department will propose a format on the website. Basically, almost all of the information on the Psychotropic IC form needs to be promulgated in the rules. The statute states it should be self-populating by the Department. Whatever is placed on the State's website will be self-populating so that no individual's name, health condition or any identifying information about the resident will be viewable. But, the base of the black box materials will be populated similar to Wisconsin's IC. What is the status of this proposed project?

Dan Levad indicated that there were discussions regarding this topic. The Department had internally discussed the difficulty in setting up the database/website for public domain usage. Inside the Department's program and what is seen out in the field. When the physician or whomever is assigning the psychotropic medications before the IC is brought back to the facility, they are accustomed to giving the resident a set of side effects that they would come back where the team would have approval or disapproval options for certain medications. Dan stated that he doesn't know the parameters and would have to get back with Board.

Mike Bibo reiterated that it is in statute in both the IDD Community Care Act, MC/DD Act and the Nursing Home Care Act. He was inquiring because there are citations out in the field. He also emphasized that it would be more of a State violation as Federal regulations do not require an IC website. It is one thing to get cited for a Federal violation for not having all of the black box material exactly the way things need to be.

Debra Bryars inquired if Mike Bibo "was saying he had a citation for this". He responded "not at a State level, but at a Federal level". He is waiting to see if it results in the State. Dan Levad stated that the Federal certification requirements are more stringent than what the State has in their requirements currently. Dan Levad indicated that he respects what Mike Bibo is saying in that aspect as far as what is going to happen for the most part when the State reviews are a little bit more intense when it comes down to conditions where immediate jeopardy might be an association with those types of consent forms.

Mike Bibo stated that there is nothing wrong with currently citing Federal violations on this if it is a violation. But, the State statutes then might interfere with the State citing State violations of this because the State has been obligated for years to develop the form and website. Dan Levad again stated that this issue has been discussed in a couple of meetings internally to get the application on the website to see what would happen.

## V. New Business

### A. Discussion of Definition Sections

- i. Sean Dailey addressed the definition sections of Part 350 and Part 390. He stated that the Board has some prior discussions regarding the amendment of Definition Section of Part 350 and 390. Lois Sheaffer-Kramer submitted the definitions and the Department decided to have these changes discussed in one of the Board's regular meetings. These amendments are more appropriate as more of a program decision versus Sean's decision. He is always open to suggestion. Part 390 is in First Notice right now, including the Definition Section. If the Board wants definitions to go with that, then it needs to be dealt with in the "Public Comment" period. The amendments could also be added in the Definitions Section of Part 350.

Mike Bibb stated in the last meeting held that a workgroup was put together to deal with the definitions. The workgroup met once and then all future meetings were canceled due to the Open Meetings Act. Mike Bibb inquired on status of definitions. If the Board cannot have a workgroup, then how are these amendments going to be reviewed by the Board. Sean Dailey stated that the definitions would have to be reviewed by the Board. Mike Bibb indicated that it might be best not to deal with the current definitions until all of the definitions have been reviewed by the Board jointly versus fragmented. Sean reiterated that Part 390 is in First Notice including the rules in which the Board voted back in May 2018. If the Board wants to submit these definitions as a "Public Comment" for that rulemaking, then it is definitely would be taken under consideration.

Dr. Pyo wanted to know what about the several language changes she proposed in the last workgroup meeting. She wanted to know if Sean had remembered the discussion she had printed out for the language change for the multiple different associates. At that time, Sean was going to check with IDPH Legal Services. She asked "where does it stand right now". Sean informed her that would be a question that Andrew Schwartz would be able to answer.

Lois Sheaffer-Kramer asked if Sean could repeat what he previously said as she did not quite understand. Sean indicated that he brought the rules to the Board in May and they were voted on. There were two (2) rulemakings. One with changes from Public Act 99-180 which changed the statute for the rule and name of rule, etc. Another rulemaking was the Definitions Section with some "technical" changes and Notice of Violation amendments. Prior to publication, the Department combined them into one (1) rulemaking and submitted to JCAR for their pre-file review prior to First Notice publication. The Department didn't get the review back from JCAR until August 2018, as it sat for three (3) months. Afterwards, JCAR had many questions and requested additional changes to the rule based on updating statutory language. While the rules were under JCAR review, the Department could not make any changes except for the mandated changes from JCAR. These rules were finally proposed in September 2018 and they are in First Notice right now. He indicated that if the Board wishes to submit the current list of proposed changes for Part 350 and Part 390 as a "Public Comment" on the Part 390 rulemaking, this is the appropriate action for additional changes to be taken under consideration. With Program approval, it can be decided whether or not changes will be made during the Second Notice drafting process. Sean Dailey stated that Part 350 is not in the amendment stage as far as the Definition Sections is concerned. With discussion at this point, Program can decide whether these are appropriate for the Part 350 Definition Section. This is a complicated subject.

Lois Sheaffer-Kramer said the Part 390 was submitted for First Notice in September 2018. Sean stated he thinks it was published in September 2018. Lois questioned whether the Public Comments is almost over. Sara Wilcockson informed the Board that Part 390 was published on October 19, 2018 and will expire on December 3, 2018 (45-day minimum).

Sean Dailey clarified that once the Department starts preparing Second Notice documents, Program will need to decide whether the definition changes are acceptable. Hypothetically, if Program likes these for Part 390, then the Department can make the changes during Public Comments for the rulemaking. When submitted for Second Notice with JCAR, the changes would be a part of it. This is how the process goes. Sean also stated he is not making any promises today.

Andrew Schwartz responded to Mike Bibo regarding the discontinuation of the workgroup for the Board. He stated that he didn't recall any specific discussion on why it was canceled. He could review the reasons if he was included in the conversations; he couldn't recall. Mike Bibo stated any definition discussions absent the workgroup, then, any definition or recommendations the Department had for definition discussions or proposed, would now be proposed back to the Board for action to be taken. The Board would go through the normal process versus having a sub-workgroup, correct? Andrew agreed and noted the Department is in no way trying to circumvent the Board's input. He would imagine the cancellation was due to the Open Meetings Act requirements; the reason the subcommittee didn't occur. But, he doesn't recall specifically. As always, any recommendations as being discussed currently comes to the full Board for the inputting of considerations.

Mike Bibo stated that another discussion was that Part 390 was published for First Notice in October 2018. He asked if the Board is going to deal with definitions as sort of a set and other definitions are going to come before the Board for action both IDD and MC/DD's, then the Board can deal with them at that time it comes forth and then at some later time amend Part 390 again on the definitions? Andrew Schwartz indicated that if you have a comment now is the time and the Board should not miss out on that opportunity. Sean emphasized that the 45-days is not a maximum, it's a minimum. It is considered a Public Comment period until the day it is filed for Second Notice in JCAR.

## B. Revision of DD Facility Advisory Board By-laws

- i. Andrew Schwartz informed everyone that the by-law revisions presented were discussed briefly at the last meeting. The Open Meetings Act was amended approximately 18 months ago to reflect a small, but discreet change. The change indicated to establish a quorum there needs to be a number of members physically present at a meeting location.

Andrew indicated that after the quorum is established through physical presence, then the Board can take a vote to allow people to attend by electronic videoconferencing or by telephone conferencing. In the past 18 months, he has worked w/Home Health Agency, ASTC, and Hospital Licensing Boards, merely to update the bylaws to reflect the requirement. The amendment is to clarify what the law states. A quorum must be established through presence at the physical locations, i.e. Chicago, Springfield, Rockford, Peoria, etc. Once the physical quorum is established at the actual meeting locations, a quick vote can be taken to say "let's open it to the phone lines, call-ins, other individuals who can attend through e-video services". The changes are self-explanatory.

Someone asked if the Board could take the vote today as the Board has a quorum. Andrew stated if you have a quorum with physical presence, then the Board can vote to accept the bylaws and then changes will be made.

Mike Bibb mentioned in the last meeting that the Board does act upon proposed regulations for the MC/DD Act. But, the MC/DD Act indicates that this Advisory Board is the one that does those actions. Would there need to be a reference in the bylaws regarding MC/DD or not? Andrew does not believe this is necessary. However, these are the Board's collective bylaws. He takes the distinct opinions on for example bringing this amendment that is required by law. It is required by law that the Board consider the MC/DD rules. What is not required by law is that the bylaws reflect them. This is left up to the Board's discussion if the language is wanted. Andrew considers it informative and that it helps to create a roadmap of what the Board does. He could certainly draft it up and come back to the next meeting in February. Mike Bibb agrees that it should be referenced as it has to do with regulations subject to the MC/DD Act.

Mike Bibb observed that in Section 2-7, it states that the Board date shall be pre-set one year in advance. Board meetings shall be via teleconference between Chicago and Springfield. Mike asked if specification should be limited just to Chicago and Springfield, what about other areas (i.e. Rockford, Peoria, etc.)? Shouldn't this section be broadened? Andrew stated he did not see it as an exhaustive list, but understands how it could be interpreted. Again, based on the current discussion, the Department could strike the language out or add "including, but not limited to" language. Mike suggested just striking Chicago and Springfield and just add "teleconference at a State office", or State facilities. Andrew agreed and will draft it up.

Mike Bibb directed the Board to Section 4-1. He wanted clarification regarding the blue language "a quorum must be physically present at the location(s) of the meetings in order to conduct the business of the Board. A quorum shall consist of one more than the majority of the voting members of the Board." There are supposedly nine (9) voting members. The question is when referring to one (1) more than the voting members, is it filled positions or total positions? Andrew Schwartz confirmed that it's filled positions. Mike asked that the language be changed to reflect the number of filled positions. Andrew was hesitant to make the change. Programmatically, since the Boards have had problems filling positions in the past, there may be an argument from people who might say "we have enough to meet the bylaws". He stresses that the Boards should always strive to have a fully filled Board. Again, it is up to the Board to vote on.

Mike Bibb asked if Section 4-8 changed. He thought there was an issue under the Open Meetings Act that if more than three (3) met to discuss any Board issues, it would be a violation of OMA. However, if three or less, discussions would not violate OMA. Was there a bylaw regarding this requirement? Andrew stated that he thought there was a prohibition, but it may have been changed. He would review and come back to the Board. He thinks the reason it was changed was because the definition of meeting was amended about three (3) or five (5) years ago. It was amended to specifically state "gathering for the purpose of conducting State business". This did away with this concern. He will double check when he updates the bylaws and bring them back to the Board at the next meeting. He recommends not to discuss the business of the Boards.

Dr. Pyo wanted to correctly understand that the revision is a rule and that the Board has no choice but to accept the revision (board member has to be physically at the location). She said that there is no room for discussion. Andrew emphasized that the OMA requires physical presence to establish a quorum. After the quorum is established, then a vote can be taken to allow members to attend through teleconference or videoconference. Andrew recommended not voting on the bylaws based on the conversations held today. He would like to make a few more changes in order for the Board to see the comprehensive version before voting.

Dr. Pyo wanted to express her concern regarding the requirement by law. From the clinician's perspective, there are constant problems with recruiting clinicians. It seems to her it limits the availability of a clinician. As she sees a full-time Clinician for the State impossible. But, otherwise, clinicians employed elsewhere, it is almost impossible to attend. Andrew agrees; but the policy perspective is the Open Meetings Act is designed so that any person can walk into a Board meeting. The Board has the ability to contact a legislator and try to make changes to the Open Meetings Act (probably won't be successful). He doesn't see any legislator voting on anything that could be seen as less transparent.

Dan Levad stated the bylaws will be tabled on the agenda in order for the Board to review at the next meeting. Everyone agreed.

#### **VI. Next Meeting**

Next Board Meeting is February 13, 2019 at 10:00 am.

Agenda items and confirm attendance to Tena Horton, [tena.horton@illinois.gov](mailto:tena.horton@illinois.gov) and Jason Grigsby, [jason.grigsby@illinois.gov](mailto:jason.grigsby@illinois.gov) by January 25, 2019. Please confirm your attendance to Tena or Jason by February 7, 2019.

Dan asked for a motion to adjourn. Motion to adjourn by Mike Bibo; seconded by Dr. Pyo. Meeting adjourned at 10:46 a.m.