

**GOVERNOR'S COUNCIL ON DISABILITIES
AND SPECIAL EDUCATION**

**Legislative Committee
MINUTES**

Videoconference Host

Governor's Council Conference Room
550 W. 7th Avenue, Suite 1230
Anchorage, Alaska

Meeting Date

December 9, 2021
2:00 p.m.

Committee Members:

Art Delaune – Chair
Jeanne Gerhardt-Cyrus
Charles (Mack) McAnally
Ric Nelson
Dean Paul
Shelly Vendetti-Vuckovich

Attendees:

Jena Crafton
Lyle Downing
Dave Fleurant
Charlene Tautfest

Staff:

Jamie Kokoszka
Jess Doherty
Michele Binkley
Jacqueline Kim
Ian Miner
Myranda Walso

Prepared by: Sheila Garrant, Peninsula Reporting

CALL TO ORDER – 2:00 p.m.
ROLL CALL – Quorum established

WELCOME FROM THE CHAIR

Art Delaune welcomed attendees to the meeting.

Declarations of Conflict

No conflicts of interest were declared.

Announcements and Good News

No announcements were made nor good news shared.

APPROVAL OF AGENDA AND APPROVAL OF PAST MINUTES

Approval of the Agenda

Ric Nelson **MOVED** to approve the agenda as presented, **SECONDED** by Shelly Vendetti-Vuckovich. Hearing no objection, the motion **PASSED**.

Approval of Meeting Minutes

Ric Nelson **MOVED** to approve the November 22nd, 2021 meeting minutes as presented, **SECONDED** by Jeanne Gerhardt-Cyrus. Hearing no opposition, the motion **PASSED**.

Correspondence

Jamie Kokoszka stated that there was no correspondence to report.

REPORTS

Chair's Report

Art Delaune opened a discussion about the Council's problems with the Designated Service Agency (DSA). The DSA was reviewed in 2020 and was initially found to be satisfactory. Recent events have changed that

assessment, and Art yielded the floor to Miranda Walso to explain the Council's situation.

Myranda Walso explained that one of the functions the Council is required to undertake during the five-year plan development process is a review of the DSA and the support functions and agreements in place. In 2020, an internal review was conducted. There were serious concerns raised regarding whether or not the existing arrangement with the Department of Health and Social Services (DHSS) and the Council were interfering and causing compliance problems with the DD Act. Myranda described the subsequent events as follows:

- The Council decided to move forward with developing a new MOA that would outline very clearly what the expectations were, what the requirements were of the State to support the Council, and what autonomy and independence the Council would have in making certain decisions. That agreement was signed in March.
- Since then, further discussions have raised concerns about whether or not the State is adequately living up to the agreements made.
- The DSA for the Council is the DHSS, and it's been that way for almost 50 years.
- One of the things changing is that the administration is moving forward with an executive order to reorganize the executive branch by separating the DHSS into two separate, stand-alone departments. As part of that process, the DSA for the Council has to change.
- The initial proposal from the DHSS administration to move the Council over into the new Department of Health causes problems because it does not meet the standard as required in the DD Act for not providing or paying for the services for those with Medicaid.
- It is relevant because even though the same issue existed with DHSS when the initial designation was made in the '70s, it was given a waiver of not having to meet that standard and was allowable. However, the new department would not have the waiver and would have to meet the standard.

Myranda Walso outlined the process for an executive order as follows:

- Changes that affect existing laws or require legislative or statutory authority that are not done by the legislature and are brought forward by the Governor can be done by executive order.

- The process for an executive order is that the administration drafts it and introduces it to the legislature on the first day of the session. Once an executive order is introduced, the legislature has 60 days to reject it. If it is not rejected, then the executive order goes into effect and is added to the existing laws within the state.
- The executive order introduced last year, Executive Order 119, was a separation of DHSS into two new departments. There were technical and legal issues with it, and concerns regarding the approach were raised during the legislative session. The House introduced a resolution rejecting it, and before that could be concurred by the Senate, the executive order was withdrawn.
- The administration stated that over the last year, they have been working on refining the approach and ensuring that the executive order is technically compliant. The administration indicated they are looking to introduce a new executive order that would substantively accomplish the same thing but that wouldn't have the same technical issues.

Myranda Walso reported that the Council has been engaging with the Department of Law and the administration regarding the changes to the Council because DHSS is the Council's DSA. As it currently stands, the administration has made changes to the language of the draft executive order to account for the unique impacts of the DSA. To meet the compliance issues, the executive order would include language that would move the Council to a new department other than the Department of Health. She stated that the Council expected to see an advanced copy of the executive order; however, it was not ready for dissemination. The Council was subsequently told that they would not be able to review it.

Ric Nelson noted that this situation puts the Council in a good position, because for many years the Council has been supposed to control its budgets and finances. It has not been able to do that because the relationship with the DSA has had an element of control by DHSS. If the Council requests a move to the Office of the Governor, it would give the Council the benefit of operating independently regarding finances and budget. It provides the Council with the freedom to do the work it has been attempting to do for years. He stated that the Council cannot continue to sit with DHSS anymore because they are a funding source for providers, and the Council provides advocacy for providers. In a situation where the Council is advocating on behalf of providers against the interests of DHSS,

it poses a conflict of interest. Ric noted that the Council also works with many different department agencies. The Council needs to get out from being involved with any other department and go where it would not have a conflict of interest, which would be in the Governor's office itself. Ric stated that the Council is trying to get ahead of the executive order. To get ahead of the executive order, the Council needs to choose where it sits rather than that being delegated to the Council without a choice.

Ric Nelson stated that Council members need to decide where they want to see the Council sit in the future during the winter Council meeting. He noted that the DSA will either be determined by the membership or be decided for the Council. Ric shared that he has been part of the Council for 15 years as a Council member, part of the Executive Committee, and staff, and this kind of opportunity has not been available to the Council. There is an opportunity for Council members to decide where it wants to take the Council in the future.

Questions from the committee members included:

Q: Does this issue need to be worked on before the winter Council meeting?

A: The executive order will be introduced before the winter Council meeting, and once introduced, cannot be altered. The DSA designation is relevant only to the Developmental Disabilities Council role of the current Governor's Council's structure. It has different impacts on the other functions, state and federal, that the Council serves. In this instance, some of the conflicts or competing priorities between those various roles and the ability to manage them is an issue that the Council needs to be aware of, especially when unique circumstances like this arise. The Council has been working with the administration to ensure that the executive order would not cause a compliance issue.

Q: With the DHSS reorganization, the Governor's Council would not be in compliance with the federal government?

A: Correct. And with the reorganization, a new DSA is needed because the old one is being dissolved.

Q: Can the Council can serve as the DSA?

A: The Council itself can serve as the DSA. The DD Act specifies that it can be the Council, the Office of the Governor, or other agencies that

do not provide or pay for services for individuals with developmental disabilities unless that designation was made prior to 1994.

Ric Nelson reported that Myranda Walso will be meeting with the Governor's office Friday, December 17th to discuss if the Governor's office is open to being the DSA for the Council. After that meeting, more will be known about the Council's opportunities to move forward.

Myranda Walso added context as follows:

- Commissioner Crum presented to the Council during the fall Council meeting and spoke about the executive order. The presentation brought up questions from the Council.
- Subsequently, the Council engaged with the Department of Law and learned more about the likely impacts on the Council specifically.
- During the November 5th Executive Committee meeting, a motion passed that the Council needed to reach out and proactively try to engage with the administration on this issue.
- During the December 8th Executive Committee meeting, a motion was passed to ask the Governor's office about being the new DSA, and the location of the Council be with the Office of the Governor as it pertains to the immediate change that could be brought up in the executive order.
- The initial review of the DSA and the compliance issues and concerns brought up were raised during the 2020 public meetings and the five-year plan's development. The DSA issue was brought up in meetings in August, September, October, and November 2020, and February and May of 2021. It is incorporated into the new five-year plan as well.
- The immediacy and need for urgency have greatly accelerated as the understanding of the impacts and the detail the Council received regarding the executive order had come through.

Questions from committee members included:

Q: Does the executive order have to be approved by the legislature?

A: No. Unless the legislature rejects the executive order, it goes into effect automatically. If no action is taken, the executive order goes into effect 100 days from the introduction. The legislature has 60

days from the introduction to vote to overturn it; however, the effective date will likely be included in the executive order. The current plan brought forward by the commissioner and administration indicated an effective date of July 1st, 2022. (The executive order is subject to change until introduced.)

Q: Does Commissioner Crum fully understand the reported issues, and has he given any input?

A: Staff cannot speak for the Commissioner. The Commissioner will be at the meeting with the Governor. The staff has had several meetings with the Commissioner and his team on this. The staff doesn't know if he has heard the full extent of the concerns. That is part of what Council staff anticipates sharing with them next week.

Q: Is there a public notice requirement that will come into play?

A: The meeting with the Governor's office is not a public meeting. The Executive Committee meetings and other meetings that have discussed this have all been publicly noticed. However, the administration is not required to provide notice or comment on anything not introduced; it is considered confidential and deliberative until it is made public. The executive order is still under the purview of the Governor's office. Once it goes to the legislature, there will be hearings and opportunities for public comment. The Council has responsibilities to conduct meetings and gather stakeholders' input regarding the preference on DSA. That was part of the process that went into the development of the new five-year plan. Those meetings were all publicly noticed meetings, the minutes are available, and those discussions are on the record. However, those discussions and the regular Council discussions about how it operates are not necessarily the same as those specific to the executive order.

Q: Will the executive order and reorganization be reflected in the upcoming budget?

A: Unknown. The budget has not been released.

Staff Report

No staff report was offered.

BUSINESS

Legislative Visits

Art Delaune reported that the Executive Committee approved the recommendation from the Legislative Committee concerning legislative visits. There will be virtual visits at the end of February and the first part of March and in-person visits with a team of people the last week in January and mid-February. The Executive Committee approved Ric Nelson, Heidi Lieb-Williams, Jena Crafton, Corey Gilmore, and Travis Noah for in-person travel to Juneau.

Address Assignments from December 8th Executive Committee Meeting

Myranda Walso reported that the Executive Committee has considered the DSA designation issues. The immediate mitigation steps that have been put into place were the decision to retain legal counsel to engage with the administration on the verbiage of the executive order to ensure that what is introduced doesn't jeopardize compliance. After the meetings with the Department of Law, the decision was made to be proactive in reaching out to the Governor and initiating a conversation asking if a new DSA is included as part of the executive order; and if it goes forward, that the DSA be the Governor's office initially. Myranda explained that there are meetings scheduled with the attorneys to explore the issue further, and there are several items that the Council has requested more information on. The committees and the Council need to talk about what the impacts are; what would change if the Council were in the Governor's office or another department; what the consequences are of having the DSA; what role does the DSA serve; what does the Council want to be able to do or not do.

Myranda Walso stated that the Council staff is bringing this to the Council committees in the hopes that they will provide additional guidance and input on it to ensure that what happens is in the best interest of the Council, is sustainable, and that it reflects the needs.

Myranda Walso clarified that the meeting with the Governor's office is a 30-minute meeting scheduled at the Council's request to bring these topics up for consideration and broach the questions of an initial relocation of the Council to the Governor's office. The process will not be a quick conversation, and there are different decisions that the Council has to make from the ones the Governor makes. The Council has to have a different process internally to evaluate what it wants, what it needs, and the

pros and cons of each. She noted that one of the things that has come out of this discussion is a very clear picture that the administration and Department's goals and objectives are not necessarily the same as those of the Council. Separate legal counsel was required for each of the entities to engage on the issue. She said that because of this, it is important to recognize that there are choices made that the Council will respond to or initiate, but that this is not something that the Governor's office tells the Council. It's on the Council to explain their preferences because they serve the Council as the DSA.

When asked if the whole Council needs to approve the decision concerning this issue, Myranda Walso said no. She explained that the DD Act outlines a particular process for how recommendations or appeals regarding the DSA can happen. One of the unique things about that aspect versus routine Council decisions is that Council members that are not primary consumers or self-advocates are excluded from participating in the vote. The approval of a DSA designation requires a majority of the self-advocate/consumer members only.

Myranda Walso stated that one of the issues about this that is very complicated in that the attorneys are still discussing action is what process could be used. She shared the following information:

- A statute enacted the current DSA designation. The Governor can change that, and the legislature could also change it. There are opportunities to evaluate the current size, responsibility, and functions of the Council.
- A recommendation that the Council's attorney has brought forward for consideration is that it may behoove the Council to request a new statute for itself separate from the executive order. It would require the Council to evaluate what it wants to do and bring that forward through the legislative process. If housed in the Governor's office, there would be a vetting process for introducing legislation, and if it aligned, they could refer it to the legislature.
- There are opportunities for requesting a legislator to introduce legislation on behalf of the Council to change things. That has been discussed, and the Council is getting advice from the attorneys.

Myranda Walso stated that the important parts for the Council to talk about are how familiar the Council is with the impacts of the changes in an

executive order, what supports it needs, and what questions need to be answered. Another issue that comes into play is that the DSA designation placement within the department only relates to the DD Council aspect of the Governor's Council. It doesn't necessarily align with the functions of the ICC, the governing body for SESA, or other activities of the Council.

Myranda Walso recommended that the Council committees talk about the resources and ability of the Council to manage the scope of the responsibility because the statutory duty the Council is assigned is broad in scope. She also recommended keeping a close eye on the progress of the executive order through the upcoming legislative session.

Charlene Tautfest commented that it is important that the whole Council is informed of the unintended consequences that the executive order could create. Art Delaune stated that at the Executive Committee meeting, the decision was made that they need to notify the entire Council of what is going on as soon as possible. The easiest way to do that before the winter meeting is to start with the committees. For the Legislative Committee specifically, it could affect the legislative advocacy. Myranda Walso noted that with regards to the unintended consequences, many things could be a consequence of the executive order. It's hard to speak to what they could be without being able to review the executive order. The risks of having a change in the DSA that doesn't meet the standards are that the Council could lose federal funding, be decertified to serve, and jeopardize compliance with the number of regulations. The most significant risk if the Council is not involved in the discussion is not understanding and being aware of the impact in time to proactively make decisions and ask for things that align with the direction the Council wants to go.

Ric Nelson commented that due to the complexity of the issues related to the DSA designation, an e-mail communication to Council members would not be digestible. Myranda Walso provided context on the volume of information. In preparation for the initial meeting with the Department of Law regarding the executive order, Myranda drafted a four-page memorandum that outlined the history, impact, and concerns. Along with the memo, there were 18 separate supporting attachments, several statutes, an outline of the discussions with the attorney about the nine separate asks-out, and each area had a different legal memo and analysis. The previous executive order itself was 119 pages. All that information would be challenging to capture in an e-mail. She noted that it is

complicated, and she emphasized that trying to summarize it quickly would run the risk of being misleading. Myranda said it is important to underscore that this will be a very long process with a lot of detail and discussions over time.

Art Delaune commented that he has been in meetings where the DSA designation was discussed, and he found the topic difficult to grasp. He assured the committee that there will be many more discussions as information becomes available and the picture becomes focused.

Review and Discussion of Legislative Priorities – 2022 Position Papers

Art Delaune noted that given the discussion at the meeting, the DSA designation might be a legislative priority. Dean Paul commented that the Legislative Committee needs to focus on 2022 legislative priorities. He noted that even though the DSA issue is huge, developing other legislative priorities as soon as possible would likely leave time for action on the DSA designation as it advances.

Update on Federal Items

Art Delaune reported that there were no changes at the federal level.

DATE OF NEXT MEETING

The next Legislative Committee is scheduled for December 21st, 2021, from 2:00 to 3:30 p.m.

ADJOURNMENT

Dean Paul **MOVED** to adjourn, **SECONDED** by Shelly Vendetti-Vuckovich. Hearing no objection, the motion **PASSED**, and the meeting adjourned at 3:28 p.m.