Client Family Leadership Committee Recommendations
DMH Draft MHSA Issue Resolution Process

At the 2008 Mental Health Oversight and Accountability Commission (MHSOAC) strategic planning session, the MHSOAC designated its Client and Family Leadership Committee (CFLC) as the lead to examine and review issues of family and client concerns regarding Mental Health Services Act (MHSA) planning and implementation. On March 27, 2009, the MHSOAC charged the CFLC with a lead consultation role in advising the MHSOAC on the Department of Mental Health (DMH) draft MHSA Issue Resolution Process. This area of responsibility was affirmed in the CFLC Charter adopted by the MHSOAC May 28, 2009.

Background

MHSA Welfare and Institutions Code Section 5845(d) (7) provides that the MHSOAC may refer critical issues related to the performance of a county mental health program to the Department of Mental Health (DMH). MHSOAC and California Mental Health Planning Council (CMHPC) currently make referrals to DMH in response to issues related to the MHSA; DMH responds using an interim process.

A workgroup consisting of representatives of DMH, MHSOAC, CMHPC, and California Mental Health Directors Association (CMHDA) met from April 2008 through February 2009 to advise DMH on the development of a procedure to respond to MHSA-related issues. The purpose of the statewide issue resolution process, according to DMH, is "for filing and resolving issues related to MHSA community program planning process, service access, and consistency between program implementation and approved Plans." The DMH is seeking input from stakeholders regarding the draft Issue Resolution Process until August 31, 2009, and conducted a web meeting for this purpose on April 2, 2009. DMH recently communicated that they will adopt their current process as an interim process and will wait to determine a permanent approach until more work is done, primarily by the CMHDA Social Justice Committee, on developing standards for local issue resolution.

Most issues and responses related to the MHSA occur at the local level. Counties differ in how they respond. Varying local and statewide processes are also in place to respond to concerns about aspects of mental health services not related to the MHSA. The effectiveness of current approaches to issue resolution is unclear; there has been no systematic inquiry of clients and family members regarding their perception of the effectiveness of existing mechanisms. Lack of understanding about how and where issues may be addressed is an acknowledged source of confusion to many stakeholders. Clients, family members, and representatives of publicly funded programs are often reluctant to complain because of fear of reprisals.

Many stakeholders look to the MHSOAC for leadership in instances when people feel they have not received an adequate response at the local level to concerns about MHSA planning or programs.

MHSA Issue Resolution (IR) Introductory comments: Commissioner Vega

The MHSOAC Client and Family Leadership Committee (CFLC) has prepared this document in response to the DMH process for Issue Resolution (IR) draft as charged by the OAC Commission. In its deliberations the CFLC membership treated the map and workflow promulgated by DMH at length and several of the points herein refer specifically to this. In addition the CFLC membership agreed with the MHSOAC's stated position affirming the importance of local IR and have identified policy and process recommendations grounded in the spirit of the MHSA that inhere to these levels as well.

The CFLC, in its mission to empower the MHSOAC with expertise and insight emerging from the lived experience of mental health clients, parents and family, has treated IR in general and the DMH-IRP specifically from the perspective of those who are historically left out of the process of program, service and policy planning, while remaining those most personally effected by lack of services, inappropriate and/or abusive services and practices which diminish rather than foster recovery from the effects of mental illnesses.

The present document then focuses on representing the interests of client-involvement and family empowerment with regards to MHSA planning, implementation and services. These recommendations, then, may be less relevant to other stakeholders, concerned parties and organizational or individual issues that emerge within the same broad MHSA sphere. Provider programs, CBOs and governmental entities have unique and valid needs to which a comprehensive IR system should ultimately be responsive. In addition IRPs are already in effect for service-related client issues as provided by statute and the role of these in a broad framework that focuses on MHSA should be examined. Optimally, process recommendations for IR on local, regional and state levels that would be keyed to the concerns of all stakeholders would necessitate a broader workgroup. (It is currently proposed, for example, that the MHSOAC is expanded upon this work through a workgroup that entails representatives of these other interest areas in order to achieve this.)

Notwithstanding, many community partner organizations, mental health providers and stakeholders have identified with the same values that undergird the membership and focus of the CFLC. It is these values, in addition to special experience of the symptoms of mental illness, mental health treatment and services, and the effects that these have on the ability of families and individuals to live meaningful lives, that form the basis of all recommendations herein listed.

These values are:

1. Inclusivity. “Nothing about us without us.” Clients and family, as the people most personally affected by mental illness and its treatment, should be consulting partners in issue investigation, arbitration and resolution. Review bodies associated with IR should therefore always have clients and family within their membership. The MHSOAC, MH Planning Council and all California county MH boards and commissions have this requirement, as do MHSA planning bodies statewide.
2. Respect/Trust. Ultimately any IR should build trust and collaboration between entities involved in order to advance understanding and quality improvement for mental health services and systems. Consumers and family have historically not been respected by providers and systems, sometimes fostering a general climate of mistrust. The MHSA stakeholder process was designed to engender this trust by convening government, clients, families and providers stakeholders for collaborative creation of MHSA plans. In any case an atmosphere which respects individuals and organizations and treats raised issues as both valid and valuable *a-priori* is essential characteristic of an effective IRP.
3. Objectivity/autonomy. In order to ensure that IR processes are not dominated by organizations or entities compromised by any of the variety of possible conflicts of interest, and to ensure fairness to all parties involved, bodies or offices which are free of these should be charged with ultimate arbitration and decision making authority. Alternatively, bodies that represent a broad spectrum of interests and of which the community approves, such as MHSA stakeholder groups that have representation and faith of consumer and families, may support this interest.
4. Transparency/openness/communication. IR is not a guarantee of satisfaction to any party. However a process which is fair and open serves the interests of all involved. Transparency is served when IRPs identify points of responsibility as well as individuals and groups involved in investigation and arbitration, where full disclosure of how individual issues are examined is provided, and where timely and complete communication are at work in all directions.
5. Freedom for fear of retaliation. Mental health consumers and former clients in particular fear retaliation based on abusive practices that sometimes occur mental health settings, where, for instance, concerns about an individual provider or program have resulted in restriction of rights and privileges, coercion such as seclusion and restraint and increased medication, neglect and delayed or peremptory discharge from programs. In addition family and other advocates may be shut out of decisions, ignored or subject to ridicule or ‘mollycoddled’ in response to legitimate issues because they are viewed as sources of trouble rather than insight. Sometimes the perception of the

possible or actual reprisal is just as damaging to trust between stakeholders as well. Protections such as anonymous vehicles for communicating complaints, whistle-blower protections and identity 'firewalls' may be essential means of reducing fear associating with bringing MHSA issues to local or other authorities.

Issue Resolution: Perspectives of CFLC Members

CFLC is seeking an issue resolution and grievance process that is easy to understand, accessible, transparent, expedient, and leads to positive outcomes. CFLC wants to ensure that issue resolution supports people to get what they need in an atmosphere of transparency and protection. For CFLC, issue resolution must be about making things work in the spirit of the MHSA, not just compliance with the technicalities

CFLC offers the following recommendations specifically for the statewide process.

1. A statewide process that requires that "Issues regarding the MHSA should be addressed first at the local level, beginning the issue resolution process in an expedient and appropriate manner" requires a local issue resolution process that meets specified standards. CFLC is concerned about an inherent conflicts of interest and power dynamics in local approaches to issue resolution, as well as the concern that it is often impossible to ensure anonymity in local issue resolution.

   CFLC envisions two possible resolutions to the "inherent conflict of interest" of requiring people to go through a local process first. The first is for every county to have a completely independent grievance body that includes clients and family members with power to make decisions, with a statewide appeal option. The second removes the requirement to go through a local process and allows the option to go directly to a statewide process.

2. A specific office, individual or entity within DMH or other State organization needs to be designated to provide issue resolution.

3. Because MHSA adds the element of community planning to potential grievances, there need to be clear standards for how counties are accountable to respond to stakeholder suggestions in community planning.

4. More differentiation between the roles of MHSOAC and CMHPC is needed.

5. The issue resolution process must ensure anonymity and protection from reprisals. It is essential to have strong, enforceable anti-retaliation (whistle-blower) provisions and to provide a sense of safety to raise issues. Retaliation by counties on individual employees and programs is of concern and needs to be included in "whistleblower" laws and regulations.

6. Accessible communication should make clear to members of the community how to raise an issue and get a response. Clients and family members, and other citizens, must understand the issue resolution process and be able to make use of it.

7. Issues at State and local levels should be resolved by a panel that includes clients and family members/parents who are paid for their services. They must have the authority and power to provide resolution.

8. The issue resolution process should include minimum standards with consequences. These should include a definition of "resolution."

9. People raising an issue need assurance that they will receive a timely response; the time limit should be specified.

10. Once an issue resolution process is completed, it is essential to get back to the person so he or she knows what action has been taken.

11. Technical assistance to clients and family members to assist them with issue resolution should be available. This assistance could involve examples, estimated appropriate timeframes, information about available resources, etc.

12. There should be available an 800 number for people who want to raise issues.

13. There is a need for more thought about integrating and differentiating mechanisms to give feedback about mental health services. MHSA can present issues that need to be handled in a different way from MediCal specialty mental health procedures. Issue resolution processes needs to address these differences and also should be easily generalized for broad mental health funding. Clients and families receiving services with multiple, blended, overlapping or evolving funding sources need an understandable, streamlined way to raise and resolve issues.

14. Consideration should be given to distinct review processes for concerns about services and for concerns about system issues (planning, plans, funding, etc.). Both require an independent mediation that has a timely outcome.

15. There need to be mechanisms to evaluate the effectiveness of issue resolution; evaluation should be based on the perception of clients and family members. Consumer and family member evaluation should also be applied to funding for programs.

16. An effective issue resolution process requires complete independence from the mental health department.

17. The county should inform the public about what kinds of grievances have been filed, how many were resolved within required timeframes, as well as the specific resolutions and outcomes and any policy or practice changes that were made as a result. The policy should specify that the county keep this documentation for some prescribed period of time and make the information public, including actively distributing the information on a regular basis. There needs to be consequences if the county receives consistent complaints about a particular issue.

18. There need to be clearly established roles and authorities at county levels with all local review bodies (mental health commissions, etc.) so that clients and family members are assured that they may bring their concerns to have them treated with legitimacy and in an atmosphere that prevents reprisals.

19. Consideration should be given to establishing Issue Resolution Boards, with representation from several counties.

20. Local issue resolution should be consistent from county to county, to the extent possible.

21. There need to be strategies to address situations when the root of the problem is political. An example is a favored agency that continues to receive funding despite a history of complaints.

22. Clients and family members who have problems at the local level should be connected with local consumer and family organizations to help advance their issues as well as to provide the benefits of peer support along the way and afterwards.

Public Comments: Issue Resolution Process

The following is a summary of comments from members of the public, offered at CFLC meetings. Please also refer to included written public comment on the draft Issue Resolution process provided by members of the public.

Public Comment: How to Proceed to Finalize Issue Resolution Process

- There are serious breakdowns in the stakeholder process at local and statewide levels. Clients are being disrespected and there is a complete lack of trust. This is grounds for a major grievance. None of this [the MHSA] would exist if we didn't exist. Government entities feel pressured from up above to move things forward and feel they have more knowledge base than we do, so we're getting blown off.
- Statewide representatives have a concern, similar to the concerns about the MOU, that they were not represented in the development of the policy. For both issues, most clients and family members who contributed were employees of a State agency. They didn't represent their constituency in the same way that we do. Going forward, we would like to have statewide representatives included. While we appreciate being able to give comments, it is much better to be part of the development in the first place
- We need more time to give input. I sent out to statewide request to get input for this call, people felt it was too short notice. We have all those people out there but need time to get their perspectives.
- The CMHDA Social Justice Committee is asking the CMHDA Governing Board to ask DMH to extend the time for comments on issue resolution to July 31. The extension would allow the Social Justice Committee to work with other stakeholders and counties to develop principles for both the county and State issue resolution processes. The extension would also provide an additional three months for DMH to hear directly more perspectives from stakeholders. The CMHDA Social Justice Advisory Committee, whether or not the deadline is extended, is committed to develop principles for local issue resolution and to ensure that these are aligned with the statewide process. [Note: the CMHDA Governing Board voted on 5/14 to support the recommendation of its Social Justice Committee.]
- OAC could recommend that the DMH keep the issue resolution process open until July 31, 2009 to allow more deliberations with stakeholders on State and local processes. Currently there are not minimum standards or principles for local processes. Since the proposed statewide process first step is to see if the local process was followed, the State process is premature without more developed local approaches.
- OAC should ask for as much time as it needs to give input to the issue resolution process. "OAC shouldn't be worried about the deadline for public comment. You're not the public. You're the OAC."
- The work of the CFLC and other OAC committees doesn't necessarily filter down to local levels. OAC can play a major role in driving a common vision for MHSA. Shared grievance and issue resolution needs to be part of that. There needs to be integration of these issues.

- There should be input about the issue resolution process from stakeholders who are not aligned with any organization.
- CFLC ought to take a very strong role. It would be very helpful for CFLC to recommend how to get more effective client and family member voice at local and statewide levels.
- The perception exists that issue resolution is what OAC is supposed to do. How do we make sure that the OAC stays an independent body? We need an ombudsman.

Public Comment: DMH Statewide Issue Resolution Process

- The statement that the local process must first be exhausted before statewide process can be initiated needs to be re-written. Anonymity is impossible in a local grievance process. Retaliation is an ever-present threat when consumers bring forward an issue. A State-level process can't be a closed loop where the person complaining must go from county to State with the expectation that the State will resolve it. There needs to be an independent State office that can receive and investigate State-level complaints.
- If issue filer has exhausted local issue resolution process, a third party independent entity should be funded to deal with MHSA issues on a State level.
- The proposed issue resolution process is more applicable to planning than to services. There might be a need in MHSA for a specific service grievance.
- Resolution of issues should include submission to leaders of the Legislature to increase transparency.

Public Comment: General (State and Local) Resolution Process

- If the issue resolution process is really impartial, the dam will burst. You cannot imagine how many grievances there will be. This body needs to be well staffed and well funded.
- The issue is for OAC to drive everyone to live up to some of the key issues of MHSA, including community engagement. The proposed issue resolution process is more focused on compliance than on quality improvement. Do we need to assess whether services fit MHSA requirements? Examples include MHSA jobs not going to clients and family members or Full-Service Partnership housing in Board and Cares. These might be examples of violations of the letter or spirit of the MHSA.
- There should be State and local processes with formal and informal components.
- The public needs easy access to user-friendly information to support their ability to file a grievance, including anonymously. People need to be able to get the information they need easily, clearly, obviously, and anonymously.
- Issue filers should be able to designate an advocate to represent them. This advocate can be affiliated with an organization or unaffiliated.
- The issue filer should be able to submit the issue electronically, in writing or in person.

- There should be strong anti-harassment protection. Anti-retaliation policies need to include a way to respond to actions that are alleged by the filer to have been taken in retaliation for filing a complaint.
- Issue resolution decisions should cite specific statutes.

Public Comment: Local Issue Resolution Processes

- Local resolution process should offer a review by an impartial body, outside any local or statewide mental health agency. An issue submitted to MHSOAC, DMH or CMHPC should be referred to the local impartial body, which will provide access to advocacy and, when requested, to anonymity. Issue filer can appeal local decision to the State level of issue resolution.
- Local issue resolution should not necessarily be assigned to the local mental health boards and commissions or to the public health systems. There should be a neutral third party, independent of the board and systems, to address issues. Not all local mental health boards and commissions are created equal. Nor do they have the power behind them. There need to be conversations with CMHPC about this issue.
- Local issue resolution needs to be expedient and effective.
- Counties often pick consumers they want to work with because they know who will support their ideas. Every county should have consumer organizations appoint someone to represent them.