

**STATE COUNCIL FOR PERSONS WITH DISABILITIES  
BRAIN INJURY COMMITTEE  
August 4, 2008 – 2:00 PM  
Appoquinimink State Service Center  
Middletown, DE**

**PRESENT:** Devon Dorman, Chair; Brian Hartman, Vice-Chair; Dr. Jane Crowley, A.I. DuPont Hospital; Linda Heller, DSAAPD; Janet Leitch, Consumer; Lora Lewis, DPH; Tom Parvis, DVR; Ann Phillips, Parent; Kyle Hodges, Staff and Linda Bates, Support Staff

**ABSENT:** Ray Brouillette, Easter Seals; Esther Curtis, BIAD; Virginia Corrigan, Christiana Care; Tony Horstman, SCPD; Dr. Dan Keating, Bancroft Neurohealth; Dr. Bradley Meier, DPC; Mike Merrill, VR/U.S. DVA; Mary Soligo, Christiana Counseling; Ellen deVrind, Christiana Counseling; Chris Long, DDDS; Al Rose, DDC; Liz Schantz, Consumer; Wendy Strauss, GACEC; William Strehle, Consumer.

**CALL TO ORDER**

The meeting was called to order at 2:05 PM.

**APPROVAL OF MINUTES**

Motion was made, seconded and approved to accept the May 2008 meeting minutes as submitted.

**AGENDA ADDITIONS/DELETIONS**

Lora added the “Head Games” book. Brian added an item which he will include in his PATBI Report.

**BUSINESS**

**BIC Report - What the State Needs & Funding Sources**

Jane reported that Kyle, Devon and Wendy had a conference call with Drew Nagle who helped resurrect Pennsylvania’s BIA. Jane would like this committee to issue a report on the current services for people with TBI, what the state needs and what funding sources are needed to obtain the needed services. Much discussion ensued and other partners were suggested. Ann suggested partnering with the Dover AFB. Linda suggested contacting patient transition coordinators. Brian suggested a committee established by Executive Order or legislatively to issue the aforementioned report. Such a committee would be able to attract key players. Lora will be attending the NASHIA conference from September 8-12. Linda has contacts at NASHIA. Kyle and Linda will coordinate a conference call for the October BIC meeting. Lora can bring back any helpful information from the conference. BIC will wait until after the October meeting to determine any legislative initiatives.

**TBI Act**

Kyle provided the draft changes to the TBI Act and Lora reviewed the document. One of the major changes is that: The Secretary may make a grant under subsection (a) only if the State or American Indian Consortia involved agrees to establish an advisory board within the appropriate health department of the State or American Indian Consortia or within another department as designated by the chief executive officer of the State or American Indian Consortia. Lora reported that the intent of this is to establish a firm location for TBI in state government, and locate the Advisory Board within that structure. Lora reported that there will be only 6 competitive grants issued this year. The grants will be for 3 years at \$250,000 per year. The guidance could be out by the end of the month.

### **Supporting BIAD - BIAD August 24<sup>th</sup> Crabfeast & BIAD October 22<sup>nd</sup> Conference**

Devon reported that the BIAD fundraiser will be on Sunday, August 24, 2008 4-7 PM at Boondock's in Smyrna and the BIAD Conference is on October 22<sup>nd</sup>. Devon noted that the keynote speaker for the conference will not be attending so the conference will focus on local activities and initiatives. Jane encouraged everyone to support the BIAD Crabfeast and other BIAD initiatives. Without people's support and given the possibility of lack of grant funding after March 2009, the future of BIAD is uncertain. Without financial support, losing staff and office space after March 2009 is a possibility. After the conference, Devon will be focusing on money generating events.

### **Building BIAD - Office Location & Board Membership**

Devon reviewed the roles of the Board of Directors and Advisory Board. It was noted that the Advisory Board is really not a functioning group at this time. It is comprised of people who want to assist BIAD, but cannot commit to regular meetings. The Board wants to expand to include different levels of expertise (e.g. legal, marketing). The Board meets on the 1<sup>st</sup> Tuesday of every month at 8 & PM. It would be beneficial if the current Advisory Board joined the Board of Directors. A "wish list" of members has been created. Dr. Tinkoff was suggested. Brian suggested getting legislators involved. Kyle will send a list. After the conference, Devon will also be focusing on membership.

### **PATBI Report**

#### **I. ABI WAIVER ELIGIBILITY**

Based on DSAAPD's processing of a recent application for its ABI waiver, two issues have arisen. First, if onset of ABI is prior to age 18, is this a basis for eligibility denial? Second, if an applicant could qualify for either the ABI waiver or, due to severely limited cognitive functioning, could also qualify for the DDDS residential waiver, should the applicant be afforded some "choice"?

#### **Age of ABI Onset**

Although DSAAPD originally entertained restricting eligibility to persons with ABI onset after age 18, the SCPD Brain Injury Committee and DLP promoted coverage irrespective of onset date. The final waiver does not restrict eligibility based on age of onset. This was confirmed in Lisa Bond's January 7, 2008 presentation to the Committee. Brian provide an excerpt from the Committee minutes is attached. The minutes recite as follows: "Lisa noted that the age range is 18 years and older and the date of injury can occur before that age." This statement is consistent with the actual waiver document. The attached "eligibility" section (Appendix B-1) does not contain any "age of onset" limitation.

#### Eligibility for Multiple Waivers: Choice

The ABI waiver requires an applicant to meet a nursing facility level of care. See Application at p. 2. The DDDS waiver covers applicants who meet an ICF/MR level of care. A low functioning person with a brain injury could conceivably meet both levels of care. In the past, an adult with TBI (due to gunshot to head at age 18) was allowed to choose between the elderly/disabled waiver and mental retardation waiver. In re W., DCIS No. 022841 (DHSS August 27, 1990). Moreover, the ABI waiver was developed to offer participants in the assisted living waiver the "choice" of either remaining on that waiver or switching to the new ABI waiver. Therefore, it is obvious that persons can qualify for more than one waiver. Therefore, even if a person with a brain injury qualifies for the DDDS residential waiver, that should not preclude eligibility for the ABI waiver.

It was agreed that the Committee would share the above observations with DSAAPD and solicit clarification of its perspective on these issues.

## II. SPECIAL EDUCATION STATISTICS

In FY 04, the Delaware Department of Education reported 0 identified students with TBI in the entire state. After enactment of DLP-authored legislation, the number of TBI-identified students has increased annually. The Committee was able to "track" the increase and assess "shortfalls" through provision of DOE statistics. For example, 0 students with TBI were identified in Kent County based on the 2006-07 unit count. Earlier this year, the GACEC and SCPD submitted requests for specific unit count information for the 2007-08 school year without success. I have therefore submitted the attached FOIA request to "formalize" the solicitation.

Brian recommended that the SCPD submit a similar FOIA request which references its statutory duties and fulfillment of HRSA grant expectations. It was agreed to submit such a request.

## III. PENNSYLVANIA MOTORCYCLE-RELATED HEAD INJURY STATISTICS

Pennsylvania repealed its law requiring motorcyclists to wear helmets in 2003. The University of Pittsburgh published a study of the results in June, 2008. The study

compared data pre-repeal (2001-2002) and post-repeal (2004-2005). Helmet use for motorcyclists involved in crashes decreased from 82% to 58% during this time period. Adjusted for inflation, acute care hospital charges for motorcycle-related head injuries increased 132% compared with a 69% increase for non-head injuries. Adjusted for an increase in motorcyclists, there was a 32% increase in head injury deaths and a 42% increase in head injury hospitalizations. The mortality rate for motorcyclists involved in reported crashes was 5.4% for unhelmeted riders versus 1.4% for helmeted riders. Some Pennsylvania legislators are promoting reenactment of a mandatory helmet law. Brian provided relevant articles.

#### IV. LEGISLATIVE UPDATE

##### A. Motorcycle Helmet Bill

Legislation (S.B. No. 46) introduced on March 14, 2007 to require all motorcyclists to wear helmets remained in committee.

##### B. Text Messaging Bill

H.B. No. 291, which would have prohibited text messaging while driving, was introduced in January, 2008. Consistent with the attached April 18, 2008 article, the bill was tabled before any committee action given state police opposition based on enforcement concerns.

##### C. PSDT Bill

H.B. No. 313, which would have clarified Worker's Compensation coverage of post-traumatic stress disorder, was introduced on February 6, 2008. It remained in committee.

##### D. Missing Persons Bill

S.B. No. 227, which establishes a "gold alert" program to locate missing persons with disabilities, was enacted and signed by the Governor on July 17, 2008.

##### E. Summer School Bill

The SCPD Brain Injury Committee "sponsored" legislation (H.B. No. 391) to require districts to disclose in IEPs that students with TBI classifications were eligible for 12-month programs. The DOE opposed the bill. Later, the prime sponsor ostensibly reached an agreement with the DOE in which DOE agreed to adopt a conforming regulation and the sponsor would defer action on the bill. The initial meeting with the DOE and SCPD BIC and GACEC representatives has been rescheduled to September 17.

#### V. MILITARY PTSD STATISTICS

As part of my May 5 PATBI report, Brian had included a summary of a study attributing many of the symptoms of returning veterans previously attributed to TBI to Post Traumatic Stress Disorder (PTSD). The Department of Defense has disclosed that 40,000 troops have been diagnosed with PTSD since 2003. A Rand study released in April concluded that 7% of troops surveyed reported both a probable brain injury and PTSD. These figures ostensibly underestimate prevalence since soldiers are often reluctant to disclose such conditions due to stigma or the belief it could adversely affect their careers. The military and Department of Veterans Affairs have increased professional resource to address these mental health needs.

## VI. SCOOTER ADS

Brian provided a July 20 News Journal advertisement (11"X10.5" in original) in which motorized scooters are being advertised as “street legal”, “no license”, “no insurance”, and “no registration” with models ranging from 50cc to 300cc.

Brian questioned the accuracy of these statements based on the following.

First, a motorized scooter is a “motor vehicle” under the Delaware Code. Title 21 Del.C. §101(33)(35). “Motor vehicles” must be registered. Title 21 Del.C. §2101-2102. A DMV regulation specifically requires “motor scooters” to have a license plate. See 2 DE Admin Code 2262, Par. 1.5.2.

Second, a driver’s license is required to operate motor vehicles on public streets. Title 21 Del.C. §2701. Other state agencies likewise contemplate “motor bikes” only being operated by persons with a license or permit. See 7 DE Admin Code 9201, Par. 11.2.

Third, motorized scooters are generally prohibited from being operated on public streets. Title 21 Del.C. 4198N(a). Violations are punishable by fines. Title 21 Del.C. §4198N(a)(3).

Fourth, “motor vehicles” which are required to be registered must be insured. Title 21 Del.C. §2118.

The advertisement will ostensibly entice children and adults to purchase and use motorized scooters contrary to State law and regulation. Indeed, if someone has a suspended or revoked license, the scooters provide an invitation to return to driving on the road with no restrictions (e.g. no license, registration, or insurance). Motion was made, seconded and approved for BIC to share the advertisement and analysis with the DMV and Attorney General’s Office for consideration. The materials will also be provided to the Office of Highway Safety and the Insurance Commissioner.

### **SB 174 Public Awareness**

Kyle reported that the Office of Highway Safety (OHS) may be conducting some public awareness/outreach regarding the bike helmet bill. Kyle asked if the Committee wanted

to have input or had any ideas. In addition, he suggested the following quote be provided: “Requiring 16-17 year olds to wear a helmet when operating bicycles and motorized scooters and skateboards makes sense given the compelling statistics which indicate that this age group is at a high risk for traumatic brain injuries and other disabling conditions. The passage of S.B. 174 will save lives, decrease the incidences of disabling conditions and save money. A TBI survivor’s lifetime expenses for healthcare and services may reach approximately \$4 million.” It was agreed to provide the quote to OHS.

The Committee suggested looking into funding sources (e.g. grants) to purchase incentives (e.g. gift cards) for police officers to give to kids when they see them wearing a helmet. Some other states do this. This could be run by Col. Macleish with the State Police. A timeline was not determined.

### **ANNOUNCEMENTS**

Lora provided a book entitled “Head Games”. Kyle will provide the remaining books to others not in attendance.

### **ADJOURNMENT**

The meeting was adjourned at 4:20 pm.

Respectively submitted,

Kyle Hodges  
SCPD Administrator

S:bic/08augustmin