

2008-2011 Chronology—DD Definition issue

- **March 14, 2008**--A declaratory order was issued in response to a request for review by The Resource Exchange ordering that
 - “eligibility for dd services must consider a person’s adaptive behavioral limitations and substantial cognitive deficits”...
 - The order noted that “without further direction from DDD, it is reasonable to operationalize the term ‘substantial cognitive deficits’ by...IQ scores between 71 and 85...”
 - The order also noted that in the DDD petition, “the CO Dept. of Human Services indicated that further rule making is necessary to clarify the meaning of the definition of dd...to ensure greater statewide consistency.” Judge Bornstein also “urged the Dept. to follow through on its stated intent to initiate the rule making process to provide further clarification to the definition.”

- Later, DDD filed a motion to reconsider and stay the declaratory order

- **April 24, 2008** the motion to reconsider was denied

- **May 14, 2008**—CDHD/DDD launched the emergency rule making process which condensed the upfront review time. In the letter initiating that process, Director Jacksi wrote:

DDD wants to reassure the DD system that a full review of the broader issues regarding the definition and its impact on eligibility for dd services will begin this summer in order to assure a thorough deliberative process [to be] available for interested constituents. This process may lead to further rule making or to a suggested change to the definition in statute.

- **May 20, 2008**—in a second letter to the DD Community, Director Jacksi wrote:

DDD will “proceed immediately with an abbreviated up-front rule making process to quickly provide the system with the clarity needed in rules and also implement the second phase where there will be a more robust process to look broadly at revising the definition...

I want to reiterate the commitment to implementing the second phase of the review of the definition...

Our goal for the workgroup would be to have recommendations to DDD before the next legislative session.”

- **July 11, 2008**—State Board holds initial review of DDD revisions and approves on first reading.
Excerpts from Minutes:
 - John Miles said that legitimate issues [re: inconsistency and confusion in current rules] have been presented which need to be discussed.
 - Dr. Jacksi said that the emergency action to change the rule is needed to provide consistency and direction.
 - Cami Learned (CCB Partners) spoke of inconsistent eligibility determinations by CCBs and that the emergency action was needed to get through the next few months.
 - CDHS Director Karen Beye asked questions about grandfathering in people who would be determined eligible under the new rule but might not be eligible if the work group proposes a narrow definition. She also noted that the work group may suggest a statutory change.
 - Jenise May (CDHS Division of Regulatory Affairs) said that the rule change appeared to be a band aid that would lead to a bigger fix.
- **August 1 2008** —state board approves emergency rule.

Excerpts from Minutes:

- Art Hogling (DDRC—member of the state board) explained to the board that the issue arose not through a planned review of the definition but through a legal review to try to further clarify the matter. He mentioned that DHS/DDD would be convening a task force to further discuss the issue and make recommendations.

- Dr. Jacksi and John Miles reported that the work group would be convened soon and that a national reviewer would provide a summary of dd definitions in all states.

Board revised 16.120 DEFINITIONS "Developmental Disability. Section C was deleted and a new Section B was adopted:

"Adaptive behavior similar to that of a person with mental retardation" means that the person has overall adaptive behavior which is two or more standard deviations below the mean in two or more skill areas (communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work), as measured by an instrument which is standardized, appropriate to the person's living environment, and administered and clinically determined by a qualified professional. These adaptive behavior limitations are a direct result of, or are significantly influenced by, the person's substantial intellectual deficits and may not be attributable to only a physical or sensory impairment or mental illness.

"Substantial intellectual deficits" means an intellectual quotient that is between 71 and 75 assuming a scale with a mean of 100 and a standard deviation of 15, as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. The standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent.

- **Sept. 8, 2008**—Susan Hunt, Interim Director of DHS-Adult, Disability and Rehabilitation Services—wrote in a letter to the task force that:

“...the purpose of the task force is to develop two recommendations to submit to the Dept. and the Governor's office for consideration:

..determine what changes may be necessary through rule making or other processes to more clearly operationalize the existing statutory definition for dd in statute..and to specify what criteria will be used to determine whether someone meets the definition

..develop a potential new statutory definition and criteria to determine eligibility for dd services...the new definition must use clear and unambiguous language that is readily understood by the reader [and]..include specific criteria to be used to determine whether someone meets the new definition of dd.

- **Oct. 1, 2008**—rule adopted under emergency procedure is implemented.
- **December, 2008**—Task Force final report: The group decided unanimously to “recommend no change to statute and to change rules..to develop a more structured and consistent way of operationalizing and implementing the rule change.”
- **April 2009**—second work group convened: charged to:
 - Draft proposed rule changes to operationalize the existing statutory definition, including specific criteria and tools to determine whether a person meets the definition.
 - Analyze and evaluate the fiscal and policy implications of the proposed rule changes, including recommendations for alternate or additional funding sources.
 - Develop effective training and procedures to implement the changes throughout the system and ensure clarity and consistency for individuals receiving services, Community Centered Boards, and federal Centers for Medicare and Medicaid Services (CMS).
 - Identify and project the implications of the proposed rule changes on the waiting list for developmental disability services.
 - Develop a realistic time-line and action plan for implementation of the proposed rule changes.
- **Sept 27, 2010**—second work group final report submitted to Sharon Jacksi--Drafts of 16.120 and 16.400 are submitted
- **Sept. 27, 2010**—Director Jacksi wrote:

....thank you for your thoughtful work in the completion of the draft rules and information regarding system impact. I am extremely pleased that you reached consensus in all the documents you have sent me. I

want to assure you that I will be forwarding the materials to the department this week, with a **strong recommendation to accept your work and allow us to move forward with public input.**

- **March 3, 2011** At a meeting with Arc chapter directors, Jenise May indicates that the proposed rules with one change will be circulated for public review and that meetings would be held around the state to gather public input. She mentions Executive Order #5 and says that the conditions of that executive order would be a “screen” for whether or not the rule making process would go forward.
- **April 14, 2011** —Dept. sends info about public meetings with proposed rule changes—one change to work group draft is made: eliminating reference to state responsibility to pay for assessments.
- **April 28, 2011**—first public meeting. Introductory materials made available at the public refer to Executive order #5. (There was some confusion about this executive order—several people expressed the opinion that this directive is un-related to the issue at hand.)
- **May 5, 2011**—2nd public meeting
- **May 12, 2011**—3rd public meeting

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