Report of Findings and Recommendations for the Office of Health Care Quality Regarding the Developmental Disabilities Survey Process

November 15, 2007

Introduction

Pursuant to Blanket Purchase Order #M00B7200571, this report is provided by Tony Records and Associates, Inc. (TRA, hereinafter referred to as Contractor) to the Director of the Office of Health Care Quality (OHCQ). The Contractor is required to submit a report with recommendations to address the efficiency and effectiveness of the process for surveying licensed community services for people with developmental disabilities. As of the date of this report, all activities in the review of the survey process have been completed.

This review was conducted solely by Tony Records, President of TRA. Mr. Records has more than 33 years of experience in services for people with developmental disabilities. He has reviewed services for people with disabilities in twenty-two different states.

This report includes a description of activities of the Contractor, acknowledgements, findings and recommendations.

The Contactor engaged in the following activities:

1. Participated in initial meetings with OHCQ Director and other key staff to clarify tasks, establish liaisons and develop work schedule.
2. Reviewed survey documents, regulations, manuals and protocols used by OHCQ for surveys.
3. Interviewed five surveyors to determine how surveys and investigations are conducted.
4. Participated in two additional meetings with OHCQ staff to discuss survey process and possible recommendations.
5. Accompanied three OHCQ surveyors to observe survey process and protocol.
6. Conducted research on the feasibility of "deeming" process utilizing national accreditation bodies.
7. Reviewed possible sampling methodologies for provider surveys.

Acknowledgements

Throughout the review process, OHCQ staff have been fully cooperative, forthcoming and accommodating with the Contractor. All information requested by the Contractor has been provided on a timely basis. The Contractor would like to particularly acknowledge the Program Manager of the Developmental Disabilities Unit for her assistance in coordination efforts, scheduling of meetings and provision of necessary documents.

Without exception, the OHCQ surveyors, investigators and management staff that were interviewed and observed by the Contractor demonstrated a high degree of competence, commitment, knowledge and professionalism in performing their respective functions and duties. In almost every instance of the Contractor's observations in the field, OHCQ staff were working extra hours and taking the additional time to ensure thoroughness in their reports and findings. Suggestions and recommendations in this report are designed to enhance OHCQ's productivity and effectiveness. Many of the OHCQ staff also contributed valuable suggestions that are incorporated as part of this report.

Findings and Recommendations

Finding #1: ***Staffing resources needed to conduct surveys and investigations in accordance with state and federal law and regulations are significantly inadequate.***

Although there are numerous findings and recommendations listed below, there is a single overarching concern that affects the survey process more than any of the others. Simply put, there are far too few surveyors. As of the time of this evaluation, there were 11.5 FTE community licensure surveyors (2 unfilled positions), 7 FTE incident investigators and 3 mortality review investigators.

Over the past ten years, from 1996 to 2006, the number of people with developmental disabilities in Maryland receiving Medicaid-funded out-of-home community residential support increased from 3,848 to 6,373 or more than 65%[1]. There has also been a continuous growth of state funded non-Medicaid services. The entirety of this growth has occurred in community-based services. The number of small homes serving one, two or three people has been the highest area of growth in residential services.

During this same ten year period of continuous growth of people with developmental disabilities being served, the number of surveyors of community services has hardly increased at all. In addition, during this period of time, the standards for community services as well as the survey processes have become increasingly complex. As a result, there is currently a significant ongoing backlog of licensing surveys, incident investigations and mortality reviews. While there are some recommendations below that may streamline the survey process to some extent, this will not be nearly enough. More resources are needed.

Recommendation #1: ***OHCQ should request at least 20 additional survey staff and five (5) additional administrative staff.***

There should be a total of at least 25 FTE licensure surveyors, 10 FTE incident investigators and 5 FTE mortality investigators to ensure that OHCQ complies with current Maryland statutes and regulations. In addition, there are many tasks that surveyors undertake (such as data entry, scheduling and document preparation) that could be performed by administrative staff. Each survey team should have sufficient administrative support to ensure timely report production and dissemination and administrative preparation for upcoming surveys and investigations.

[1] August 2007, Residential Services for Persons with Developmental Disabilities, University of Minnesota

Annual licensing surveys are complex and lengthy processes. For a large community services provider for example, an annual survey can take as many as seventy-five surveyor days. Even for a moderate size community provider serving approximately 50 people in residential and day services, as many as 18 surveyor days are needed from start to finish of the survey process. As stated above, the number of small homes for people with developmental disabilities continues to expand. In some instances, the traditionally larger five and six-person homes are converting to two smaller settings. While this conversion is generally considered a very positive development for the overall quality of individual services, it also translates to additional residential settings that require on-site reviews by surveyors. On a parallel with the workload for licensing surveyors, the growth in community services has a similar impact on the workload of the incident investigators and mortality investigators.

Over the past year, the communication between OHCQ management and the provider community has been greatly enhanced. One function that should be expanded by OHCQ, however, is provider technical assistance. Interviews with providers revealed that there is much clarification needed on the interpretation of licensing and investigation requirements. This lack of clarity often leads to unnecessary deficiencies in licensing reviews and investigation protocols that result in developing and reviewing plans of corrections. Plans of corrections require a significant amount of time and energy for service providers and surveyors alike. Ongoing technical assistance sessions between OHCQ surveyors, DDA and community services providers could alleviate many unnecessary deficiencies and, consequently, improve the overall quality of the service delivery system. Currently, the workload of surveyors is far too burdensome to allow for ongoing technical assistance communication between OHCQ surveyors and community service providers. The addition of more surveyors as recommended above would allow for the technical assistance function of OHCQ to be further developed.

Finding #2: - ***The data and information systems used by surveyors are cumbersome, inefficient and often not operational.***

Currently, there is no single system of collecting, sharing and utilizing data for people with developmental disabilities in Maryland. As a result, there are multiple systems in place that have severe limitations and are minimally effective. There is a consistent theme communicated by surveyors – a new data system is needed. Anecdotally, when one surveyor was asked about the data system, she responded by asking "What data system?" It was reported to the Contractor repeatedly by surveyors that the current ASPEN system is often not operational and/or slow. The current system also requires the re-entry of much demographic data already in other systems. In many instances, surveyors needed to contact DDA or community service providers directly to verify the site locations or the names of the individuals who live there. It is clear that real-time, accurate information is necessary to support the various survey functions of OHCQ. Also, the current system is not amenable to electronically downloading or transferring information in order to be incorporated into survey reports. There are also other less significant deficiencies in the current system, such as a lack of spell-check, requiring surveyors to take additional time in editing reported information.

Recommendation #2: ***The current data and information system should be replaced with a real-time, server-based system that has interface capabilities with the DDA system.***

Of all of the needs expressed by the surveyors and investigators, the need most repeated was a single data system that can be used in conjunction with DDA data. Although the Contractor did not have the ability to conduct a surveyor time/effort evaluation, it was quite clear that accessing current information and re-entering demographic information is a major time-waster in their typical workday. A comprehensive information system that

interfaces with DDA could also assist DDA in maintaining information from OHCQ that could be used to support program related decisions. For example, if DDA was negotiating with a community services provider to expand or provide a new service, they would have current information immediately available related to the quality and performance of that particular provider.

An additional but related recommendation is for surveyors and investigators to be provided with available technology assistance to increase efficiency and productivity. For example, global positioning system (GPS) devices and PC wireless internet cards are now available at a reasonable cost. These devices would assist surveyors a great deal as they are constantly traveling statewide and the benefit of being able to locate new sites as well as the capability to connect to the internet while on site location far outweighs the relatively small cost.

Finding #3 – *The operational components of th licensure survey processes and instruments are cumbersome and require redundant steps by surveyors.*

While the Consultant fully appreciates the thoroughness in which licensure surveys are conducted, too much time and effort is devoted to excess document review and re-review. Surveys of even moderate size community providers often take weeks of time by survey teams and more than a month for large providers. Much of this time is spent verifying documentation, reviewing staff training and personnel records and entering and re-entering the same demographic and identifier information. Notes are often hand-written and transcribed at a later date. In some instances, documents are reviewed merely for their existence with no review of content or quality. As stated earlier, surveys of a single provider can consume up to seventy surveyor days. This task can be shortened with some reasonable changes in methodologies and sampling techniques.

Recommendation #3: ***The licensure survey process should be significantly revised and streamlined to allow for preliminary self-evaluation, revised sampling techniques and document certification.***

Most of the on-site time by surveyors should be spent interviewing individuals with disabilities and staff, observing services and supports and reviewing relevant program documents. Currently, much of the time is spent reviewing documents and verifying the existence of provider records. For example, a large amount of time is spent reviewing staff training records. This process alone could be greatly reduced by the implementation a provider certification process confirming that specific training requirements have been completed. In some instances, OHCQ may choose to verify the certification through a sampling methodology, but would not need to conduct a comprehensive review of every training record.

Another consideration would be to reduce the sampling size of individuals who receive a comprehensive review. Using staff training documentation as an example once again, it is perfectly reasonable to conduct a much smaller portion of the individuals already in the survey sample to confirm whether the provider complies with staff training requirements.

A third consideration is requiring providers to conduct their own self evaluation just prior to the anniversary of their last annual survey. The self evaluation protocol could be similar to the process used by OHCQ. When OHCQ conducts its annual survey, the documentation from the self-evaluation would be reviewed. Based on the review of the self evaluation, the OHCQ surveyor would determine whether further evaluation is necessary for each specific survey area. For example, if the provider provides comprehensive documentation that is incompliance with medication administration certification, OHCQ may decide not to conduct a comprehensive review of the same material.

Finding #4: ***OHCQ conducts numerous on-site death investigations that are not necessary, thus utilizing staff and resources that can be used elsewhere.***

Except for the timeline requirements of the investigation, the protocol for death investigations is the same, regardless of the circumstances surrounding the death. For example, all deaths of individuals funded through DDA require on-site investigations, with no exceptions. This includes expected deaths of people who had long-term or terminal illnesses as well as those who were receiving in-home hospice services and/or palliative care.

A single death investigation takes, on average, three surveyor days and can take as many as five surveyor days. As the average age of individuals served in the community by DDA continues to rise, the number of deaths by natural causes or long-term illness is expected to rise accordingly. Although some recommendations emanating from investigations of long-term illnesses may be useful, the Contractor believes that this time could be better spent reviewing unexpected deaths, evaluating trends and systemic issues associated with unexpected deaths[2] and making recommendations for systemic change.

Recommendation #4: - ***OHCQ should revise its protocol for expected, natural deaths due to documented illnesses and medical conditions.***

On-site investigations should not be necessary for all death investigations. In many instances, there is sufficient documentation to verify the relevant information necessary to reach conclusions surrounding a death. In addition, there is always an investigation conducted by the residential provider upon an individual's death. In these circumstances, the OHCQ investigator spends valuable time simply verifying that the information incorporated in the residential provider's report is accurate and complete. It would be

[2] In some instances of deaths, such as those that are suspected homicide, suicide or abuse and neglect, an investigation is also conducted by the police or other law enforcement agencies.

prudent and wise, therefore, for OHCQ to establish a modified protocol for deaths of documented natural causes.

Finding #5 – ***All providers, regardless of their track record of previous reviews, spend an inordinate amount of time and resources during the survey process.***

The most amount of time spent conducting quality reviews should be devoted to provider agencies that continue to struggle meeting or maintaining licensing standards. Currently, many acknowledged high quality providers, those whose previous reviews by OHCQ revealed minimal or no deficiencies, spent weeks or months with OHCQ demonstrating that which has already been demonstrated. There is no reward for high performance. Conversely, it is critical for OHCQ to have the ability to conduct more comprehensive reviews, repeated unannounced visits and plan of correction follow-up for providers that had multiple or serious deficiencies in previous surveys.

An important ingredient of any quality enhancement system is its ability to recognize where quality is compromised and devoting proportionate resources to that particular area. In the current structure, all licensees are treated the same. While this approach on the surface may appear to be equitable, it fails to place all too limited resources where they are needed.

Below is a list of options for consideration by OHCQ that can be applied in circumstances where community service providers have an established track record. If one or more of these options are implemented, important resources can be used where they are needed and the overall credibility of the survey process can be enhanced.

The contractor is fully aware that some of these options may require regulatory or statutory changes.

Recommendation #5 – *OHCQ should consider actions to provide relief to providers with minimal or no deficiencies to include:*

- ✓ ***Multiple-year licensing for licensees that consistently receive minimal or no deficiencies on licensing review;***

Due to the current backlog of annual licensing surveys, multiple year surveys are, in effect, happening already. Some annual licensing surveys have been more than a year late. For those community service providers that have consistently demonstrated high quality marks through either no deficiencies or minimal deficiencies that do not affect the health and safety of those they serve, two or three year surveys should be considered. Multiple year surveys would allow OHCQ to place their efforts where it is needed – for those providers who are unable to achieve substantial compliance with licensing standards.

- ✓ ***Less intensive licensure reviews for providers that consistently receive minimal or no deficiencies on licensing reviews;***

Another consideration for those providers who consistently demonstrate minimal or no deficiencies would be a modified annual review that does not include the detailed comprehensive approach currently applied for all licensing reviews. A less intensive review may include, for example, a smaller sampling size, provider documentation compliance certifications (see Recommendation #3), provider self evaluations and streamlined review of individual records. In the process of a less intensive licensure review, OHCQ, of course, would determine that there is a need for a fully comprehensive review and exercise that option. Another alternative would be that OHCQ limit its comprehensive review to the area(s) where the provider had documented deficiencies in the past.

- ✓ ***Modified investigation process for providers that demonstrate a proven track record in consistently in conducting internal investigations;***

OHCQ also struggles continuously with conducting timely investigations of allegations of neglect and abuse. Although the triage process for investigations has helped focus investigations in the areas where they are needed the most, there remains to be a significant backlog in the timely investigations of allegations of abuse, neglect and exploitation.

Maryland regulations require licensed providers to conduct their own internal investigations of specific reportable incidents. In many instances, providers conduct comprehensive investigations, taking steps and actions even further than are required by regulations. OHCQ reviews these internal investigations and part of their protocol for independent investigations. In numerous instances, OHCQ interviews the same individuals who are connected to the incident, invariably with the same results. For those providers that have a proven track record of conducting comprehensive investigations, OHCQ should have the discretion to reasonably modify its investigatory approach accordingly. Once again, this places the emphasis where it needs to be – on those providers who do not conduct quality investigations of allegations of possible abuse or neglect.

- ✓ ***Recommendations to the legislature allowing for "deeming" of licensure if the provider achieves full accreditation by the Council on Quality and Leadership.***

Given the limited amount of resources and the need for emphasis on continuous quality, it is important to consider alternatives that can assist Maryland community services in maintaining quality services and supports that are demonstrating current best practices. The *Personal Outcome Measures* (2002) developed by *The Council on Quality and Leadership in Supports for People with Disabilities* (Council) are nationally considered

to be a high standard of quality for people with developmental disabilities, incorporating best practices in the field. These outcome measures focus on primary themes of Leadership, Systems and Quality Management and Planning. These outcome measures also include strict accountability in the areas of health and safety as well as fiscal and legal accountability. The Council's outcome measures are also are wholly consistent with the recently enacted Home and Community Based Quality Framework developed by the Centers for Medicare and Medicaid Services (CMS).

There are at least six other states that permit community service providers to meet licensure standards if they achieve full accreditation by the Council. The Council is located in Towson, Maryland. Maryland should consider legislation that enables providers to utilize accreditation by the Council in lieu of annual licensing reviews. There are other nationally recognized accreditation organizations that have developed standards for services for people with developmental disabilities. At this time however, until further research is conducted, the Contractor is only recommending the Council accreditation to be considered for deeming status.

Finding #6 – *DDA does not play a major active role in ensuring quality of community services.*

DDA is the state's program expert regarding community services and supports for people with developmental disabilities. Regulations require DDA, through Service Coordination, to "Monitor and act as third party advocate for implementation of the Individual Plan (IP)."[3] It is important for OHCQ to clarify how Service Coordination Monitors implementation of the IP, how this monitoring information is documented and how it can be used in the survey process.

[3] COMAR, 1022.09.04, (E.) Functions of the resource Coordination Licensee

It is important to clarify that DDA does have a small office of quality assurance that does review and approve provider quality assurance plans, among other general quality assurance activities. This office does not have the resources, however, to evaluate the implementation or effectiveness of the quality assurance plans. In addition, DDA does not directly review program services through ongoing monitoring efforts.

Recommendation #6 – ***DDA, through Service Coordination and its office on quality assurance should assume an increased collaborative role in evaluating the quality of development and implementation of individual plans and implementation of quality assurance plans.***

Part of the licensure survey process is, through interviews, observation and record reviews to evaluate implementation of the IP. Similarly, DDA, through Service Coordination is required by regulation to monitor implementation of the IP. OHCQ also reviews the Quality Assurance Plans require by regulations.[4] DDA, through its office of Quality Assurance, reviews and approves these plans. Collaboration of these efforts should result in a more meaningful approach to quality review. This is also an area where OHCQ and DDA could provide increased technical assistance as described in Recommendation #1 above.

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[4] COMAR, 1022, 02.14, (A), Quality Assurance