

Nevada's Strategic Plan for People with Disabilities

Annual Report

July 2005

Introduction

The past few years have been a time of significant systemic change for Nevada's disability services. In response to an important U.S. Supreme Court decision in 1999, Nevada responded with an excellent Strategic Plan for People with Disabilities. Since being endorsed by the Governor and the Nevada Legislature in 2003, implementation of the plan has progressed nicely.

Considering that the plan covers a 10-year period, beginning in July 2003, there is much work still to be done to implement the objectives of the Strategic Plan. But, a great deal has already been accomplished and Nevada is fortunate to have a governor, a legislature and a disability services system that are committed to the process, and that share a vision of self-directed independence for Nevadans with disabilities.

The Strategic Plan Accountability Committee (SPAC) was created by executive order in 2003 to hold the State accountable for the implementation of the Strategic Plan. It has been a very active and engaged body and has done well to balance its accountability role with its desire to work cooperatively with all the State agencies involved. The SPAC is made up of eleven members from a diverse background of disability interests. The group meets on an as-needed basis, typically five times per year. The SPAC is staffed by the Office of Disability Services, but most meetings are also attended by representatives from the Division of Health Care Financing and Policy (Nevada Medicaid), Aging Services, Welfare, Vocational Rehabilitation, Child and Family Services, Mental Health and Developmental Services, Early Intervention and others.

Looking back on the past year, the SPAC is especially appreciative of the many legislators who championed the Strategic Plan, and of the Interim Legislative Committee on People with Disabilities, chaired by Senator Dina Titus, which has given the Plan a forum in which it can move forward. Good ideas only become real outcomes through the support of Nevada's lawmakers.

Year-Two Activities

A pattern seems to be developing, whereby the SPAC spends one year planning the Olmstead implementation process, and the next year pursuing implementation. Last year, this report outlined in detail several recommended actions for the Executive and Legislative branches of government. This year's report will primarily cover the outcomes of those recommendations and outline some of the salient issues to be explored in the coming months.

With the completion of the legislative session last month, the SPAC has taken an opportunity to review its implementation activities of the past year, most of which had successful conclusions. As mentioned above, a broad variety of State agencies continue to staff the committee; their involvement has been key to the successful outcomes.

The Department of Health and Human Services (DHHS) has again been able to secure federal funding to cover the cost of SPAC meetings during the coming year— some will be held in person and others by video-conference. On balance, the committee's work has been productive and cooperative. They have held partner agencies to a high standard while offering a great deal of support. Members of the committee have been very committed to the process and have spent significant personal time between meetings participating in topical work groups. SPAC meetings have also demanded a substantial time commitment as they have typically run five hours each.

Year-Two Plan Status

This report has been reviewed by members of the SPAC and is reflective of their view of Nevada's progress toward the objectives of the strategic plan. The SPAC closely coordinated its work this past year with the Legislative Interim Committee on People with Disabilities, chaired by Senator Titus. Members of the SPAC attended all of the legislative committee's meetings and provided extensive testimony in support of the legislative committee's deliberations. Ultimately, the SPAC provided 18 specific recommendations, each of which was approved by the legislative committee. Those recommendations follow, along with an update of their status:

Recommendation 1

Include a statement in the final report urging the Governor and the Legislature to support, throughout the budget process, sufficient state funding of community based services to make reasonable progress towards the elimination of waiting lists for persons with disabilities seeking services to support living in less restrictive environments and to avoid or delay unnecessary institutionalization, consistent with the Americans with Disabilities Act as interpreted and mandated by the U.S. Supreme Court's decision in *Olmstead v. L.C.* In 2003, the Legislature adopted Senate Concurrent Resolution No. 10 endorsing the implementation of the State Strategic Plan and urging the Governor and state agencies to take the appropriate steps to ensure that persons with disabilities are able to live in the least restrictive environment. The Committee wishes to emphasize the continued urgency of the issues addressed in SCR 10 and the importance of continuing to implement the State Strategic Plan in an expeditious manner.

The Governor's Budget Office agreed to create a budget decision unit specifically for Olmstead issues, to ensure programs that enable people with disabilities to live in the community, have waiting lists that move at a reasonable pace. As a result, funding was included in the Executive Budget, and approved by the legislature, to reduce to 90 days the waiting lists for Independent Living Services, Personal Assistance Services, and Traumatic Brain Injury Rehabilitation.

Recommendation 2

Include a statement in the final report urging the Governor to support the budget proposal for the Office of Disability Services (ODS), related to Personal Assistance Services (PAS). Since Nevada's PAS program was founded in 1985 it has grown in size by 2,000 percent, to over \$2,000,000 per year. Because it was initially a small program, ODS was able to absorb the cost of managing it. However, the program now employs nearly 100 caregivers around the State and requires a significant staff commitment to manage and monitor the very personal and vital services it provides. Therefore, ODS will be seeking \$68,000 to fund 0.95 full time equivalent (FTE) as minimal staffing for the PAS program. This funding would be distributed over six existing management, program, and fiscal positions.

Funding for this recommendation was included in the Executive Budget, and approved by the legislature.

Recommendation 3

Include a statement in the final report: (1) supporting the request of the State Medicaid Program and the recommendation of the Provider Rates Task Force, to increase the PAS rates from \$17 to \$18.50 per hour; and (2) urging the Governor to support a similar increase proposed by ODS related to provider rates for PAS services. In 2002, the Provider Rates Task Force recommended the rate for PAS services be increased to \$18.50 per hour. It is important that the State PAS program use the same rate. Currently, the State PAS program is providing 132,500 annual care hours at a rate of \$17 per hour. Thus, the estimated cost of this maintenance increase is \$198,750 per year. The Strategic Plan Accountability Committee is concerned that a portion of the rate increase may not be passed along to those individuals who actually provide the service.

Funding for this recommendation was included in the Executive Budget, and approved by the legislature.

Recommendation 4

Include a statement in the final report urging the Governor to support the budget proposal by ODS related to reducing the waiting list for the PAS programs. In accordance with subsection 2 of NRS 426.729, the Department of Human Resources (DHR) is required to include funding in its budget request for any increase in the number of cases handled by the State PAS programs, provided those individuals on the waiting list meet certain criteria for severity of need. The PAS program waiting list currently has 23 individuals who meet the criteria. In light of the judicial mandate of the *Olmstead* decision, and the Strategic Plan's objective to reduce waiting lists for services that divert people from institutional care, the PAS programs should be included as a maintenance request in the budget. Using a calculation of 23 people x 1,300 annual hours of care x \$18.50 per hour, the estimated cost of this maintenance increase is \$553,150 per year.

Funding for this recommendation was included in the Executive Budget, and approved by the legislature.

Recommendation 5

Include a statement in the final report urging the Governor to support the budget proposal by ODS relating to funding for the Advisory Committee on Personal Assistance for Persons with Severe Functional Disabilities. The provisions of NRS 426.731 call for the Advisory Committee to make recommendations to the State's three PAS programs. Funding for meetings has been provided through a federal systems change grant, but that grant will end in September 2004. The budget request will be for an enhancement appropriation to fund four meetings per year of the PAS Advisory Committee, at an annual cost of \$7,800.

Funding for this recommendation was included in the Executive Budget, and approved by the legislature.

Recommendation 6

Include a statement in the final report supporting the Department of Human Resources' proposal to amend the NRS to allow personal care tasks to be delegated by spouses, parents of minor children, and legal guardians. Currently, tasks can only be delegated by people with disabilities, themselves. This causes problems for Medicaid in offering self-directed services because, as the statutes are currently written, minor children and those who are dependent on others (spouses and guardians) for their decisions have no means under the law to self-direct their care.

This recommendation was implemented by the legislature through the passage of AB 126.

Recommendation 7

Include a statement in the final report urging the State Medicaid Program to seek funding to support contract services for making disability determinations for state purposes. Currently, the Welfare Division is dependent upon disability determinations made in conjunction with supplemental security income (SSI) eligibility determinations through the Department of Employment, Training and Rehabilitation (DETR). By providing funding for contract services to make disability determinations for state purposes, persons with terminal conditions and urgent medical conditions could receive expedited consideration and receive necessary services in a timely manner under criteria adopted by the State.

A budget enhancement decision unit was offered by the Medicaid agency, however, no success was achieved on this issue.

Recommendation 8

High Priority—Include a statement in the final report supporting the State Medicaid Program's budget request to add behavioral services to the Mental Retardation/Related Conditions waiver. An additional 150 service slots (above regular caseload growth) will be proposed and many are expected to benefit children with Autism. The current estimate of the budget impact is \$2,000,000 per year in State General Funds.

The agency received significant additional funding from the legislature, which will enable them to further serve individuals with Autism. However, no policy change was made to allow behavioral intervention services for those individuals. The agency has created a pilot project to demonstrate a service model for children with Autism in hopes that it might attract future funding.

Recommendation 9

High Priority—Include a statement in the final report supporting the budget request of the State Independent Living (SIL) Program to eliminate its four-year waiting list for home and vehicle modifications and other equipment. The one-time services provided by the SIL Program—such as ramps and wheelchair lifts—result in years of assistance to those in need. Approximately \$600,000 is needed annually over the next biennium (2006-2007) to eliminate the waiting list, with ongoing annual funding of approximately \$350,000.

Funding for this recommendation was included in the Executive Budget, and approved by the legislature.

Recommendation 10

Include a statement in the final report supporting the State Medicaid Program's proposal to extend the waiver of patient liability, in certain cases, from 60 days to 180 days. In connection with the Money Follows the Person (MFP) grant, allowing waivers of patient liability for persons entering a nursing home or other institution, on a temporary basis, has been identified as an important means of avoiding unnecessary institutionalization. Enabling patients to retain sufficient funds to support their existing living arrangements during their temporary institutionalization, ensures that such persons can avoid the loss of their home and belongings during their temporary stay. Absent a waiver of patient liability, such persons may remain in an institution unnecessarily rather than take on the burden of establishing a new residence. Initial analyses indicate that extensions of waivers of patient liability will be either budget-neutral or have a minimal fiscal impact that can be absorbed within existing budgets.

It has been determined that this is not an issue for Medicaid, but is an issue for the Counties, because they stand to lose the cost-sharing dollars paid by the individuals in question. Additional work will be needed to explore the implications for the Counties and to propose a possible structure for a patient liability waiver.

Recommendation 11

High Priority—Include a statement in the final report urging the incorporation of positive behavioral supports (PBSs) into programs that serve individuals with behavioral issues including Child and Family Services, Mental Health and Developmental Services, state and local education agencies, and Vocational Rehabilitation.

The PBS Nevada project has developed sub-committees to look at a number of issues, including the concerns outlined here. The SPAC plans to coordinate its efforts with PBS Nevada and the Executive Branch to move this issue forward.

Recommendation 12

High Priority—Include a statement in the final report supporting the monitoring and future consideration of adopting the proposed federal definition of eligibility for Early Intervention Services to ensure that at-risk children are eligible for services and to bring Nevada in line with other states. The current proposal for a new federal definition would grant eligibility to a child that exhibits a minimum 35 percent delay in one area or 25 percent in any two areas. Currently, eligibility in Nevada requires a minimum 50 percent delay in one area or 25 percent in any two areas. Upon reauthorization of the Individuals with Disabilities in Education Act (IDEA) by the United States Congress, the Interagency Coordinating Council (ICC) in Nevada is urged to review and consider adoption of the federal definition in Nevada.

The State Interagency Coordinating Council endorsed this recommendation, pending a change in the federal definition. However, the reauthorization of the federal Individuals with Disabilities Education Act did not include a new definition for Early Intervention.

Recommendation 13

Include a statement in the final report urging the Governor to support the budget proposals by ODS relating to traumatic brain injury. Historically, ODS has not been funded to manage the State's post-acute Traumatic Brain Injury (TBI) rehabilitation program, although ODS' fiscal responsibility for the program is significant. Its program reviews are a key component in the continuing national accreditation of program facilities. The ODS is seeking 0.50 FTE as minimal staffing for the TBI program. This funding would be distributed over three management, program, and fiscal positions at an estimated annual cost of \$28,000.

Funding for this recommendation was included in the Executive Budget, and approved by the legislature.

Recommendation 14

Include a statement in the final report supporting the State Medicaid Program's review and consideration of a request to amend its disability waiver to include residential rehabilitation and behavioral adult day care for individuals with TBI. These measures are vital to Nevada's mandate under the *Olmstead* decision. Residential rehabilitation will open the door for individuals with severe behavioral issues to be moved from out of state, back to Nevada, and for others to remain in state. Behavioral adult day care will provide daytime support to families who are caring for family members with TBI; similar services are already provided to seniors and those with mental retardation under other Medicaid waivers. The fiscal impact of this proposal is currently being studied and may be significant. Nevertheless, the importance of providing these services is great and efforts to implement such services should be supported and pursued.

This recommendation was proposed in the agency budget, however it was not included in the Executive Budget, nor funded by the legislature.

Recommendation 15

Include a statement in the final report supporting an enhancement appropriation of \$804,000 for each year of the biennium in the DHR budget to fund an additional 63 unserved indigent individuals. Current funding for TBI services has been targeted to helping those individuals deemed “indigent,” or lacking other resources to fund their rehabilitation. In all cases, these individuals have no other service option, outside the State’s TBI program. State funding for this care has not been increased in over a decade. Because TBI rehabilitation is a one-time service that yields lifetime benefits, it is an investment that yields a net savings to society. Currently, it is projected that 63 individuals—who are defined as indigent and having significant rehabilitation potential—will need TBI services during each year of the biennium. It is further estimated that their rehabilitation will cost \$17,000 per person, on average. Current funding for the program is \$267,000 annually, leaving an annual deficit of \$804,000.

Funding for this recommendation was included in the Executive Budget, and approved by the legislature.

Recommendation 16

Amend the NRS to permit members of the Advisory Committee on TBI to receive a per diem allowance and travel expenses as the budget of the Advisory Committee permits without limitations on the source of funding. Chapter 426A of the NRS calls for an Advisory Committee on TBI to meet and serve in an advisory capacity. This Advisory Committee has not met in several years to the detriment of TBI services.

This recommendation was implemented by the legislature through the passage of SB 187.

Recommendation 17

Draft legislation to allow the existing telecommunications relay surcharge monies, as authorized by NRS 426.295, to be used to fund a portion of the cost for 2-1-1 services. Since the 2-1-1 program has obtained funding for a statewide coordinator and development of a business plan, the 2-1-1 program will soon be able to propose a specific implementation budget to the DHR. The DHR would then request the Public Utilities Commission of Nevada (PUCN) to approve an appropriate level of funding for 2-1-1 from the surcharge monies. The surcharge rate has been 8 cents per line, per month, charged to every phone line and wireless line in Nevada. Currently, the surcharge is used to fund social service programs including Relay Nevada, the Deaf Resource Centers, and the Telecommunications Equipment Distribution Program. The surcharge account has a substantial surplus balance of over \$1 million. As a result, the PUCN is considering reducing the surcharge rate to 3 cents. Each 1-cent of surcharge is estimated to produce \$240,000 in annual revenues.

This recommendation was defeated in the legislature. However, a separate measure passed, calling for the establishment of Nevada's 2-1-1 system and appropriating \$200,000 for that purpose.

Recommendation 18

Include a statement in the final report directing the Nevada Department of Education (NDE), DETR, and DHR, to form a cross-agency independent advisory board that would also report to the Legislature and the Governor, to oversee the transition of high school students with disabilities to ensure positive post school outcomes. The advisory board should consist of representatives from DHR, DETR, NDE, school districts (including Clark, Washoe, and one rural school district), advocacy organizations (Parents Encouraging Parents [PEP] and Nevada Disability Advocacy and Law Center), parents, students, former students, and service providers.

The advisory board should: (1) oversee the implementation of all transition-related objectives in the Strategic Plan for People with Disabilities; (2) have oversight responsibility for the following (and possibly other) measures by DETR; (3) provide accurate, statewide data regarding transition-age individuals using DETR services; (4) maintain up-to-date interagency agreements with community colleges, state universities, and local school districts, and ensure that those agreements are being implemented; and (5) examine and report on strategies needed to increase the number of transition-age individuals receiving DETR services.

The advisory board should also oversee and ensure that NDE and Nevada's school districts: (1) develop written transition plans for every Nevada student with a disability, at least two years prior to graduation; (2) provide accurate, statewide data regarding transition-age students and the status of their transition plans; (3) track and report data on post-graduation outcomes for transition students; (4) monitor the implementation of inter-local agreements between school districts and DETR; and (5) oversee the coordination of community systems of transition services, including post-secondary education and training institutions, community education programs, workforce investment programs, and community-based agency providers.

This recommendation was implemented by the legislature through the passage of SB 22.

Year-Three Planned Activities

The committee held its first meeting of the new state fiscal year on July 22nd. At that meeting, they decided to take a new approach to tracking and moving forward on Strategic Plan objectives. After two years of activity, that has seen seven objectives completed and significant progress on several others, the committee perceived that some initiatives were being followed closer, at the expense of others.

In response, the committee will endeavor to assign every remaining objective to one person on the SPAC who will be responsible for at least tracking the objective, and possibly for working toward its implementation. It is anticipated that each committee member will be tracking 8-10 objectives. In advance of each SPAC meeting, the

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members will be asked to identify which of their objectives are in need of current discussion or action. With this approach, SPAC meeting time will be more productive and should yield greater success.

In addition, the SPAC is surveying other policy bodies in the state to identify those that might, knowingly or not, be working toward the same outcomes as the SPAC on certain issues. For example, there is a new advisory board on school-to-adult transition. Rather than duplicating the efforts of that board, the SPAC will identify which of the strategic plan objectives relate to transition, will identify the transition board as subject-matter experts on those objectives, and will coordinate efforts with the transition board to see the objectives through to implementation.

This process might involve a SPAC member attending the other body's meetings, or vice versa. At the least, it will involve some form of ongoing communication. It will also be an effective way to have the SPAC indirectly delegate its work to bodies that have greater knowledge and resources related to specific issues.

Over the coming months, the SPAC will work to identify objectives that are readily achievable or urgently needed, and will outline a plan to move those objectives forward. As the Legislative Committee on People with Disabilities begins its interim meeting schedule, members of the SPAC and staff of the Office of Disability Services will report on 2005 outcomes and assist in planning for 2007 initiatives.