

Client Family Leadership Committee Recommendations DMH Draft MHSWA 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 (MHSWA) 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 MHSWA Issue Resolution Process. The MHSOAC on May 28 will consider the CFLC's input and adopt recommendations to DMH on this subject.

Background

MHSWA 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 MHSWA; 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 procedure to respond to MHSWA-related issues. The purpose of the Issue Resolution Process, according to DMH, is "for filing and resolving issues related to MHSWA community program planning process, service access, and consistency between program implementation and approved Plans." The DMH conducted a web meeting for stakeholder input on April 2, 2009, and is seeking additional input from stakeholders until May 31, 2009.

Most issues and responses related to the MHSWA 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 aspects of mental health services not related to the MHSWA. The effectiveness of current approaches to issue resolution is unclear; there has been no systematic inquiry of clients and family members regarding their perception of the effectiveness of existing mechanisms. 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 MHSWA planning or programs. MHSOAC's role in issue resolution is not clearly defined. Some have asked that CFLC provide functional review and/or that it play a facilitative or listening role with regard to consumer and family grievances.

Issue Resolution: Perspectives of CFLC Members

CFLC is seeking an issue and grievance resolution that is easy to understand, accessible, transparent, expedient, and leads to positive outcomes. CFLC wants to ensure that issue resolution at all levels supports people to get what they need in an atmosphere that is safe, transparent, and collaborative. For CFLC, issue resolution must be about making things work in the spirit of the MHSA, not just compliance with the technicalities.

A. Suggested MHSOAC Recommendations to DMH: Next Steps

CFLC recommends that MHSOAC take the following steps with regard to the DMH draft statewide Issue Resolution Process:

1. Recommend that DMH defer approval of a statewide Issue Resolution Process to give DMH time to develop a revised document reflecting expanded stakeholder discussion and public commentary.
2. Recommend that DMH establish clear timelines for all steps in the development of Issue Resolution Process.

B. CFLC Recommendations to MHSOAC: Next Steps

1. MHSOAC staff produce a report on issue resolution processes currently being used, including any available assessment of their effectiveness. The purpose is to re-visit past and existing issue resolution processes to avoid “reinventing the wheel” and to incorporate and make use of “lessons learned.”
2. Establish a sub-committee of the CFLC to serve as the MHSOAC lead to review and oversee issues emerging from clients and families/parents, including agencies representing them. The purpose of the CFLC subcommittee will be to:
 - a. Serve as a contact point for DMH in finalizing its Issue Resolution Process
 - b. Review issues brought to MHSOAC with MHSOAC leadership, meet with designated DMH staff, and present written semi-annual reports to the CFLC on broad themes and concerns that emerge from issues raised by clients and family members; CFLC will present these broad concerns to the Commission at least annually.
 - c. Where relevant, refer issues that are unrelated to consumer and family members to the appropriate MHSOAC committee for review,
 - d. Consult with MHSOAC leadership, the CMHPC, and CMHDA with regards to local county issue resolution processes and concerns, including quality improvement measures, with a focus on consumer/family perspectives, strengthening the role of designated entities such as Mental Health Boards and Commissions, etc.
 - e. Represent clients and family members when possible at statewide meetings at which issue resolution processes are being addressed, especially with regard to clients’ and families’ issues.

The proposed CFLC sub-committee’s primary role is to be informed and updated on concerns, issues, and complaints raised by clients and families including parents, and to support CFLC to advise and update MHSOAC as to recurrent or widespread themes. The subcommittee builds upon existing content expertise within the CFLC.

C. CFLC Recommendations: DMH Statewide Issue Resolution Process (IRP)

CFLC offers the following recommendations specifically for the statewide IRP.

1. *Recommendations to current draft language of the IRP.* Unless standards are established for local issue resolution (discussed in the next two sections), CFLC members recommend removal of the language in the current draft that states “Issues regarding the MHSA should be addressed first at the local level, beginning the issue resolution process in an expedient and appropriate manner.”

CFLC also recommends removal of 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.”

CFLC requests consideration of the option in some instances for clients and family members with a concern to bypass the local issue resolution process and go directly to a statewide process. CFLC believes that such an option is necessary in some instances because of inherent conflicts of interest and power dynamics in local approaches to

CFLC envisions two possible resolutions to the “inherent conflict of interest” of requiring people to go through a local process first. 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 removes the requirement to go through a local process and allows the option to go directly to a statewide process.

2. *Identified point of response.* A specific office, individual or entity within DMH or other State organization needs to be designated to provide issue resolution.
3. *Standards for responsiveness in community program planning.* Because 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.
4. *Improved clarification of state-level entity roles.* More differentiation between the roles of MHSOAC and CMHPC is needed.

D. CFLC Recommendations: General (State and Local) Issue Resolution Process

While the primary CFLC task is to comment on the proposed DMH statewide Issue Resolution Process, CFLC perceives critical links between the integrity of the local review process and a statewide process. The following recommendations apply to issue resolution at State and local levels:

1. *Anonymity/Freedom from fear of reprisal.* The issue resolution process must ensure anonymity and protection from reprisals. It is essential to have strong, enforceable anti-retaliation (whistle-blower) provisions and to provide a sense of safety to raise issues.

Retaliation by counties on individual employees and programs is of concern and needs to be included in "whistleblower" laws and regulations.

2. *Clear and available information.* Accessible communication should make clear to members of the community how to raise an issue and get a response. Clients and family members, and other citizens, must understand the issue resolution process and be able to make use of it.
3. *Client and family representation in review bodies.* 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.
4. *Defined standards and terms.* The issue resolution process should include minimum standards with consequences. These should include a definition of "resolution."
5. *Timely responsiveness.* People raising an issue need assurance that they will receive a timely response; the time limit should be specified.
6. *Communication/reporting.* 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.
7. *Assistance in accessing and negotiating processes for resolution.* Technical assistance to clients and family members to assist them with issue resolution should be available. This assistance could involve examples, estimated appropriate timeframes, information about available resources, etc.
8. *Statewide open quality improvement/grievance line.* There should be available an 800 number for people who want to raise issues.
9. *Strategic development/ integration of MHSA and other means of resolving client- and service-related concerns.* There is a need for more thought about integrating and differentiating mechanisms to give feedback about mental health services. MHSA can present issues that need to be handled in a different way from MediCal specialty mental health procedures. Issue resolution processes needs to address these differences and also should be easily generalized for broad mental health funding. Clients and families receiving services with multiple, blended, overlapping or evolving funding sources need an understandable, streamlined way to raise and resolve issues.
10. *Independent mediation.* Consideration should be given to distinct review processes for concerns about services and for concerns about system issues (planning, plans, funding, etc.). Both require an independent mediation that has a timely outcome.
11. *Evaluation and quality improvement.* There need to be mechanisms to evaluate the effectiveness of issue resolution; evaluation should be based on the perception of clients and family members. Consumer and family member evaluation should also be applied to funding for programs.

E. CFLC Policy Recommendations: Local Issue Resolution Processes

CFLC offers the following recommendations regarding local issue resolution processes. These recommendations are intended to support collaborative efforts to strengthen issue resolution at local county levels.

1. *Process independent of local mental health authority.* An effective issue resolution process requires complete independence from the mental health department.
2. *Communication/reporting to public.* 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. 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. There needs to be consequences if the county receives consistent complaints about a particular issue.
3. *Clarification of roles and channels.* 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 are assured that they may bring their concerns to have them treated with legitimacy and in an atmosphere that prevents reprisals.
4. *Regional or multi-county IRP.* Consideration should be given to establishing Issue Resolution Boards, with representation from several counties.
5. *Uniform process across localities.* Local issue resolution should be consistent from county to county, to the extent possible.
6. *Favoritism, political elements.* 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.
7. *Connection to peer support and advocacy groups.* Clients and family members who have problems at the local level should be connected with local consumer and family organizations to help advance their issues as well as to provide the benefits of peer support along the way and afterwards.

Public comments

The following is a summary of comments from members of the public, offered at CFLC meetings. Please also refer to included written public comment on the draft Issue Resolution process provided by members of the public.

Public Comment: How to Proceed to Finalize Issue Resolution Process

- There are serious breakdowns in the stakeholder process at local and statewide levels. Clients are being disrespected and there is a complete lack of trust. This is grounds for a major grievance. 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.
- Statewide representatives have a concern, similar to the concerns about the MOU, that they were not represented in the development of the policy. For both issues, most clients and family members who contributed were employees of a State agency. They didn't represent their constituency in the same way that we do. Going forward, we would like to have statewide representatives included. While we appreciate being able to give comments, it is much better to be part of the development in the first place
- We need more time to give input. I sent out to statewide request to get input for this call, people felt it was too short notice. We have all those people out there but need time to get their perspectives.
- The CMHDA Social Justice Committee is asking the CMHDA Governing Board to ask DMH to extend the time for comments on issue resolution to July 31. The extension would allow the Social Justice Committee to work with other stakeholders and counties to develop principles for both the county and State issue resolution processes. The extension would also provide an additional three months for DMH to hear directly more perspectives from stakeholders. The CMHDA Social Justice Advisory Committee, whether or not the deadline is extended, is committed to develop principles for local issue resolution and to ensure that these are aligned with the statewide process. [Note: the CMHDA Governing Board voted on 5/14 to support the recommendation of its Social Justice Committee.]
- OAC could recommend that the DMH keep the issue resolution process open until July 31, 2009 to allow more deliberations with stakeholders on State and local processes. Currently there are not minimum standards or principles for local processes. Since the proposed statewide process first step is to see if the local process was followed, the State process is premature without more developed local approaches.
- 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."
- 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.

- There should be input about the issue resolution process from stakeholders who are not aligned with any organization.
- CFLC ought to take a very strong role. It would be very helpful for CFLC to recommend how to get more effective client and family member voice at local and statewide levels.
- The perception exists 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.

Public Comment: DMH Statewide Issue Resolution Process

- 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. There needs to be an independent State office that can receive and investigate State-level complaints.
- If issue filer has exhausted local issue resolution process, a third party independent entity should be funded to deal with MHSA issues on a State level.
- The proposed issue resolution process is more applicable to planning than to services. There might be a need in MHSA for a specific service grievance.
- Resolution of issues should include submission to leaders of the Legislature to increase transparency.

Public Comment: General (State and Local) Resolution Process

- If the issue resolution process is really impartial, the dam will burst. You cannot imagine how many grievances there will be. This body needs to be well staffed and well funded.
- The issue is for OAC to drive everyone to live up to some of the key issues of MHSA, including community engagement. The proposed issue resolution process is more focused on compliance than on quality improvement. Do we need to assess whether services fit MHSA requirements? Examples include MHSA jobs not going to clients and family members or Full-Service Partnership housing in Board and Cares. These might be examples of violations of the letter or spirit of the MHSA.
- There should be State and local processes with formal and informal components.
- 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.
- Issue filers should be able to designate an advocate to represent them. This advocate can be affiliated with an organization or unaffiliated.
- The issue filer should be able to submit the issue electronically, in writing or in person.

- There should be strong anti-harassment protection. Anti-retaliation policies need to include a way to respond to actions that are alleged by the filer to have been taken in retaliation for filing a complaint.
- Issue resolution decisions should cite specific statutes.

Public Comment: Local Issue Resolution Processes

- Local resolution process should offer a review by an impartial body, outside any local or statewide mental health agency. An issue submitted to MHSOAC, DMH or CMHPC should be referred to the local impartial body, which will provide access to advocacy and, when requested, to anonymity. Issue filer can appeal local decision to the State level of issue resolution.
- Local issue resolution should not necessarily be assigned to the local mental health boards and commissions or to the public health systems. There should be a neutral third party, independent of the board and systems, to address issues. Not all local mental health boards and commissions are created equal. Nor do they have the power behind them. There need to be conversations with CMHPC about this issue.
- Local issue resolution needs to be expedient and effective.
- Counties often pick consumers they want to work with because they know who will support their ideas. Every county should have consumer organizations appoint someone to represent them.