Client Family Leadership Committee Discussions
Draft DMH 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 for purposes of examining and reviewing issues of family and client concerns regarding Mental Health Services Act (MHSA) planning and implementation. This area of responsibility was affirmed in the CFLC Charter, to be adopted by the MHSOAC May 28, 2009. 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. The MHSOAC on May 28 will consider the CFLC's input and adopt recommendations to DMH on this subject.

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 process to respond to MHSA-related issues. The purpose of the 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 May 31, 2009, and conducted a web meeting for this purpose on April 2, 2009.

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 other aspects of mental health services not related to the MHSA. It is not clear how effective the current processes are, although 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. MHSOAC's role in issue resolution is not clearly defined. Some have asked that CFLC play a facilitative or listening role with regard to consumer and family grievances.

Issue Resolution: Perspectives of CFLC Members

An issue resolution process is a technical level of advocacy that needs clarity and muscle. 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 where people are protected.

Concern about Requirement to Exhaust Local Process

CFLC members have concerns about the following provision in the current draft: **"Issues regarding the MHSA should be addressed first at the local level, beginning the issue resolution process in an expedient and appropriate manner."** Many CFLC members would also like to remove the following provision in the current draft**: "DMH confirms whether the local issue resolution process was exhausted…. DMH will ask you to provide evidence that you exhausted the local process and ask you to provide documentation of the County Administration remedy. If you did not use your local MHSA issue resolution process, DMH will refer you back to your county to address your MHSA issue."**

Several CFLC members feel that a requirement to initiate issues at the local level is an inherent conflict of interest. The same people who distribute funds also address complaints. Said one member, "It's like having the police police themselves." Requiring people to go through a local process is fatally flawed." Statutory and designated "official"' roles vary by county, which creates a frequently unsatisfactory chain of advocacy channels with varying ties to county offices.

Reprisals, intentional or not, are a very real threat for individuals as well as for stakeholder organizations that are funded or supported by their county mental health authority or its political partners. Members point out that any consumer organization with county funding is likely to be reluctant to raise issues publicly: "People won't go to complain about systemic issues, implementation issues. The only person or organization who can safely express serious concerns at a county level is someone with no investment."

People raising concerns in most cases have to self-identify, or where they do not, the permeability of information in a small mental health community is such that confidentially is not likely. People in small counties often have particular concerns about reprisals because of the impossibility of anonymity. CFLC members want a structure where people can give anonymous feedback and still get a response through a feedback loop. They consider this link essential for accountability.

Some members point out that the local process itself can be the problem. Whether or not the local process is the issue, the local authority is the power. It doesn't make sense to many members to refer people to a local process if their issue is with that local process because local authority has power over the person/organization raising the issue. People who advocate to MHSOAC, MHPC, and other State-level entities have generally first gone to their counties. When they come to MHSOAC with an issue, some members feel it is not wise to send them back to the county where the problem originated.

At the same time, despite difficulties and conflicts inherent in a local issue resolution process, several CFLC members feel that an effective and accessible local process is essential. It is hard to balance competing values: transparency and the need for people to go through the local level of issue resolution with the fact that anonymity is nearly impossible to achieve in many county settings.

Possible Remedies to Conflicts of Interest with Local Process

Many CFLC members believe that an effective issue resolution process requires at least: a) has complete independence from the mental health department, b) includes/consists of clients and family, and c) ensures anonymity and protection from reprisals.

CFLC envisioned two possible resolutions to the "inherent conflict of interest" of requiring people to go through a local process first. Both approaches ensure alternate pathways to resolution that don't involve the county mental health system. The first is for every county to have a completely independent grievance body made up of clients and family members with power to make decisions, with a statewide appeal option. The second pathway removes the requirement to go through a local process and allows the option to go directly to a statewide process.

Some CFLC members believe that OAC should serve the role of statewide issue resolution: either as an alternative to a local resolution process or as an appeals body for a local resolution process. One member suggested that OAC could designate "mini OACs" for each county to act as independent local review bodies.

Additional Protections from Reprisals

Especially in small counties, the need to preserve anonymity and confidentiality is easily compromised. It is a very vulnerable issue. In addition to provisions for confidentiality and anonymity, it is essential to have strong, enforceable anti-retaliation protections. Whistle-blowing conventions and protections should be clear and county mental health authorities should enact written commitment to these.

Role of Clients and Family Members in Issue Resolution

Many CFLC members feel that issues at state and local levels should be resolved by a panel of clients and family members/parents who are paid for their services. They must have the authority and power to provide resolution. Representation of clients and family members without independence and power doesn't do what is necessary.

Some but not all local mental health commissions construe issue resolution as their responsibility. Many CFLC members don't believe that this mechanism is sufficient for an effective local issue resolution process.

Clients and family members have distinct insight about the context of complaints. A CFLC member stated that a process that regards stakeholders as anything other than the primary people involved is skewed from the beginning. In the current process, stakeholders are treated as an after-fact. A process developed by professionals that informs stakeholders and says "this is what you need to know" is a little backwards. Professionals need to take a back seat and let clients and family members run the process.

An ongoing question is what role CFLC should play in issue resolution.

Individual and Public Transparency

Documentation of all issues or concerns and any resolution is essential. 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.

It is also critical to report back to the public accessible information about the response to the issue, including action taken and any policy or practice changes that were made as a result. 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. There needs to be consequences if the county receives consistent complaints about a particular area. 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. Information about issue resolution should be reported biannually to the OAC. This kind of system would address the need for people to see that their concerns elicit a response and would also address their reluctance to speak up because of concerns about reprisals.

Other Concerns and Recommendations of Various CFLC Members

- Principles are great but what are required for issue resolution are minimum standards or expectations with consequences.
- "Resolution" needs a definition.
- 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 know where they may bring their concerns to have them treated with legitimacy and in an atmosphere that prevents reprisals.
- Clients and family members, and other citizens, must understand the issue resolution process and be able to make use of it. Accessible communication should make clear to members of the community how to raise an issue and get a response.
- Clients and families receiving services with multiple, blended, overlapping or evolving funding sources need an understandable, streamlined way to raise and resolve issues. As California moves toward system integration, it will be harder to differentiate a MHSA issues and services. There is a need for more thought about integration and differentiation among the mechanisms that exist to give feedback about mental health services.
- People raising an issue need assurance that they will receive a timely response; the time limit should be specified.
- There might be a need for a separate review issue for concerns about services and for concerns about system issues (planning, plans, funding, etc.). Both require an independent mediation process that has a timely outcome.
- Local issue resolution should be consistent from county to county.
- 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.
- More differentiation between the roles of MHSOAC and MHPC is needed.
- There is a need for education for Boards of Supervisors.
- The CFLC should be informed and updated on concerns/complaints raised by the combination of staff and DMH liaison so that the CFLC can adequately advise the MHSOAC.

- A specific office, individual or entity within DMH or other State organization needs to be designated to provide issue resolution. Lacking this specificity, there is concern that issues will simply be dropped into the black box of bureaucracy and that neither the individuals filing them, nor the process of investigation/reporting will be honored by a mechanism that is functional and transparent.
- 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. How can we get issue resolution to address this kind of situation?

Community comments

There are serious breakdowns in the stakeholder process at local and statewide levels. Clients are being disrespected. This is grounds for a major grievance. There is a complete breakdown of trust. 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.

The issue is for OAC to drive everyone to live up to some of the key issues of MHSA, including community engagement. 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.

The proposed issue resolution process is more applicable to planning than to services and is more focused on compliance than on quality improvement. Is there a need in MHSA for a specific service grievance? Do we need to assess whether services fit MHSA requirements? In at least three counties, there are complaints that jobs reserved for clients are going to county staff. This might not come up as a compliance issue, but it's still very important. Issue resolution must be about making things work in the spirit of the MHSA, not just the technicalities. In some counties, FSP housing is done in Board and Cares. Is that a violation of the letter or spirit of the MHSA?

CARES Coalition is putting together concerns about issue resolution process. They will forward their position to CFLC and OAC.

CFLC ought to take a very strong role.

Any jobs related to MHSA should go to clients and family members.

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. This approach is based on a compliance model that is not up to the task for many issues. There needs to be an independent State office that can receive and investigate State-level complaints. That would give two different State-level loops that people could access.

There should be State and local processes with formal and informal components. There should also be anti-harassment protection.

Counties often pick consumers they want to work with because they know who will support their ideas. My suggestion is that every county have consumer organizations appoint someone to represent them, not allow the county to select.

The perception among many NAMI members is 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.

If you have a really impartial issue resolution process, the dam will burst. You cannot imagine how many grievances there will be. This body needs to be well staffed and well funded.

We need an informal and formal process. A lot of this might not have to go to the top and can be handled informally

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.

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.

There should be input about the issue resolution process from stakeholders who are not aligned with any organization.

Next Steps

CFLC will continue to discuss issue resolution at its next meeting [May 11] and will provide written feedback to MHSOAC for its May 28 meeting.

DMH is accepting written comments at issue.resolution@dmh.ca.gov until May 31, 2009.

Public can make comments at all MHSOAC meetings.