

## **Agenda Item Number 10.A.**

### **Senior & Disabled Services Legislative Priorities for 2005**

**Presenter:** Ted Stevens

**Action Recommended:** Approve Legislative Priorities and Authorize Staff and Advisory Councils to Advocate on Behalf of Them

**Issue Summary:**

- One of Senior & Disabled Services (S&DS) responsibilities as the Area Agency on Aging and Disability Services for Lane County is to serve as an advocate for those we serve. To this end, S&DS, with the help of the members of its Senior Services and Disability Services Advisory Councils, strives to develop and maintain positive relationships with the elected officials who represent Lane County in the State Legislature. It also endeavors to inform and educate members of the State Legislature about the needs and concerns of seniors and people with disabilities.
- To facilitate this work, every even-numbered year S&DS develops a set of priorities for the upcoming legislative session which convenes in January of the odd-numbered year. With the general election less than two months away, it is timely that the identification of the organization's priorities for the 2005 Session of the Legislature occur.
- The recommended priorities contained in this document are endorsed by LCOG's Senior Services and Disability Services Advisory Councils. They were favorably reviewed by the LCOG Board's Executive Committee at its meeting on September 17, 2004.
- The recommended priorities contain few surprises. Several have been on LCOG's list of priorities during prior legislative sessions. The others are directed at enhancing the provision of services currently

available to seniors and people with disabilities in Lane County. The eight proposed priorities are set forth in summary form here. A brief explanation of each issue is attached.

- ❖ Restore funding for needed long term care services (Medicaid Levels 14-17, and full restoration of the biennial appropriation for Oregon Project Independence).
- ❖ Restore funds for health care (OHP Standard) and prescription drugs (Medically Needy Program).
- ❖ Adequately staff Adult Protective Services (APS).
- ❖ Expand funding for special transportation services.
- ❖ Create an ombudsman for users of managed health care services.
- ❖ Keep the promise – fund “equity” for Area Agencies on Aging and Disability Services.
- ❖ Revise one-sided DHS contracts with local governments for the provision of human services.
- ❖ Adequately fund counties’ services to assist military veterans obtain federal veterans benefits.

**Recommended Action:**

That the LCOG Board of Directors approve the recommended legislative priorities for Senior & Disabled Services for 2005, and authorize staff and members of the organization’s Senior Services and Disability Services Advisory Councils to advocate on their behalf with legislative candidates, legislators, and others, as appropriate.

Attachments

## Restore Needed Long Term Care Services

The rejection of Ballot Measure 28 by Oregon voters triggered significant cuts to long term care services for Oregon's seniors and people with disabilities. Between February 1 and April 1, 2003, 728 Lane County residents lost Medicaid-funded long term care services. They were assessed at Service Priority Levels 12-17 on Oregon's long term care assessment scale and, as such, were the least impaired of Senior & Disabled Services' Medicaid-funded 2,900 long term care clients. Notwithstanding this fact, it should be noted that they required assistance with daily living tasks, including, bathing, dressing, mobility, eating and elimination. On May 1, 2003, an additional 90 lost in-home services funded by Oregon Project Independence (OPI). In sum, through the combination of these cuts, approximately 27% of the seniors and people with disabilities who were receiving publicly-financed long term care services from Senior & Disabled Services at the end of January 2003, lost their services by May 1, 2003.

Members of S&DS' citizens Advisory Councils wanted to learn what happened to these people. To answer this question, they asked the Councils' Long Term Care Committee to contact a sample of individuals who lost services. A telephone survey was conducted in late summer 2003. Of the 60 individuals contacted, 42 agreed to participate. Highlights of the survey's findings include:

- 38% of respondents were unable to find another means of having their care needs met;
- 19% had to move from their home or apartment to a senior residence or care facility;
- 88% lost public help paying for needed prescription drugs;
- 48% stated that their health had declined, with fully 60% of those stating that they were either depressed or suffering from anxiety; and
- 19% reported that they had been to the doctor or hospital more frequently than prior to the loss of service.

Fortunately, in early April 2004, the Legislative Emergency Board approved the restoration of services to clients assessed at Levels 12 and 13, and appropriated an extra \$1 million for additional OPI services, statewide. While these steps help, the vast majority of people who lost long term care services last year continue to do without. In Lane County, it is estimated that 540 former long term care clients will not be helped by these E-Board actions, including Medicaid long term care clients assessed at Levels 14-17, and OPI clients assessed at Levels 16 and 17. Therefore, the restoration by the 2005 Legislature of services to these individuals, and their counterparts in other counties, is a priority for local senior and disability advocates.

## Restore Funds for Health Care and Prescription Drugs

Voters' rejection of Ballot Measure 28 triggered significant cuts in health services for poor Oregonians. For senior citizens and adults with disabilities living in Lane County, the losses were as follows: 718 lost prescription drug coverage through the Medically Needy program when this program was eliminated on February 1, 2003; and an additional 728 lost medical benefits, including prescription drug coverage, when they were cut off of Medicaid-funded long term care services in February and April 2003. Also, given the recent defeat of Measure 30, the Oregon Health Plan (OHP) Standard Benefit Plan is now closed to new clients and one-half of those who are being helped today will lose benefits by June 2005.

What happens when seniors and people with disabilities lose medical and prescription drug benefits? Given the experience of the past year, answers to this question are now readily available. Some people turn to family and friends for assistance. Some seek charitable help from assistance programs sponsored by pharmaceutical manufacturers. Some seek services from free and low cost health clinics. Some choose to spend their scarce resources on medical care and prescription drugs, with the result that they become homeless for failure to pay their housing costs. And, finally, some stop seeking medical care and stop taking medications, with the result that they get sicker and either die or end up in a hospital emergency room (the cost of which, ultimately, is passed along to other payers, like private insurance plans). If hospitalization is the outcome, upon discharge, they often end up back in Oregon's long term care system in much worse shape, requiring more intensive and expensive care than prior to their loss of benefits.

Is this the way for a society to treat its elders and those who are unable to care for themselves? Should they be forced to demean themselves by asking for charity from family, friends, and others? And, should they be forced to make untenable choices between spending scarce resources on food, housing, or medical care? Local advocates for both populations think not. As a result, the Legislature is urged to restore funding to both the Medically Needy Program and Oregon Health Plan Standard Plan services.

## Staffing for Adult Protective Services

In 1981, Oregon's Elder Abuse Law was enacted. Since then, the Adult Protective Services (APS) system has seen significant growth in the number of abuse investigations. Between 1994 and 2002, for example, the number of investigations completed annually by staff rose from 5,400 to 11,470. While this growth has caused and continues to cause challenges, there are other factors which make it difficult for APS workers to meet statutory obligations and provide quality interventions. They include significant increases in the complexity of the problems and needs of the people being served, and major changes in the program's administrative and statutory requirements (see below for details). These latter changes have occurred without commensurate increases in program staffing.

Oregon's home and community based long term care system has been highly successful in shifting the primary location for the delivery of service from nursing facilities to in-home and licensed community based settings (e.g., adult foster homes, assisted living facilities and residential care facilities). While this shift has saved the State's Treasury millions of dollars, over time, and has enhanced the levels of independence and self-determination of literally thousands of Oregonians, it has had two consequences which make the job of Oregon's protective services system more challenging: (1) there are many more people living in the community who need assistance from others with vital daily living tasks, and (2) the level of acuity of people being served in nursing homes is significantly higher than was the case 20 years ago. These changes have increased the risk factors for physical and emotional abuse in both community and nursing home care settings, as well as financial exploitation in community settings. Recent budget-driven reductions to health and long term care services have further contributed to the complexity of circumstances facing former and prospective DHS clients.

During the last two decades, the program's requirements have changed in the following ways:

- Mandatory reporting laws have been introduced;
- New criminal laws dealing with adult abuse have been enacted;
- The number of community-based facilities has increased significantly, leading to increased numbers of facility investigations;
- Program requirements for responding to abuse complaints have increased;
- Documentation and report-writing requirements are more demanding;
- Coordination and networking expectations, such as, the requirement for the development and maintenance of local multi-disciplinary teams, have

- grown;
- There is an increased emphasis on the screening and triage of complaints received (to assure a higher degree of consistence in service delivery statewide).

These changes, while positive for abuse victims and local communities, have introduced complexities which greatly affect the workloads for those employed in Oregon's Adult Protective Services system.

The State of Oregon has not looked at the staffing allocation standard for Adult Protective Services since 1989, when the current standard of one APS worker to 195 completed investigations was established. A Secretary of State's audit in 1996 revealed that field staff in DHS' Seniors and People with Disabilities Division and Area Agencies on Aging and Disabilities were experiencing significant difficulty meeting statutory obligations both for the timely response to abuse complaints and for the completion of protective service investigations. For the reasons cited above, the situation has only gotten worse since then. Fortunately, DHS is working to address this problem. For the 2005-07 State budget, it is proposing changes to the APS staffing standard, as follows: one worker to 96 facility investigations, and one worker to 120 community investigations. These changes deserve the support of the Governor and State Legislature.

## Funding for Special Transportation Services

In our highly mobile society, one's ability to travel from place to place is a key to personal independence. For those unable to drive or access public transit services due to illness, disability, or geographic isolation, the inability to get to and from services can result in the loss of independence, and may even force a move into a long term care facility.

Recognizing this fact, the Oregon Legislature appropriates funds for "special transportation" throughout the state. These services are often provided by public transit and private non-profit agencies, using lift-equipped mini-vans. Volunteers and taxi companies are also involved in service provision.

Today, the money appropriated by the Legislature on a biennial basis is not keeping up with the growing demand for services, nor is it keeping up with the rapidly rising cost of gasoline. As a result, a larger legislative appropriation for Special Transportation Fund (STF) services for the 2005-07 biennium is desired.

Oregon law divides STF funds between urban and rural areas, by formula. In urban areas, STF resources are often augmented by local transit districts. This is the case in Lane County; Lane Transit District uses payroll tax revenue to help underwrite the cost of special transportation services within its boundaries. Many rural areas, however, do not have sources of additional public support. As a result, rural operators are often forced to cap or curtail services as their operating costs increase. In addition, rural operators rarely have the funds to replace vehicles, once they reach the end of their useful lives.

For these reasons, the 2005 Legislature is urged to increase its appropriation for Special Transportation services by \$5 million, with special consideration being given to increased funding for rural areas.

## Need for Managed Care Ombudsperson

The current system for reviewing the decisions and policies of managed health care organizations (MCOs) has severe flaws, particularly as applied to persons on the Oregon Health Plan (OHP). There is need for an additional means of independent oversight of MCOs by an ombudsperson empowered to review and correct decisions made under the present appeal process concerning complaints about managed care.

In the early 1990s, Oregon obtained a waiver from the federal government to expand the reach of its Medicaid-funded medical assistance program to serve many more low income people. The Oregon Health Plan, as it is called, was implemented in 1993 and 1994. While highly successful in terms of extending health services to many people who were previously uninsured, it proved costly. To better control these costs, Oregon contracted with MCOs. Unfortunately, these contracts fail to provide for adequate oversight, control, or procedures for the correction of problems when they occur. Since at least 1999, some MCOs have not followed state rules on covered benefits and services. Patients and advocates have complained to DHS and the Governor's Advocacy Office. DHS has not compelled the MCOs to correct these problems. This results in:

- Patients not getting services or items (like pain medication, durable medical equipment, gloves) for which they qualify under Medicare and/or Medicaid.
- Retaliation against patients, advocates, vendors and others who file complaints with the MCO.
- Cost shifting as other public or private agencies, organizations, and even vendors, friends and family pay for desperately needed items.
- Unnecessary suffering, frustration, despair, humiliation, and dependence.

To correct these problems, it is recommended that the Legislature:

- Develop a community-based Managed Health Care Ombudsperson office with oversight duties and authority.
- Provide investigative processes for MCO abuse or neglect similar to Long-Term Care Ombudsman processes (i.e., protect complainant's anonymity, prevent retaliation, require thorough investigation of complaints, and impose fines and penalties -- including termination of the contract -- if warranted).
- Re-work MCO contract provisions to allow DHS to oversee MCO operations and take corrective actions.
- Require MCOs to make public their Board of Directors proceedings and payments to shareholders and employees, including any incentive bonuses.

## Keep the Promise – Fund Equity for Area Agencies

In keeping with the provisions of Oregon law (ORS 410), responsibility for the delivery of long term care, medical assistance, and financial assistance services to lower income seniors and people with disabilities is divided geographically between local governments (counties and councils of governments) and the Oregon Department of Human Services (DHS). Generally, clients residing in western Oregon are served by local government-operated Area Agencies on Aging and Disabilities (AAADs); those in other parts of the state are served by DHS.

Historically, DHS has funded its own field offices more generously than it has funded the AAADs. Today, the disparity in funding – a.k.a., “equity gap” – is approximately 15%. Since personnel and operating costs are substantially the same, regardless of which government runs an office, this means that customers of AAADs receive fewer services than customers of DHS-operated offices. Through the Oregon Association of Area Agencies on Aging and Disabilities (O4AD), the AAADs have worked to correct this inequity. After 15 years of effort, the Legislature passed HB 2288 in August 2003, and the Governor signed it into law on September 17, 2003. While not appropriating additional funds to AAADs for the 2003-05 biennium, HB 2288 establishes a mechanism for closing the equity gap over time. Specifically, it requires DHS to:

- Adopt by rule a methodology for determining its costs for operating these local government-operated offices (technically known as “Type B Area Agencies”);
- Determine annual budgets for these offices that are not less than 95% of DHS’ costs;
- Consider these budgets when making recommendations to the Governor on the funding for these offices in the upcoming biennium.

Since the close of the 2003 Legislative Session, DHS has worked cooperatively with the AAADs to develop the methodology called for in HB 2288. Once it is in rule, one question will remain, will DHS and, ultimately, the Governor include sufficient new funds in the 2005-07 Governor’s Recommended Budget to begin to close the equity gap? If not, the AAADs and O4AD will ask the 2005 Legislature for help correcting this situation.

For LCOG Senior & Disabled Services, the AAAD for Lane County, it is very important that the promise made by the enactment of HB 2288 be kept.

## Revise DHS Contracts with Local Governments

In accordance with federal and state laws, the Oregon Department of Human Services (DHS) is required to sub-divide the state into geographic regions and, once the regions are drawn, to designate one public or private non-profit agency in each region as the "Area Agency." This agency is required to create and maintain a comprehensive and coordinated service delivery system to meet the needs of older people and, in some parts of the state, for people with disabilities, as well. Lane Council of Governments is the designated Area Agency on Aging and Disability Services for this county. Within LCOG, operational responsibility for these services rests with Senior & Disabled Services (S&DS).

A little over a year ago, DHS changed dramatically the provisions of its contract with LCOG (and with other Area Agencies, as well). Previously, the contract was written from the perspective that DHS and LCOG were co-equals. This approach was, and continues to be consistent with the provisions of the enabling state law, ORS 410. Now, on advice from the Oregon Department of Justice, the contract has been rewritten to the benefit of DHS and the detriment of LCOG.

A comparison of the provision dealing with "misexpenditures" in the previous and current contracts will help to illustrate this point. The prior contract required LCOG to reimburse the State for costs disallowed by the federal government. However, LCOG was not required to make reimbursement when the disallowance resulted from its implementation of DHS rule or policy. The new contract is very different on this point. Not only does it require LCOG to reimburse the State for costs disallowed due to local errors, but it requires LCOG to pay any disallowance resulting from errors made by DHS in its development of policies and rules. In short, it shifts the responsibility and burden for State errors to LCOG, rather than holding LCOG harmless from them. Similarly one-sided language can be found in the indemnification and dispute resolution clauses of this new contract.

Negotiations on this matter involving the Governor's Office, the Attorney General, and local governments are under way. (In addition to Area Agency contracts, DHS has adopted the same approach in its contracts with counties for mental health, developmental disabilities, and public health services.) If these negotiations are not successful in restoring balance and appropriate risk-sharing between the State and local governments, help from the 2005 Legislature will be solicited.

## Adequately Fund Counties' Services to Assist Military Veterans Obtain Federal Veterans Benefits

Military veterans who meet eligibility criteria are entitled to receive health and long term care benefits from the U.S. Veterans Administration (V.A.). However, satisfying the V.A.'s requirements can be difficult and time-consuming. In response, the State of Oregon has funded county-level staff to assist veterans obtain V.A. benefits. Unfortunately, the State funding for these positions is inadequate; it covers only a fraction of the cost of a County Veterans Services Officer (CVSO).

In 2001, the State Legislature authorized and funded a pilot project in Multnomah and Washington Counties to assist veterans and their spouses or dependents apply for V.A. benefits. A special focus of this pilot was helping Medicaid clients who were potentially eligible for V.A. benefits obtain them. It was successful. By working with Medicaid case managers and eligibility staff, CVSOs helped identify and obtain V.A. benefits for a number of recipients of Medicaid services. Further, by working with new applicants, CVSOs assisted V.A.-eligible individuals avoid becoming Oregon Medicaid clients.

It is the desire of local senior and disability advocates that the 2001 pilot project be made permanent, be expanded to the entire state, and be adequately funded in Oregon's 2005-07 budget by the State Legislature. The benefits of this action would include:

- Reducing State Medicaid caseloads;
- Ensuring that V.A.-eligible individuals do not become State Medicaid clients; and

Honoring Oregon veterans by helping them obtain V.A. benefits that were promised to them when they enlisted in the military.

*Last Saved: September 21, 2004*