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COUNTY JUDGES AND COMMISSIONERS CONFERENCE

Mr. John A. Gilmartin, County Officials Program Specialist with the Texas Agricultural Extension Service of Texas, working in cooperation with the County Judges and Commissioners Association of Texas, held the annual conference of county officials at College Station on 5 February 1980.

The first item on the agenda was "Mock Committment Proceedings" for non compos mentis. It was conducted by the Honorable Wayne Gent, County Judge, Kaufman county. Also participating in the program was the Honorable Joseph E. Ashmore, Judge Probate Court, No. 3, Dallas County. Judge Ashmore presented an overview of committment hearings in Texas. Following Judge Ashmore's excellent presentation was a panel discussion of committment hearings. The moderator was Mr. Tim Shaunty of Texas A&M. Panelists were: Judge Ashmore; the Honorable Thomas H. Bacus, Wichita County; the Honorable Wayne Gent, Kaufman County; and Mr. H. W. Hise of the Texas Council. The discussion revealed the broad range of problems facing judges across Texas. Judge Bennett Hill of Cass County questioned ways to handle committments when forty miles from the nearest MHMR facility and also discussed problems of recommittment. He noted that a man and a woman from his county had been committed 14 times and 11 times respectively over a nine year period. The problems of obtaining doctors to appear for cross examination during hearings and means to follow up discharged patients were apparent. It was pointed out that community MHMR centers should offer judges a useful alternative to institutional committment. Further, it was noted that there has been a more than forty percent reduction in the time patients spend in mental institutions since 1974 in areas served by centers. Copies of proposed changes to the Mental Health Code were distributed and the judges were asked for comment related to their particular experiences. Future programs on committment and other aspects of MHMR are being planned with Mr. John A. Gilmartin.

THE ROLE OF STATE GOVERNMENTS IN DELIVERY OF CARE AND SERVICES TO THE MENTALLY DISABLED

For four years the Texas Council has been recommending ways to improve MHMR services in Texas. It is encouraging when the Council's perceptions of MHMR service delivery problems and solutions are shared by other associations and organizations. The National Governor's Association adopted the following position at their meeting last summer:

> Despite major investments by all levels of government, services for the mentally disabled are in many ways fragmented and inadequate. The problem is not a lack of funds, but the absence of coordinated program and management design for the care and treatment of the mentally disabled. As a consequence, large numbers of persons who need mental health care are unserved, underserved, or inappropriately served. This has been documented by both the report of the President's Commission on Mental Health and the United States General Accounting Office report titled "Returning the Mentally Disabled to the Community: Government Needs To Do More."
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> The National Governors' Association calls for an equal partnership of federal, state, and local governments to plan and deliver care for the mentally disabled through a unified, integrated, community-based system. Specifically, the mental health authority designated by the Governor (or by state statute) should be an equal partner with the federal and local levels in programmatic and financial planning, development, and administration of state mental health programs.
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> Based on national goals and state-local planning, the state mental health system should assemble and coordinate an array of treatment and support services for all individuals in all settings. Given the scope of such a system, the needs of the mentally disabled should be taken into consideration in the programmatic and fiscal policy development process for all human services programs. The primary objective of the mental health system should be to give special emphasis to the chronically mentally disabled and to other priority populations (children, adolescents, the elderly, racial and ethnic minorities, low-income groups, and rural populations) as determined by needs assessments conducted within the state-local planning process and in conformity with a state plan. An equally important objective should be providing encouragement and resources to the mental health authority to eliminate waste and duplication of effort and promote efficiency and accountability.

Expenditures within each state for services for the mentally disabled should conform with a coordinated and comprehensive plan. Funds should be administered through formal agreements between federal and state government, and where services are to be provided by local entities, between state governments and those local entities. The agreements should specify each party's rights and responsibilities, describe clear lines of accountability and contain incentives for improved performance by each level.

The Legislative and Operational programs of the Texas Council make the same points specific for Texas. We do need a coordinated and comprehensive plan that is the basis for budgeting and expenditure. We do need to define each party's rights and responsibilities as well as the other points mentioned above to achieve an effective system of MHMR care in Texas.

NIMH ATTEMPTS CLARIFICATION OF CORE SERVICE AGENCY CONCEPT

In the Community Support System (CSS) guidelines produced by the National Institute of Mental Health (NIMH) in 1977, the concept of a local "core service agency" (CSA) was introduced to provide leadership in making comprehensive mental health, rehabilitation and support services available to the chronically mentally ill clients. This concept is also reflected in a proposed new Mental Health Systems Act currently under consideration by Congress. The different ways in which various states receiving CSS contracts have operationalized the concept of a core service agency have highlighted an ambiguity in the original guidelines regarding what a CSA is supposed to accomplish and what type of agency is suited to the role. Therefore, NIMH is attempting to clarify the original intent and raise issues which states need to consider in planning and implementing community support systems.

If the role primarily calls for areawide planning, then only one such agency should be designated per planning area and this should be the agency in the best position to obtain cooperation and participation of a variety of mental health and human service providers needed for community support system development. Unfortunately, this "logical agency" may not be an agency directly committed to the overall needs of the client population. Subcontracting may solve part of this problem, but it also involves additional administrative levels which requires additional resources. There is an additional problem of possible competition between several local service providers in a single planning area who wish to be designated the sole CSA.

If, on the other hand, the primary role of the CSA calls for provision of direct services and development of new opportunities at the community level, multiple CSAs might be needed in a single planning area. Eligibility criteria would then depend more on the demonstrated and potential capacity of local agencies to offer relevent services to CSS clients. The CSA would

not be responsible for developing a total community support system, but would focus on making sure that the designated clients receiving services through their respective programs had access to a full range of services appropriate to their needs. A potential drawback to this, however, is that there is no mechanism to assure attention to area-wide planning, service coordination and system building.

The Mental Health Systems Act attempts to sort out these problems by defining the functions of a core service agency (CSA) and an Area Mental Health Authority (AMHA). The proposed Act defines an AMHA as:

> the public or nonprofit private entity (and there may be only one) in a mental health services area designated by the State Agency to be responsible for planning the mental health services program of the area and (at the option of the State) any one or more other mental health services areas, and for the coordination and development of mental health services in that area or other areas.

From the standpoint of developing community support systems, a potential problem is seen in the fact that mental health planners typically have not viewed themselves as responsible for the community support needs of people with chronic mental illness. For example, while local mental health plans may address such needs as screening and follow-up care, they are less likely to attend to housing, employment, and other psychosocial rehabilitation opportunities and services that usually are seen as beyond the traditional boundaries of mental health care. Indeed, in areas such as Texas where community MHMR centers are designated as the local mental health planning authority by state law, they have been severely criticized for trying to be "all things to all people" and for having ambiguous service goals and ill-defined client populations. The American Medical Association just recently attacked community mental health centers nationwide on these very issues (See The Curriculor, January 1980). Without attention to these concerns on both a statewide and area-wide basis, CSS development at the local level remains difficult.

To deal with this problem, the proposed Mental Health Systems Act includes a definition of a Core Services Agency:

> a public or nonprofit private entity designated by the State Agency to assume responsibility in any mental health services area for planning, coordinating, and developing, and for delivering (directly or through affiliation agreements with others), the mental health services and support services that are necessary for the care of those members of any one or more priority population groups in the area who need both mental health services and support services.

One problem with this definition is that, while it does allow for some

flexibility in adapting to local conditions, it seems to overlap with some of the planning and coordinating functions of the AMHA and, to some extent, with the role of the Health Systems Agencies. A second problem is the implicit suggestion in this definition that there may be only one core service agency in any single planning area when there may be a need for a broad array of local programs and may be advantages in making various types of agencies eligible for these funds without having to channel them through another bureaucratic layer.

Considering both the complexity and fragmentation that currently exists, it is important to clarify the functions that must be performed at each level to develop viable community support systems. At the state level, state mental health agencies can and should assume a leadership role in working with a wide range of state and local health, mental health, rehabilitation, housing and social support agencies to plan and stimulate development of community support systems throughout the state.

At the sub-state or area level, consideration should be given to broadening the planning and coordinating responsibilities of the Area Mental Health Authorities with respect to the needs of people with chronic mental illness. Although the AMHAs cannot be expected to be responsible for the community support needs of the general population, it is essential that attention be paid to the housing, social and other support needs of the chronically mentally ill population in order to develop a successful network of community-based care. At this level, interagency coordination is critical.

At the more local community services level, a variety of community support agencies should be helped to provide more appropriate services to CSS clients. For some agencies this will involve providing a comprehensive array of services through their own program. For others, it will mean improving linkage between their programs and others to insure the availability and accessibility of needed services.

In conclusion, the current ambiguities regarding the functions and role of core service agencies as initially defined in the NIMH guidelines present potential problems requiring careful consideration at each level of government. One possible solution is to drop the term core services agency and incorporate the essential elements by redefining the planning and coordination functions of the State Mental Health Agency, the Area Mental Health Authorities, and the service delivery functions of a wide range of community support agencies. Consideration must also be given to developing state and federal definitions of community support agencies. Actions taken to clarify and define these terms will be of great interest to community MHMR centers in Texas since their boards of trustees have been defined by state law to be the local mental health planning authority and also because in many areas they are the "logical agency" to be designated the core service agency.

Copies of the article "The Core Service Agency Concept: Implications for Future Planning and Legislation from which this article was excerpted are available from the office of the Texas Council.

PETTY V. PETTY--DUE PROCESS PROVISIONS OF THE LIMITED GUARDIANSHIP ACT

On 26 December 1979, the Dallas Court of Civil Appeals delivered its decision in the case of Petty v. Petty, interpreting due process provisions of the Limited Guardianship Act.

Joe Allen Petty, a mildly mentally retarded person and Appellant on appeal, has lived at the Denton State School since 1965. His parents have refused to agree to his placement in a lesser restrictive setting in the community for the past two years despite the efforts of Joe's counselors and habilitators at the School to convince them that a community-based residential setting would better meet Joe's needs. Acting on the advice of state school personnel, the parents obtained a limited guardianship over their son in Hunt County, Texas and were granted the following powers to act in his behalf:

1) The power to collect or to file suit on debts, rentals, wages or other claims owed Appellant;
2) the power to pay, settle, or defend claims against Appellant;
3) the power and duty to apply for and to receive governmental funds for which Appellant is eligible;
4) the power and duty to apply and consent to needed medical or dental tests or treatment, except in an emergency;
5) the power and duty to help Appellant find an appropriate place to live;
6) the power and duty to take part in developing Appellant's individual education, habilitation, and program planning;
7) the power to propose or to contest a proposed transfer or discharge of Appellant from a state school, state human development center, or community MHMR center; and
8) the power to make purchases or consent to purchases of Appellant in excess of $500.00.

Service was made on Denton State School personnel and Appellant did not actually receive this process until after the hearing granting the limited guardianship. The current examination, required under Section 130F of the Limited Guardianship Act, was not performed until after the limited guardianship was granted. Appellant arrived at the hearing without counsel accompanied by his parents and their attorney. Joe made statements waiving counsel at this hearing; but upon discovering exactly what had occurred there, he contacted his present counsel and appealed. On appeal, Appellant contended that the trial court lacked personal jurisdiction because he was

not personally served, that his waiver of the right to counsel was not knowing and voluntary, that the trial court should not have proceeded without a proper examination report, and that venue did not lie in Hunt County, Texas.

The Dallas Court of Civil Appeals reversed and remanded the decision of the trial court, holding that a respondent in a limited guardianship proceeding must be appointed counsel and must consult with counsel before his appearance may be found by the trial court to be voluntary and knowing and before he may waive any rights, including all those rights provided in the Limited Guardianship Act. Justice Robertson emphasized the Legislature's intent to provide ample due process protections to mentally retarded persons in limited guardianship proceedings and restated the Court's holding:

> We conclude that the legislative intent to afford protection to a mentally retarded person prior to any determination of a need for limited guardianship is manifestly clear. In order to assure that the legislature's objectives are not thwarted, the Act must be construed to insure that a subject individual is thoroughly apprised of all his rights and the consequences of any action he may take or fail to take. We hold, therefore, that retention or appointment of an attorney for a subject individual is required prior to a hearing under the Limited Guardianship Act, and that consultation with that attorney is an essential prerequisite to waiver by the subject individual of any of his rights, including the provisions of the Act.

Further information on the Court's decision is available through the office of the Texas Council or from Advocacy, Inc., 5555 North Lamar, Suite K-109, Austin, Texas 78751.

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