

JANUARY 8, 2013

**MINUTES OF
MECKLENBURG COUNTY BOARD OF COMMISSIONERS**

The Board of Commissioners of Mecklenburg County, North Carolina, met in Budget/Public Policy Session in Conference Center Room 267 of the Charlotte-Mecklenburg Government Center located at 600 East Fourth Street at 3:00 p.m. on Tuesday, January 8, 2013.

ATTENDANCE

Present: Chairman Patricia Cotham and Commissioners Karen Bentley, Dumont Clarke, George Dunlap, Trevor Fuller, Bill James, Vilma Leake, Kim Ratliff and Matthew Ridenhour
County Manager Harry L. Jones, Sr.
County Attorney Marvin Bethune
Clerk to the Board Janice S. Paige

Absent: None

(13-0798) MECKLINK MEDICAID WAIVER

Chairman Cotham called upon County Manager Jones to outline the purpose and format of today's meeting.

County Manager Jones acknowledged the presence of advocates and providers of mental health services. County Manager Jones said the Board had also received emails from other advocates, providers, and consumers of mental health services complimenting and supporting the work of MeckLINK Behavioral Health Services for their development of the Medicaid Waiver program with consumers in mind and in a way that's most cost effective for Mecklenburg County taxpayers.

County Manager Jones shared two emails the Board received from advocacy groups in support of MeckLINK implementing the Medicaid Waiver, the Mecklenburg Consumer and Family Advisory Committee, Sandy DuPuy, Committee Chair and the Mecklenburg Disability Action Collaborative, Ron Reeve, Chair. County Manager Jones said the advocacy groups urged the Board to seek a reversal of the Secretary of the N.C. Department of Health and Human Services (DHHS) decision to assign Mecklenburg County's Medicaid Waiver program over to Cardinal Innovations Healthcare Solutions.

County Manager Jones said he would provide the Board with recommendations and options regarding how to proceed in continuing to provide mental health services to those in need.

General Manager Michelle Lancaster was then called upon to provide a brief history of the Medicaid Waiver Program.

General Manager Lancaster highlighted previous Board action and specifically noted the following:

- Mecklenburg County submitted an application to the State and was approved in March of 2010 to become a Medicaid Waiver Implementation Site, the second for the State.
- There was a pause on the County's part in 2010, because in September of 2010 there

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were many issues around the director of a provider that Area Mental Health was doing business with called Mecklenburg Open Door. Those issues, subsequently, caused Mecklenburg Open Door to go out of business.

- At that time the County had a substantial relationship with Mecklenburg Open Door, which caused several issues of concern regarding the HUD grant, oversight, and around how the Board and the community felt about these issues and how the County was managing them.
- With the Board's approval, staff rebid all Area Mental Health contracts, in order to regain the confidence of the provider network and the community.
- The rebidding process took approximately twelve months.
- Staff also went through the process of consolidating all of the County's Human Services finance functions.
- Staff also went through the process of establishing a corporate compliance program.
- Rebidding all Area Mental Health contracts, consolidating all of the County's Human Services finance functions, and establishing a corporate compliance program, seemed to be more important, at that time, than moving forward with the Waiver. General Manager Lancaster said this was not a "surprise" to anyone.
- The State granted Mecklenburg County an extension, by the then, DHHS Secretary Lanier Cansler.
- In the summer of 2011, the County was asked, via emails, by DHHS to consider embarking upon the Medicaid Waiver implementation again.
- General Manager Lancaster asked for a July 2013 start date from DHHS and she was encouraged to consider a January 1, 2013 start date, with the indication that it would give the County six months prior to the statutory mandated implementation date of July 1, 2013. The County agreed to move forward.
- The Board received numerous updates regarding the Waiver, since that time.

MeckLINK Behavioral Health Director Phil Endress was called upon to address implementation progress to date. The following was noted:

- Director Endress became the Director in August 2012.
- 143 additional staff had been hired since July 2012.
- A new information technology system was implemented November 1, 2012.
- The provider network consisted of 258 agencies, licensed independent practitioners and group practices.
- It's anticipated that there would be over 330 when the network was fully operational.
- The Call Center would become operational January 15, 2013 and would operate 24/7.
- One of the reasons for the County's getting into managed care was to establish "good quality outcomes" for consumers of services.
- Good quality services reduce costs, the number of in-patient days, the number of total admissions, and visits to emergency rooms.
- MeckLINK was all about reforming and redirecting the current delivery system in the County.
- One of the key factors in this was being able to pull together diverging funding streams, such as Medicaid, State Single-Stream funding, and County tax dollars, so that a service plan could be built around the individual.
- Being able to monitor and modify the service delivery for an individual was critical to the success of managed care and having the capability to do that locally was far better for the consumer.

Director Endress shared with the Board a progress report as to where MeckLINK was with its implementation plan and with issues identified in various Mercer reports.

A copy of the report is on file with the Clerk to the Board.

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Director Endress said the County's completion rate with respect to the Critical Path Plan was 43% as of today.

Comments

Commissioner James asked for clarification regarding the 43% completion rate with respect to the Critical Path Plan, which was addressed.

Director Endress clarified that the 43% completion rate had to do with the issues that were identified per Mercer's December 20, 2012 visit. Director Endress said overall the County had accomplished between 85% - 90% to date of all of the objectives.

Commissioner James asked were there other Managed Care Organizations that didn't meet the standard as of December 31, 2012. *Director Endress said it was his understanding the other ten were approved.*

Commissioner James asked did that approval mean the others completed all of the tasks. *General Manager Lancaster said she did not think it meant, all tasks had been completed.*

General Manager Lancaster said some still had matters to be completed, but they were approved.

Commissioner James asked did it appear that the State treated Mecklenburg County differently.

County Manager Jones said in response to Commissioner James' question regarding whether or not it was felt Mecklenburg County was treated differently, that he requested a comparison of the readiness review Mercer conducted on the County versus several others. County Manager Jones said when he looked at a Local Management Entity (LME) called CenterPoint, and read the language and compared it side by side, it appeared the issues that CenterPoint had were similar to those identified for Mecklenburg County by Mercer.

County Manager Jones said the difference was that Secretary Delia said as he made his decision, he listened to the language that Mercer used and that Mercer said CenterPoint "will be" ready on February 1, 2013 and Mecklenburg County "could be" ready. Thus, he based his decision on the use of the terms "will" and "could," even though he felt Mecklenburg County after taking into consideration what Mercer had said, believed Mecklenburg County would be up and running prior to the statutory implementation date of July 1, 2013. County Manager Jones said Mercer said Mecklenburg County would be up and running by April 1, 2013, but consideration was not given to that by the Secretary.

County Manager Jones said he also found out that the Secretary made a decision regarding Coastal, even though Mercer said Coastal would be ready by February 1, 2013, the Secretary had concerns about Coastal and because of those concerns, he placed special conditions on Coastal by requiring them to incur at their own expense, bringing in Mercer to do more frequent reviews regarding their readiness.

County Manager Jones said when the Secretary was asked why wasn't Mecklenburg County given that same consideration, the response was that Mercer said Mecklenburg County would not be ready on February 1, 2013.

Commissioner Dunlap asked if staff was confident that MeckLINK would be ready by February 1, 2013. *Director Endress said yes.*

Commissioner Dunlap said with respect to the time between 2010 and now, it should be noted that the County was without a director of area mental health.

Commissioner Leake questioned the length of time it took to employ a new director.

General Manager Lancaster said an immediate hiring process was not started, when the County became without a director of area mental health because of all the issues that were going on with Mecklenburg Open Door. She said the Board was informed.

General Manager Lancaster said having a director would not have changed staff's mind about moving forward with the waiver, because there were still three large issues, as she noted earlier, that had to be worked on that were more important to staff at that time and a priority for the organization, than waiver implementation.

General Manager Lancaster said, at that time, the State had not made a decision in 2010 to expand the Waiver statewide. She said the State had sought applicants and that Mecklenburg County was, she believed, one of the four and was the only one chosen.

General Manager Lancaster said it was in 2011 when the legislature took action to require a statewide expansion, thus, the dynamics changed not only for Mecklenburg County as an organization, but also with respect to what the State law required.

Commissioner Bentley commented on the long-term financial implications of the Medicaid Waiver.

Commissioner Bentley asked had there been any conversations that would indicate a lack of confidence from the State legislature or administration, that Mecklenburg County would not be able to realize the savings, the Medicaid savings, that the State anticipated from the County, that would ultimately drive the decision to assign MeckLINK to Cardinal Innovations Healthcare Solutions.

Director Endress said he had not been part of any of those discussions, nor had he heard of that being an issue.

Commissioner Bentley asked Director Endress to clarify the 10% savings that the State took off the top, which he did.

Director Endress said the State had already realized their savings using the Medicaid Waiver System. He said out of that, the County received approximately \$156, per member, per Medicaid recipient, per month and of that, the general breakdown was approximately 9% - 10% for administration, 85% for the medical loss ratio, 2% goes to the reserve fund that would have to be established and there's about a 2% - 3% variance that had to be dealt with in order to break even.

Commissioner Bentley asked what was the biggest driver for cost reduction. *Director Endress said it was being able to target the right service to the right individual at the right time, so that high risk individuals could be identified by the Medicaid claims data.*

Commissioner Bentley asked was the business model for MeckLINK similar to other Managed Care Organizations operating throughout the state. *Director Endress said he wasn't sure what practices others used, but he would assume it would be some of the same managed care practices that the County would be employing.*

Director Endress said one thing that distinguished Mecklenburg County from other Local Management Entities (LME)/Managed Care Organizations was that Mecklenburg County was geographically dense with its population. He said most of the others were multiple counties and covered a large geographical area. Director Endress said that was a very different situation to be able to manage, than more of an urban population.

Commissioner Bentley said if it was determined that MeckLINK would indeed be assigned to Cardinal Innovations Healthcare Solutions, what assurance would the Board have as the Board of Health, that its constituents needing services would continue to receive those critical services during the transition from MeckLINK to Cardinal Innovations Healthcare Solutions. *Director Endress said as long as MeckLINK was a part of the service delivery system, then the Board had a great deal of influence over that with respect to the quality of those services and how those services were delivered. Director Endress said, once those services, however, go to Cardinal Innovations Healthcare Solutions, then it was his understanding that the Board would lose that control and oversight.*

Director Endress said there may be members from Mecklenburg County on the Board of Directors of Cardinal Innovations Healthcare Solutions, but as a Board of County Commissioners, the Board may not have any overall representation on their Board of Directors. Director Endress said that's where you would want to have the control and direction of policy on how and what services were delivered.

Commissioner Ratliff asked what assurances did staff have that MeckLINK would be ready by February 1, 2013. *Director Endress said the due date with respect to the Critical Path Plan was January 23, 2013 and that staff was "tight" on that Plan and they're "sticking to it." Director Endress said his staff was aware they cannot "slip" on the due dates. He addressed the status of the Call Center and the Information Technology System.*

General Manager Lancaster said Mecklenburg County was not the only Managed Care Organization using this type of Information Technology System. She said there were four others using it as well across the state.

Commissioner Leake asked about the staffing level at the Call Center, which was addressed.

Commissioner Dunlap said he would like to know more about how the State used the funds it received from the Medicaid Waiver.

Commissioner Clarke asked if Western Highlands, a Managed Care Organization that was up and running, still in business, because it was his understanding they had experienced some problems. *The response was yes.*

Commissioner Clarke asked had any of Western Highlands' responsibilities been reassigned. *The response was no.*

Director Endress said he believed part of Western Highlands' problem was with their information technology system.

Commissioner Clarke asked was the County using that same information technology system. *The response was no.*

Commissioner Clarke asked about the financial risk to the County if MeckLINK was not successful and would that put other County resources at risk. *Director Endress said it was his understanding that the State said individual counties would not be financially at risk for the implementation of the LME/MCO project.*

Director Endress said if the County got to that point, the State, as well as, the Board, would monitor MeckLINK on a monthly basis and would know if there were problems or not. Director Endress said if the State saw that MeckLINK was having difficulties, it would step in and either demand an immediate plan of correction or they would reassign MeckLINK to someone else.

General Manager Lancaster said, per the way the Statute currently read, there was no risk to

the County, that all the risk was with the State.

Commissioner Clarke asked had any of the eleven Managed Care Organizations been reassigned yet or not allowed to go forward. *The response was no.*

General Manager Lancaster noted however, that when the application process was reopened in 2011, there were certain thresholds that had to be met in order to be able to go it alone or in some conglomeration. She said there were some who were forced to merge because they were not approved under the scenario that they applied under. She said Wake County was one of those, as well as, she believed Durham and Cumberland and that they created a group. General Manager Lancaster said so, some were denied, but not after they'd been accepted by the State, it occurred early in the process.

Commissioner Fuller said he wanted to hear from Brett Loftis with the Council for Children's Rights and Doug Sea, an attorney who represented Medicaid recipients, prior to going into Closed Session.

Motion was made by Commissioner Fuller, seconded by Commissioner Leake and unanimously carried with Commissioners Bentley, Clarke, Cotham, Dunlap, Fuller, James, Leake, Ratliff, and Ridenhour voting yes, to go into Closed Session to Consult with Attorney.

The Board realized that it voted prematurely to go into Closed Session because it had not heard comments from Brett Loftis and Doug Sea, and subsequently, the motion below was immediately made.

Motion was made by Commissioner Bentley, seconded by Commissioner Ratliff and unanimously carried with Commissioners Bentley, Clarke, Cotham, Dunlap, Fuller, James, Leake, Ratliff, and Ridenhour voting yes, to go out of Closed Session.

The Board then heard remarks from Brett Loftis, Executive Director for the Council for Children's Rights and Doug Sea, an attorney who represents Medicaid recipients, regarding why this issue mattered for Mecklenburg County.

Mr. Loftis noted the following:

- The State for the last twelve years has rolled out a series of different reform efforts with respect to mental health, developmental disabilities and substance abuse services.
- All of those reforms have been around money savings.
- The money that the State takes off the top goes to make up the deficit and shortfalls in the State budget.
- The consumers and their families of these services have to be the center of the conversation.
- Over 1,000 children were committed to mental health hospitals annually in Mecklenburg County.
- There were 155,000 consumers being served by Mecklenburg County.
- There was not another County serving that volume of consumers or that had the capacity to serve that volume.
- The 155,000 served by Mecklenburg County exceeded the 15 counties serviced by Cardinal Innovations Healthcare Solutions.
- If mental health, developmental disabilities and substance services were taken away from Mecklenburg County, consumers would not have the opportunity to receive needed services via an integrated healthcare system.

Mr. Loftis encouraged the Board to protect the rights of those with mental health, developmental disabilities, and substance abuse problems.

Attorney Doug Sea said he had represented Medicaid recipients in Mecklenburg County for

over thirty years, seeking services from the State Medicaid agency. Attorney Sea noted the following:

- The families he represented were very concerned about Cardinal Innovations Healthcare Solutions' "track record."
- Cardinal Innovations Healthcare Solutions had a "track record" of denying "necessary" services and being very "adversarial," not just with recipients, but with providers and with the counties that they dealt with.
- Cardinal Innovations Healthcare Solutions spends "millions" of dollars on lawyers to fight "tooth and nail" every decision of anyone that disagreed with them.
- Cardinal Innovations Healthcare Solutions accumulated a fund balance, as of 2011, of \$74 million dollars, despite spending millions on a brand new building for themselves and giving their staff raises. Further, Cardinal Innovations Healthcare Solutions was not going to return any of those taxpayers' dollars back to the taxpayer, the State, or to the counties that "gave them that money." They're keeping it, which was within their prerogative.
- If the system was ran by Mecklenburg County, then the County dollars would be within the County's control and the County could take those County dollars back, if it generated the savings that it hoped to generate and put them to other purposes in the County.
- In 2012 a federal district court found that Cardinal Innovations Healthcare Solutions was systematically denying due process when certifying clients. Some of Cardinal Innovations Healthcare Solutions practices, included telling recipients in writing that "if you do not agree to have your services cut by 60%, you will lose all of your services tomorrow."
- Other families were told "if you don't agree to these cuts, we will take your child away from you and institutionalize them."
- These facts were proven in federal court and resulted in a federal court order ruling that Cardinal Innovations Healthcare Solutions was systematically denying due process.
- Providers were "so concerned and so upset" that many of them were refusing to contract with them, which meant there would not be an adequate provider network in Mecklenburg County.
- Under federal law there must be a provider network.

Attorney Sea said per his review of the law and the facts, it's his legal opinion that Secretary Delia's decision did not comply with the law and that it could be successfully challenged. Further, that if the County challenged that decision, the families he represented would be happy to join in that lawsuit.

Chairman Cotham said she asked Cardinal Innovations Healthcare Solutions CEO, if sometime soon, she would be willing to come and address the Board to hopefully get some questions answered. Chairman Cotham said her response was yes, however, a date was not determined.

Motion was made by Commissioner Fuller, seconded by Commissioner Leake and unanimously carried with Commissioners Bentley, Clarke, Cotham, Dunlap, Fuller, James, Leake, Ratliff, and Ridenhour voting yes, to go into Closed Session to Consult with Attorney.

The Board went into Closed Session at 4:15 p.m. and came back into Open Session at 6:07 p.m.

Motion was made by Commissioner Leake, seconded by Commissioner James and unanimously carried with Commissioners Bentley, Clarke, Cotham, Dunlap, Fuller, James, Leake, Ratliff, and Ridenhour voting yes, to approve the recommendation for MeckLINK as presented by the County Manager and is as follows:

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1. Direct staff to continue working toward implementation and to engage consultants to assure readiness and insure progress.
2. Authorize the County Manager, with the assistance of Counsel, to bring an action in the Office of Administrative Hearings as outlined in the memo to the Board of County Commissioners from J. Daniel Bishop dated January 8, 2013.
3. Reaffirm commitment to the legislative agenda item to protect Mecklenburg's ability to implement the MeckLINK Managed Care Organization.
4. Instruct staff to continue advocating to the Department of Health and Human Services that the decision of former Secretary Delia should be overturned.

Note: The above is not inclusive of every comment but is a summary.

Motion was made by Commissioner Clarke, seconded by Commissioner Dunlap and unanimously carried with Commissioners Bentley, Clarke, Cotham, Dunlap, Fuller, James, Leake, Ratliff, and Ridenhour voting yes, that there being no further business to come before the Board that the meeting be adjourned at 6:24 p.m.

Janice S. Paige, Clerk

Patricia "Pat" Cotham, Chair