ADVOCACY SERVICES

South Dakota REPORT

Advocating the Rights of South Dakotans with Disabilities

THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH DAKOTA

Volume 31, Issue 3 July, 2017

South Dakota Advocacy Services is changing its name to *Disability Rights South Dakota*

by Tim Neyhart

South Dakota Advocacy Services (SDAS) is the federally funded Protection and Advocacy (P&A) system designated by the Governor to provide protection and advocacy services to people with disabilities living in South Dakota. The agency has been the designated P&A system since July 11, 1977, when it was originally incorporated as "South Dakota Advocacy Project."

The Board of Directors changed the name to *South Dakota Advocacy Services* on January 1, 1990. The Board meeting minutes reflect that the Board members felt that the agency was no longer a "project." The CAP and PAIMI programs had been added to the existing PADD program in 1984 and 1986, respectively. The Board felt the term "project" indicated something still evolving and being tested. Since its inception, the agency had become established as an important part of the service delivery model for people with disabilities in South Dakota. As such, it required a name change that reflected its growth. The Board chose the name South Dakota Advocacy Services.

For the last 27 years, the SDAS name has served the agency and people with disabilities very well. However, as times have changed and new technology has come on-line, it has become more important to be branded in a way that people can easily identify and understand the services available from the agency.

The Board contacted members of the disability community and listened to their feedback. The name, "South Dakota Advocacy Services," often required a lengthy explanation to help

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Congratulations Year 25 Partners in Policymaking graduates. ***See* p. 16**

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people understand the services that are available from the agency. The need for a name change became part of the planning process at Board meetings. The Board asked the staff to begin the process of identifying a new name and establishing a brand that could be easily recognized and identified with the legal rights of people with disabilities.

DRSD belongs to a national organization called National Disability Rights Network (NDRN). The organization was previously called the National Association of Protection and Advocacy Systems, or "NAPAS." NAPAS had researched and identified the benefits of name recognition and association. It determined National Disability Rights Network better branded the organization as working in the area of disability rights. Many of the state protection and advocacy agencies followed the lead of NDRN and adopted state-specific names, such as Disability Rights Texas, Disability Rights California, etc. DRSD is attempting to benefit in the same way that the other states have identified.

Through the name change to Disability Rights South Dakota, callers and potential clients will know immediately that DRSD is in the business of protecting the rights of people with disabilities. The office locations and the toll-free number remain the same. Staff email addresses have changed as set out in the box on page 2. While we have legally changed the name, the roll-out will be gradual. We will continue to do business as SDAS through September 30, 2017. At this point, we have not yet changed the website, www.sdadvocacy.com. We will begin the process of changing over letterhead, brochures, etc., in late summer. We plan to complete the name change process and make formal announcements by October 1, 2017.

Public Forum Notice
We Want to Hear From You!

On July 11, 12, and 13, 2017, representatives from the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), Protection and Advocacy for Individuals with Mental Illness (PAIMI) Program will visit South Dakota Advocacy Services in Pierre.

SAMHSA/CMHS invites you to send written comments about the PAIMI Program services and activities conducted by South Dakota Advocacy Services. Please send your comments to SAMHSA/CMHS by e-mail to PAIMI@samhsa.hhs.gov or mail, ATTENTION: The PAIMI Program Coordinator, SAMHSA/CMHS, 1 Choke Cherry Road, Room 2-1105, Rockville, MD 20857.

Disability Rights South Dakota (DRSD) is an independent (not a part of state or federal government or any service provider), private, non-profit corporation established in the State of South Dakota and designated by the Governor to provide protection and advocacy services to eligible South Dakotans with disabilities. DRSD is funded in part by the U.S. Department of Health and Human Services, U.S. Department of Education, and Social Security Administration. Articles are intended for informational purposes only and are not intended as legal advice. Comments on DRSD services and priorities are welcome.

New Callers should contact intake staff at 1-800-658-4782.

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Questions and Answers About the DRSD Monitoring Process

by Tim Neyhart

Over the course of the last year, DRSD has developed and implemented a monitoring process to provide DRSD staff with the opportunity to meet people who live in group homes and other settings that provide care and treatment for people with disabilities. This monitoring process is different than monitoring the agency conducted in the past. The new process is more formalized and has several new elements, such as providing notice to the people receiving services, notice to their guardians, etc. The new process and the renewed focus on monitoring by DRSD has raised questions from service providers, family members, and others. This article will attempt answer those questions.

One question asked by providers is how the DRSD monitoring process is different than reviews conducted by the Council on Quality Leadership (CQL), the Division of Developmental Disabilities (DDD), the Department of Health (DOH), or other enforcement agencies. It is important to understand that each of these agencies has a specific purpose for conducting their activities. DDD creates a regulatory structure for Medicaid providers by developing and reviewing compliance with state administrative rules designed to implement federal requirements. DDD measures compliance with HCBS Waiver regulations, Administrative Rules of South Dakota (ARSD), etc. CQL creates information and questions to ascertain an accreditation process for providers. The Department of Health checks for a variety of health and safety requirements that cover living conditions, food preparation, etc.

Providers have expressed concerns that DRSD's monitoring process is duplicative and burdensome. Some providers question why they need to expend staff time and resources on this process. DRSD has had conversations with DDD staff and service providers who are concerned about the administrative burdens this process will place on the facilities and staff. DRSD does not intend to add activities to the already full schedule of the facility staff. DRSD is aware that one of the most challenging elements in the service system is staff shortages and turnover. That is why DRSD staff work to find times to meet with people that do not disrupt regularly-scheduled activities to the extent possible. The monitoring process has been in the federal law and related regulations for forty years. It is not a new administrative requirement.

DRSD conducts **monitoring to provide rights training and monitor for safety issues for people living or receiving services in facilities**. If DRSD identifies issues during monitoring, the DRSD protocol directs that the issues be addressed via advocacy methods with the manager of that facility while the team is onsite to the extent possible. DRSD is not an enforcement agency; it is a legally-based advocacy agency. DRSD monitors to train and provide advocacy work on behalf of the people living in the facility, not as a duplication of another type of review.

Another question related to the need for the various policies and procedures requested by DRSD prior its monitoring visits. The purpose for requesting this information and for reviewing other agencies' assessments is to assist DRSD staff to understand what rules apply to a facility and what the facility's internal policies and procedures say about topics such as rights restrictions, person centered planning practices, and other relevant topics. DRSD uses this information to successfully advocate for the rights and safety of the people living in that facility.

DRSD asks for internal policies and procedures that should be readily available. Included in the request are policies about abuse and neglect and other related matters. DRSD is open to receiving this information via email or by looking on the facility website when such policies are available there. It is the intent of DRSD to gain an understanding of the processes and procedures used by a facility. The requests are not to cause extra work to the staff by asking them to print and distribute policy and procedure documents. It is important to remember that this process is to assess safety and rights issues and to advocate to address any concerns identified either by observation or interaction with the people receiving services.

DRSD will check with various entities for any publicly available documents that would provide information about a facility. That may include inquiries as to the probationary status of the facility, whether the facility has a plan of correction it is working on, has it passed its CQL review, etc. DRSD will look for any information that already exists about rights and safety of the residents in that facility.

DRSD is first and foremost an advocacy agency for people with disabilities. Advocacy-related issues identified by DRSD staff during a monitoring activity are addressed on an advocacy basis. Knowing the rules and other related topics is part of the process of advocating on behalf of an individual or a group of individuals in any setting. If advocates do not know which rules apply to a setting, they cannot be an effective advocate.

DRSD has been asked how facilities are selected to be monitored. DRSD may monitor a number of different types of agencies where individuals with disabilities live or work, such as mental health facilities, developmental disability ser-

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Using Supported Decision Making to Increase Independence

by Gail C. Eichstadt

The phrase "supported decision making" (SDM) sounds complicated. It can be simple and many people use SDM every day. Most everyone has asked a friend, relative, supervisor, or spouse for advice. A popular game show, "Who Wants to Be a Millionaire," allows SDM when the contestant decides to "phone a friend" or "ask the audience" for the answer to a tough question.

An organization in Maine, Supportmydecision.org, has defined the concept as,

> . . . a method of developing decision-making skills by relying on Supporters to assist you in collecting information, processing information, and coming to a reasoned decision. Supported Decision-Making is an alternative to guardianship in that it provides a trusted environment for individuals who are seeking assistance with decision-making while still promoting self-determination. In contrast to guardianship, Supported Decision-Making is flexible and can change with the needs of the individual to provide more opportunities for independence and autonomy.

SDM can be formal with written agreements or informal with an understanding that a person with a disability can ask a trusted friend for advice when needed. It is growing worldwide as an alternative to guardianship for individuals with disabilities. The formal SDM supports may require an attorney to help draft them. These may include a variety of documents depending on the individual's situation and need for assistance with making decisions. More formal documents could include a power of attorney for education or health care decisions, a durable power of attorney for health care decisions, a living will, or a trust. Less formal supports could include a joint checking account, a release to speak to medical professionals, a Social Security representative payee, and peer support.

Individuals, organizations, and countries now recognize that too often *disability* is assumed, rather than *ability* being presumed. The United Nations adopted the Convention on the Rights of Persons with Disabilities on December 13, 2006. It became effective on May 3, 2008, after twenty countries ratified it. This agreement hopes to ensure that all individuals with disabilities are treated the same as people without disabilities.

Additional information about SDM can be found at the following websites. All Links worked at the time this article was written. www.JennyHatchJusticeProject.org, https://www.americanbar.org/publications/bifocal/vol_37/issue_2_december2015/2015-guardianship-supported-decision-making.html, www.SupportedDecisionMaking.org, www.BBI.Syr.edu, www.DCQualityTrust.org, and https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html or United Nations Convention on Rights of Persons with Disabilities (CRPD).

Plainly, SDM can consist of many different supports and does not include a "one size fits all" option. If SDM is put in place, it must be individualized based on the individual's needs and circumstances.

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vice providers, nursing homes, education agencies, correctional facilities, and State facilities. A team of DRSD staff made up of attorneys and Program Directors from the PAIMI, PADD and PAIR Programs decides which facilities or agencies will be monitored. DRSD has a data base that tracks requests for services and complaints about facilities. If there are several complaints about an agency, the team may decide to monitor that agency to attempt to identify what is causing the complaints. A news story or serious complaint about an injury or death at a facility can result in the team selecting a facility to be monitored. The team attempts to select a variety of types of agencies that serve different disability populations. The team may also consider other factors, such as how long it has been since DRSD staff visited that facility.

Questions have been asked about the use of a camera. DRSD's access right under federal regulations found at 45 C.F.R. 1386.27 2(iii), includes "but is not limited to inspecting, viewing, photographing, and video recording all areas of a service provider's premises or under the service provider's supervision or control which are used by individuals with developmental disabilities or are accessible to them. This authority does not include photographing or video recording individuals with developmental disabilities unless they consent or State laws allow such activities." The purpose of the camera is to document and record any concerns that may be identified during a monitoring activity. DRSD does not and cannot share personally identifiable information about the people that it represents. Any recorded information using a camera would be used to address safety and rights issues.

Another question asked about DRSD's monitoring process is whether it will include reviewing files of the people being served in a facility. DRSD staff will not do file reviews as part of the monitoring process. However, if a person that DRSD staff meet with expresses a concern about a rights restriction or another topic related to his or her care and services that requires DRSD staff to access the person's file, a release will be obtained from the person or his or her guard-

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The ~~Dis~~Ability to Work

by Cole Uecker

It was 11:25 a.m. and I had arrived five minutes early for a meeting with an employee who works at one of Pierre's most popular watering holes. Though Bob's Lounge would not be open for business until noon, I was not the first person at the bar that day. I had come to speak with a remarkable employee. Chad was already waiting by the front door until the bar's owner/operator, David Kelley, arrived to open the door so that Chad could start his work.

I first heard about Chad and his exceptional work ethic from a Facebook post David placed on the business' page, where he shared a story about Chad's dedication to his job. Mr. Kelley related:

> I need to tell you about one of my employees. His name is Chad. Chad came to me though a service that helps people with special needs get jobs. He has autism. When I met him, I didn't think it would work. He had a difficult time. With training and patience, he steadily improved day by day. He still needs some guidance, but does his job well and is alway[s] on time.
>
> Friday, I told Chad that he had Monday off for Memorial Day, but would have to come in Tuesday. He informed me that Tuesday was his day off. I said you have Monday off this week. He responded, "Tuesday is my day off." I gave in to him. I asked if he would like to come in at 9:00 AM on Monday and he agreed.
>
> Skip ahead to Monday morning about 11 AM when I realized I forgot to meet Chad. I hurried down to the bar to meet him. When I arrived, Chad was sitting on the sidewalk patiently waiting for me. He had a bit of a frustrated look on his face when I walked to the door. I apologized to him and said I would help him get his work done quickly so he could enjoy the rest of his day. He said, "That's OK. Let's get to work."
>
> I have never had an "Employee of the Month" until now. Chad is a Special Olympian Bronze medalist and now the first Bob's Lounge employee of the month.

"I just really want to do a really, really, good job."

When I read this, I realized that I had to meet Chad. He is the type of worker that employers are *always* looking for, and the type of worker that we know exists within the disability community. Like most people, what they need to be successful in employment is to be given the opportunity to prove themselves.

Mr. Kelley pulled up to the establishment promptly at 11:30 and let Chad and I inside. He offered to get us a soda or a water while we talked. I replied that I was fine, but Chad accepted the offer; he did not wait to be served the beverage. He jumped right behind the bar and poured himself a Coke from the "gun" with such flair one would have thought that he'd been trained by a seasoned "trick" bartender ala Tom Cruise in *Cocktail*.

Chad and David Kelley

Chad, David, and I sat down to discuss work at Bob's. I asked Chad how it is working there. He said that it is good work and that he sometimes gets "so sweaty" from the hard work that he does. He works about three hours a day, five days a week. He restocks the bar, sweeps, mops, and wipes the tables off. He related that Saturday and Monday mornings can be especially laborious because of the volume of patrons from the night before (Bob's is closed on Sundays). David laughed, saying that sometimes he reminds Chad to slow down and that safety is more important than speed. Chad responded, "I just really want to do a really, really, good job." He explained that it is his goal to complete all his tasks as well as he possibly can, adding that he tries to make sure that he gets "every bit" of popcorn, which can be scattered in every nook and cranny of the establishment. It is a big job, considering that it is only one of the many tasks for which he is responsible. With all of these tasks to take care of every day, I assumed that Chad would need some support from David and other staff in completing it all. David agreed that sometimes he reminds Chad of something like a garbage can that he may have missed. He clarified that these reminders are not uncommon for any employee and that sometimes Chad reminds David of tasks that need to be completed or perhaps of items, such as cleaning supplies, that need to be replenished when they are running low. David shared that Chad has even notified him at times when bar supplies, such as garnish fruit, were running low. This attention to detail saved the bartend-

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ers from having to serve margaritas without that all-important lime. I asked Chad if he ever gets help from the other staff who work there. He responded that he did not really need too much help anymore – he does his job and they do theirs. Everyone has their responsibilities, and he takes his very seriously. I asked Chad what is the hardest part of his job? He responded, "the time." I did not know what he meant, so I asked him to clarify. He said that sometimes the day goes by so fast that he gets worried that he will not get everything done. He says that it is on those days when he has to really work hard and focus on getting everything done.

The chief responsibility that all employees have is to show up to work on time. David related that Chad is at work every day that he is scheduled and that if he is not on time, he is early. The few times that Chad has come in late, it was due to unavoidable delays with transit, which Chad uses to get to work every day. David does not sweat it. He knows when Chad is not there at his scheduled time, he is on his way and that minor delays will not get in the way of Chad's dedication to doing a great job.

Chad's driving goal is to do good work at Bob's Lounge, but admits that he likes getting paid for his efforts. He shared that he enjoys being able to help his family buy food for the household and relishes his time fishing on the river with his father. Chad related that he recently won a bronze medal in basketball at the Special Olympics event in Mitchell. He likes the sportsmanship, comradery, and respect inherent in the games. While he reaffirmed that these attributes are the most important part of the event, he smiled and proudly said, "I really feel like I earned that bronze medal." Chad's employment affords him more opportunity to contribute to his family's financial obligations and to enjoy recreational activities more fully.

Bob's Lounge is not Chad's first place of employment. He has worked at a few different places in Pierre. He had not quite found a good fit. Independent Employment Specialist, Billie Jo Steffen of Dakota Employment, helped connect David Kelley, an employer looking for a good employee, and Chad, an employee looking for gratifying and fulfilling employment. Billie Jo helped Chad become oriented to his new job for the first few weeks. After that, David assisted Chad by encouraging and assisting where necessary, until Chad needed little or no help. Chad has worked at Bob's Lounge for about eight months now – the longest he has ever worked with a single employer. It is all about finding the right job which fits the person's interests and abilities; sprinkle in a little support, some patience, and the outcome can be spectacular for both the employer and the employee. Employers and job seekers with disabilities are encouraged to contact SD Vocational Rehabilitation for employment assistance.

David added that in addition to getting a great employee, employers can benefit from programs such as the Work Opportunity Tax Credit when they hire individuals with certain disabilities. He said that this reduction in tax liability is not the reason he hired Chad, but it is certainly a worthwhile incentive for qualifying employers.

I could tell that Chad was anxious to start his tasks for the day. I was glad to have had the opportunity to speak with this remarkable young man and his boss, but I could tell I was standing in the way of progress. So, with that, I shook Chad's hand, thanked him, and we exchanged goodbyes. On my way out the door, I could hear Chad say to himself as he bounded into his work, "Time to get along to business." I thought, Employee of the Month indeed.

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ian. If the guardian is offered the opportunity to sign the release and refuses, then DRSD has a right to access the file without the guardian's permission.

While this article has addressed several questions that have arisen regarding DRSD's monitoring process, undoubtedly other questions will arise over time. If you have further questions, please call 1-800-658-4782 and ask to speak to Tim Neyhart.

Partners in Policymaking Will Change Your Life

Application Deadline Draws Near

Partners in Policymaking is a leadership-training program for self-advocates and parents of children with disabilities. It provides state-of-the-art knowledge about disability issues and builds the competencies necessary to become advocates who can effectively influence system change. The training will *change your life*.

Disability Rights South Dakota, d/b/a South Dakota Advocacy Services, is currently seeking applications from interested people who have disabilities or who are parents of children with disabilities to participate in Partners in Policymaking. Applications for Year Twenty-Six can be obtained by contacting Sandy Hook, DRSD, 221 S. Central Ave., Ste. 38, Pierre, SD 57501, or by calling 1-800-658-4782. Applications are also available on the SDAS Website at www.sdadvocacy.com or email sandy.hook@drsdlaw.org.

This program is designed to provide information, training, and skill building so those who participate may obtain the most appropriate services for themselves and others. The application deadline is September 15, 2017.

Partners in Policymaking has over 615 graduates in South Dakota and over 20,000 nationwide. There is no cost associated to the participant for attending the training sessions. Mileage and meals to and from the training site, as well as expenses while at the training (lodging and meals) are paid for, while respite care and attendant services (when applicable) will be partially covered.

Legal Pull-out Section

July 2017

Prevention of Abuse and Neglect by Facilities and Service Providers: Risk Management

by John A. Hamilton

As one has read in the past few issues of the ***South Dakota Report***, Disability Rights South Dakota (DRSD – doing business as South Dakota Advocacy Services) has begun monitoring facilities/service providers in South Dakota. While the main reason for monitoring is to ensure individuals with disabilities are not subject to abuse or neglect and that their rights are not violated, one of the end results of monitoring is to provide recommendations to ensure that abuse or neglect do not occur.

Persons with disabilities, especially children, are particularly vulnerable to physical and sexual abuse, neglect, and types of exploitation. Individuals receiving services from facilities/service providers tend to be dependent on caregivers, are easily coerced, and may not be educated about personal safety and sexual abuse. Facility and service provider directors are charged with protecting persons with disabilities from neglect, physical and sexual abuse, and exploitation. Making decisions on how to operate a facility/service provider with the goal of preventing abuse and neglect is a form of "Risk Management."

Risk Management is a term usually associated with the business world. It is the process of identifying, assessing, and controlling or minimizing threats to an organization. If a risk is very small, perhaps an organization will determine no changes need to be made. If a risk is identified as significant, risk management dictates that the organization make the necessary changes to reduce or eliminate the risk. For example, deciding whether to purchase liability insurance versus taking the chance an organization will not be sued is a risk management decision. People make risk management decisions in their daily lives as well. For example, if a storm is coming, the individual must decide whether to take the time to put the car in the garage or take the chance it does not hail.

The concept of risk management is particularly applicable for facilities and service providers. It is a set of practices to identify risks, determine the significance of the risks, and determine if steps need to be taken that would minimize possible harm to individuals with disabilities. While it may not be possible to *guarantee* a person's safety, a risk management system seeks to identify factors that may increase those risks and actively promote practices that will keep risk as low as possible. The purpose of a risk management system is to promote a positive quality of life for all persons with disabilities by ensuring their basic safety and well-being.

This article is designed to provide an awareness of risks that facilities and services providers face and more-so to discuss the actions an agency can take to minimize such risks. Each of the discussion points is magnified for agencies serving children because of their increased vulnerability to abuse in adult-child relationships.

Employment Screening and Hiring Practices

The first, and perhaps best, way to protect individuals with disabilities and organizations from abusers is in the employment screening and hiring process. Eliminating an applicant at this stage is the only way to eliminate any contact between the applicant and individuals receiving services. Keeping abusers out of the organization and away from individuals with disabilities is the first and best way to provide protection.

The hiring process is one where many agencies tend to cut corners. The most recent issue of the South Dakota Report highlights issues with staff turnover and the number open positions across South Dakota in community service providers. Referrals from friends or current employees and the desperate need to fill positions may prompt those in charge of hiring to skip steps in the hiring process. What does skipping steps mean? Perhaps references are not checked. Perhaps odd responses are not followed-up. Perhaps someone escapes typical scrutiny because he or she is a relative or friend of another staff person. When an agency must fill a position and only one person applies, screening standards may slide. Familiarity with an applicant or the need to fill a position is not an excuse for letting hiring practices slide. A candidate should never be hired solely because he or she is the only one who applied or because he or she is friends of someone in the agency. No applicant should be exempt from the entire employment screening process. Employment screening and hiring is the last place to cut corners because one wrong hire can

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essentially close an agency when it is discovered that staff person is sexually abusing children or adults with disabilities.

The amount of scrutiny given to an applicant should have a direct relationship to the amount of access that position will have to children or adults with disabilities. Simply put, positions that allow for easy and frequent access to persons with disabilities warrant a higher level of screening, while positions with limited or no access require less scrutiny. For example, an accountant may have no direct contact with individuals with disabilities, while a bus driver may spend considerable time alone with children or adults with disabilities. Organizations should assess each position within the organization for the amount of access a person in that position may have to children or adults with disabilities. The assessment should be completed by persons who know the positions and the amount and type of access the positions require. In assessing the positions, other factors include the actual amount of time with individuals, the intensity of the relationships, and the level of staff monitoring in place.

Employment screening and hiring is the last place to cut corners because one wrong hire can essentially close an agency when it is discovered that staff person is sexually abusing children or adults with disabilities.

Sometimes threats are not from employees of the agency, but from other adults (or children) who have access to the agency. Some organizations may permit access by spouses or children of employees, employees of other organizations that share office space, maintenance people, or others who visit the agency. This access can have serious consequences. For example, child abuse experts have estimated that 25% of organizational sexual abuse cases involve non-employee husbands and sons of employees. These findings suggest that agencies that allow individuals, including family members, to visit sites where they have unsupervised access to persons with disabilities are placing the organization at significant risk. Ideally, only adults/visitors who have been screened by the organization should have unsupervised access to the individuals served by the organization.

The Employment Application

An organization's employment application should both elicit specific information that is relevant to the employer's hiring decision and encourage undesirable applicants to withdraw from the employment process. Depending on the level of accessibility the position has to persons with disabilities, questions should vary in content and depth. Questions should be designed to uncover potential high-risk applicants. So long as the questions pertain to the particular position, applicants can be asked personal questions. The application should contain language that clearly conveys a *"zero tolerance for abuse"* philosophy. It is important that the application contain such language because it may encourage high-risk applicants to withdraw from the application process. In other words, if the application informs an abuser that the organization is committed to providing a safe environment for persons with disabilities and will fully cooperate with legal authorities, an abuser may likely stop the application process.

The Interview Process

For potential abusers who continue with the application process, the interview provides an organization with a great opportunity for uncovering potential risk. Facial expressions, gestures, word choice, and inflection, as well as how the applicant responds to questions, provide information that is unavailable on an application and is limited in a phone interview. The interview should provide the organization with not only the opportunity to gather information about applicant's skills, but also to ascertain characteristics of the applicant that may suggest an increased risk. During the interview, the organization should also provide the applicant with a clear message that the organization has zero tolerance for abusers. Regardless of whether the agency interviews as a team, conducts interviews separately by several interviewers, or uses another method, interviewers should use standardized questions (based on position) designed to probe risk areas. Interviewers should have a "red flag" checklist that may indicate increased risk. The format and questions will depend on the risk level of the position.

References and Other Background Checks

While some former employers may provide little information as a reference, references should be required and checked. Contacting references can result in a great deal of relevant information if the person contacting the references is both trained in asking questions and the ability to discern comments that may indicate high risk characteristics. Organizations may consider requiring certain types of references for high and moderate risk positions (*e.g.*, someone with experience watching the individual interact with children/adults with disabilities, both male and female references, someone who has known the applicant for longer than a year, etc.). The process for checking references should be standardized. The number and type of references required and checked should be the same for all applicants, and the process for checking the references should be implemented in the same way for everyone.

In addition to a standardized process for conducting reference checks, other types of background checks may provide useful information. Driver's license checks may reveal poor driving records, alcohol abuse, and other criminal activity. Applicants who show poor judgment driving may be at risk of having poor judgment in other areas of their lives. Drug and alcohol problems may show increased risk of abusive behavior. Similarly, criminal background checks, which will be required for some types of agencies, can also alert employers

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to high risk applicants, including those who may be legally ineligible for employment around children or others.

To fully utilize the information collected in the employment application and interview process, all parties involved in the process must have an opportunity to participate by sharing their findings and impressions. The more information gathered, the easier it is for organizations to search for "red flag" characteristics. A "red flag" is not necessarily a reason to not hire someone, but it should generate the need for additional information, such as through a further interview, a further reference check, a background check if not previously conducted, or other types of follow-up.

The interview provides organizations with is an opportune time to share with the applicant the agency's "zero tolerance" philosophy, how all employees are required to follow practices and procedures designed to minimize the risk of abuse, that the agency will cooperate with legal authorities in the prosecution of abusers, and that staff are regularly monitored in their interactions with individuals with disabilities (again, this is especially important for agencies that serve children). By sharing this during the interview, it provides the applicant information of what is expected before accepting employment. It allows an abuser to weigh the risks and decline employment if offered or withdraw from the process.

Staff Training and Monitoring

Once staff is hired, training and monitoring are essential to creating a safe environment. Well-trained staff can help in the identification of children or adults who may be abuse victims, as well as in the deterrence of abuse within the organization. A safe environment requires that abuse risk management is the on-going responsibility of all staff, not the responsibility of only a select few individuals in the organization.

Staff Training

There are several reasons why staff (and volunteers) need training in abuse prevention. The more staff know on the subject, the more comfortable they should feel in reporting their observations should they suspect abuse or neglect. Staff who are trained in abuse prevention are better able to keep themselves, and the organization, from compromising situations. In other words, when staff learn what situations could lead to questions or false allegations, they are better equipped to know to steer clear of such activities. Training also helps the entire staff to buy into the agency's zero tolerance philosophy. Training also tells parents and guardians, "We care enough about your child/family member that we require all staff to be trained on abuse recognition and prevention." Finally, training tells potential abusers that abuse will not go undetected.

Staff training programs in abuse prevention should include, at a minimum, content on understanding and recognizing the various types of abuse, the organization's philosophy, policies, and practices governing interactions with children or adults with disabilities, how employees should respond to both staff interactions that appear inappropriate or to programmatic circumstances that place the individual, the staff, or the organization at risk, and how to respond to individuals who show signs of abuse or who disclose victimization.

In addition to learning information about emotional, physical, and sexual abuse, staff must also be skilled at recognizing abusive interactions. Without proper training, staff may inadvertently overlook more subtle kinds of abuse, such as verbal intimidation or threats. Because of the inherent power imbalance, especially in adult-child relationships, actions or comments by an adult that might otherwise be acceptable in society may be perceived as threatening, dangerous, or abusive to a person with a disability. Staff should also learn how the likelihood of abuse may increase when staff have unusual stress, overwork, fatigue, major changes in life circumstances, etc. Again, the organizational standard of zero tolerance for any type of abuse must be communicated during training. This philosophy must carry over into actual policies and practices that guide staff in their interactions and such policies and practices should be thoroughly covered through the training process.

While the training would clearly address what constitutes inappropriate interactions, it must also train staff on *what to do* and *how to report* when they suspect or discover inappropriate interactions. Training will result in staff becoming more skilled in detecting signs of abuse. Staff may also experience situations where children or adults disclose that they have been mistreated by another staff person or another person. Training should allow staff to be prepared to respond sensitively, responsibly, and correctly in these situations.

Effective staff training can and should come in many forms. Organizations may use any or all the following: written materials; media presentations; lectures; open and frank discussions; role play exercises; and/or on-the-job supervision and feedback. As part of their risk management plan, organizations should require a certain amount of initial training before staff begin working with individuals, especially children.

Staff Monitoring

Another important ingredient in organizational abuse risk management is staff monitoring. Staff monitoring provides protection to individuals, staff, and the organization. Ongoing monitoring results in potential abusers being less likely to act because they face detection. Staff monitoring also makes investigation of allegations of impropriety easier to accurately resolve. There are different types of monitoring an organization can utilize.

Presence of Others - Perhaps the most effective form of monitoring is to ensure staff or volunteers are never alone with a single child or adult with a disability. Having other staff present certainly decreases the risk; being in the presence of other children or adults with disabilities can also reduce the risk. Such continuous monitoring is better than intermittent monitoring, but intermittent monitoring is better than none. However, this method will not be practical in all circumstances, as some programming will require a single

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staff person to be with a person with a disability for long periods of time. In these situations, organizations must consider alternative methods of monitoring, such as client feedback or frequent, unannounced spot checks.

Written Reporting Requirements - When staff spend time with a person with a disability without others present, the requirement of written documentation describing how the time was spent provides another form of monitoring. The documentation of who staff worked with and the activities they engaged in may sometimes raise red flags that require follow-up by a supervisor. For example, if a staff person always chooses the same individual to work with or go on activities with, or always takes individuals to the same type of activity, unless spelled out as such in the individuals' plans, these may be red flags that require follow-up or use of spot checks.

Identification of Staff - Another form of monitoring is to require identification badges for all staff, volunteers, guests, or other visitors. Ideally, all staff and volunteers should have a color photo on their badge. Especially in larger organizations or those experiencing high turnover, picture identification removes any doubt to the individual with a disability (as well as to parent/guardians and other staff members) about whether the person is a legitimate member of the organization. Picture identification helps both children and adults with disabilities to not be fooled by strangers, it helps parents/guardians to know whom to turn to with questions or concerns, it distinguishes staff or volunteers from other visitors, it makes it easier for staff to question the presence of unfamiliar people, and it may facilitate an investigation should there be an allegation of abuse or neglect.

Architectural Characteristics - The physical setting itself may deter abuse by facilitating staff monitoring. Agencies should avoid using out-of-the-way rooms for one-on-one interactions. Other places where an abuser could avoid detection, such as certain corners, stairwells, or behind boxes or equipment should also be avoided in any one-on-one programming. Storage sheds or closets should be locked and the agency should record which staff have keys. Using walls that extend part-way to the ceiling (half walls), rooms with windows, shared activity areas, open doors, and ensuring traffic patterns that require staff to pass through areas all promote monitoring. One area that is a high risk for abusive activity is bathrooms because individuals may be in various stages of undress for legitimate reasons. Organizations should have policies in place on how situations are handled where an individual requires assistance and require strict compliance. Bathrooms should be in central, not isolated, areas.

Organizational Policies - Organizations should have policies in place to guide staff in high risk situations, such as those where options for staff monitoring are limited. Some of these areas include transportation, visitors, bathroom activities, and other non-typical circumstances.

Internal Feedback Systems

No matter what has been put in place and how much training staff receive, a system of risk management is of no benefit if it is not easy for staff, volunteers, parents/guardians, or individuals to report suspicious or inappropriate behavior and have systems to alert directors of high risk situations. It does no good for an employee to state after-the-fact that he or she noticed, but did not report, certain suspicious behaviors, or to state after abuse has occurred, "I always thought it was odd that …." If the same staff had brought forward their concerns, an incident of abuse may have been prevented.

Making it Easy to Report

There are three important aspects to making people feel comfortable in reporting concerns. The first goes back to the discussion on training. Staff need to be confident in their ability to detect and recognize what may be suspicious or inappropriate behavior. Staff who do not report may be unaware the individual is possibly at risk or do not want to look foolish pointing out an interaction. Flagrant behaviors are least likely to occur in the presence of others. That is why is it critical that all staff maintain a high level of competence (through training) of recognizing both subtle and obvious signs of abuse.

The second aspect of making allegations of abuse easy to report is that staff members need to know *how* to report their concerns. Staff must understand to whom they can report their concerns and what to include in their report. Staff should have at least two options for reporting a concern to address situations where one option is not available, such as if the concern is regarding one of the persons to whom staff are to report. They need to understand what will occur once a report is submitted. Staff who do not understand the process are much less likely to share concerns.

The third aspect is an environment that encourages reporting. No matter how much knowledge an employee has on detecting abuse and on the process for reporting concerns, if the organization does not encourage reporting and is not supportive of persons reporting concerns, it will not happen. Organizations must let employees know that all actions that contribute to a safe environment are worthwhile and that all reports will be taken seriously, not blown out of proportion, and will be handled confidentiality. The organization should have clearly written policies that support the process and allow for no retaliation. A system that encourages reporting gives organizations the opportunity to identify suspicious or potentially dangerous situations before actual abuse occurs.

Other Reporting Systems

In addition to a reporting system where staff and others can report concerns or allegations of abuse and neglect, another type of reporting system is also helpful to the overall risk management system. The organization should keep data designed to detect patterns. Certain patterns can indicate high risk situations. For example, data may indicate a high level of individuals discontinuing a particular program. It may show

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higher levels of staff turnover at a particular location. It may show injuries or even certain types of injuries repeating at a location. With this type of information, the agency can follow-up to determine why individuals are exiting a program or why there is unusually high staff turnover in a location. An agency can investigate why injuries are occurring and take steps to prevent future injuries.

The Role of Consumer Awareness

A good risk management system does not fall solely on agency staff. Adults or children with disabilities, as well as parents or guardians, need to be active partners in the prevention of abuse. To be active partners, individuals with disabilities must also receive age-appropriate or cognitive level-appropriate training on what constitutes appropriate interactions from employees and volunteers. Individuals also must be encouraged to report any concerns and be taught how and to whom they should speak with when they have concerns.

Especially in organizations that serve children, parents/guardians play a role in the safety of their children. Parents/guardians should learn warning signs that a child may be abused or is at least uncomfortable with an adult relationship. Parents need to know what to discuss and how to discuss abuse with their children. Such discussions should make the children feel secure, not fearful.

Organizations serving children should provide parents/guardians with specific information of organizational policies and practices. By providing parents with this information, parents will know what to expect and they will know what the organization allows and what activities may be suspicious or abusive. First, parents should know how much and what type of physical contact is allowed. Physical contact can cover a wide variety of actions, from holding, hugging, or kissing a child, to undressing children. Parents should know the extent and circumstances when such physical contact is permitted. Second, parents should know the discipline methods used by an organization. For example, if physical restraint or isolation is used, parents should know under what circumstances they are used, length of time, and the type of restraint. If an organization uses other forms of discipline, parents should know what they are and the circumstances when they may be used. Third, parents should be able to freely communicate with staff (or volunteers). Open communication is important because parents need to know if they share concerns, that the concerns will be timely addressed. Fourth, parents should know the organization's methods for monitoring staff. It is comforting for parents to know that staff and volunteers are observed or supervised. Parents should also know they have the right to visit. Fifth, parents should know the organization's policies on staff using appropriate language. This is important because threats, intimidation, etc. can be as damaging as physical abuse. Sixth, parents should know how staff are trained to respond to out-of-the-ordinary events, such as medical emergencies, bathroom accidents, children whose parents cannot pick them up at the scheduled time, etc. Finally, parents should know the organization's policies on relationship boundaries. To effectively serve children, trusting relationships need to form, yet every relationship has boundaries. Parents need to know those boundaries. For example, are staff allowed to give children gifts? Are staff allowed to spend time with children outside of regular work hours or only if the parent is also present? Knowledge of boundaries is important because abuse may occur when boundaries are crossed. While referring to children, much of the above discussion is applicable to parents/guardians of adults as well.

Parents and guardians must know how to report concerns they may have, whether regarding staff behavior or how their child may be acting. Parents should have the names of at least two persons in the organization they can contact to report concerns. They should know how the organization responds to such reports. When parents are encouraged to report concerns, it serves an important role in the organization's overall risk management. Even if parental concerns turn out to be incorrect or unfounded, the fact that the organization welcomes and investigates such concerns informs potential abusers the organization takes consumer feedback seriously.

Incident Investigation and Follow-up

An organization that has taken the measures described to reduce the risk of abuse within the organization may still receive occasional complaints or allegations of abuse. When someone (staff, volunteer, individual, parent/guardian) has expressed concerns or alleged improper treatment, the first thing an organization should do is take immediate steps to reduce further risk to the individual, staff person or volunteer, and the organization. Organizations should have a specific incident investigation procedure in place, not wait to create one on the fly once an allegation occurs. How an organization responds may reduce or exacerbate the situation for all parties. Even if an allegation is unfounded, it can cause immeasurable damage if handled poorly.

Minimizing harm to the individual is the first and most important step. Minimizing harm may mean protecting the anonymity of the individual and the accused and involving only those staff who need to know. It may mean some sort of separation of the individual from the staff or volunteer. It may mean communicating regularly with a parent/guardian. Because some allegations are unfounded or actions are misinterpreted, minimizing harm to the accused is vital. Minimizing harm to the organization is also important. In addition to taking actions already described, the best thing an organization can do is to set aside any personal relationships and follow the investigation procedure. An organization does not want to make exceptions to policy based on the staff person involved.

For the sake of all parties, confidentiality is important. Breach of confidentiality can have devastating and exacerbating effects. If there is an allegation of sexual abuse, it could be psychologically damaging to the individual and emotionally abusive to spread the information beyond those who need to know. On the other hand, allegations, even if false, can be devastating to a staff person.

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Testing Your Ability to Work When Receiving Social Security Disability Benefits

by Brian G. Gosch

It can be difficult to get on Social Security disability benefits, as some discover, as they wade through years of appeals and hearings. It can be a very arduous process during very trying times as applicants struggle paying their bills and obtaining health care. That being the case, once one is on benefits, why would a beneficiary want to jeopardize it by working?

One reason to test one's ability to work is because there is a sense of pride, independence and enjoyment one can receive from working despite personal struggles with disability-related issues. There is also a sense of personal freedom and choice by being financially independent based on working. In that event, one would also be making more money than he or she would be receiving from Social Security and arguably have greater opportunities. One may also better connect with the community by interacting with others through the work setting. There are many reasons to secure, maintain, or regain gainful employment.

Testing one's ability to work without the risk of permanently losing benefits becomes vital. Questions arise as to how to do this - To what extent can I work and still get my monetary and medical benefits? How much money can I make each month and keep my benefits? What happens if I make over certain amounts? Do I keep my medical benefits?

This article will focus on the monetary side of Social Security Disability Insurance (SSDI) benefits and not SSI or the medical benefits. Follow-up articles will address these other areas. SSDI benefit amounts vary based on the amount of earnings individuals had during their "quarters of coverage" period. But, the amount of money one can earn working, which is important for determining whether one can keep his or her Social Security disability benefit amount while working, stays the same each month during a calendar year and typically increases a small amount each year. It is also important to note that SSDI is an "all or nothing program," meaning beneficiaries either get their whole cash benefit or nothing. This is different than SSI, which allows for a reduction in one's SSI cash benefit as one has more work earnings.

For the remainder of this discussion, assume one is receiving SSDI benefits and wants to test his or her ability to work. The first thing one should know is that once an individual begins receiving SSDI benefits, one is allowed nine TRIAL WORK MONTHS in which to test his or her ability to work. During the Trial Work Period, there is with no limit on work earnings. The nine-month period exists within a 60-month revolving time period, so they do not have to be consecutive. The thing to take away from this, though, is that there are only nine months available for this standard, regardless of whether they are taken consecutively or spread out over the 60-month period.

So how much can one make before it constitutes a trial work month? For 2017 (it generally goes up each year), the number is $840 or more gross earnings per month. Notice, trial work months are based on gross earnings, not the amount of pay one receives in a paycheck (net earnings), so one must be careful when looking at one's paycheck to determine if one has used a trial work month. For example, a paycheck for $825 of net earnings is very likely over $840 of gross earnings.

The Trial Work Period, again, is nine months. For nine consecutive or non-consecutive months, one can earn $840 or more in gross earnings and keep one's full SSDI cash benefit. For example, during the Trial Work Period, one could earn $2,000 from work in a month and would still receive his or her full SSDI cash benefit. I encourage people who test their ability to work to try it at or near full-time levels to get a true feel as to whether their body or mind will allow them to be successful at the job with or without accommodation. There are different rules once the trial work period is completed, and it may not be worth entering that realm of different rules and standards unless one can likely maintain full or near full-time work.

To recap, during the Trial Work Period, individuals can make as much as they want and still keep their full SSDI benefit. After the nine months, the trial work period will be exhausted and new rules will apply. One will now enter a 36-month period called the EXTENDED PERIOD OF ELIGIBILITY (EPE). This three-year period throws out the $840 trial work month amount and a new and different amount of earnings becomes important. The new amount is the Substantial Gainful Activity (SGA) amount, which for 2017 is $1,170 (non-blind) and $1,950 (blind). This amount also typically increases each year.

During the EPE, if a non-blind person with a disability earns $1,170 gross earnings or more, then he or she is not entitled to any SSDI cash benefit for the month(s) gross earnings exceeded the SGA amount. It is an all or nothing program. The same would apply for a person with blindness, but at the greater limit of $1,950. Again, it is important to recognize the difference between gross and net earnings, as gross earnings are what matters when determining if earnings exceed the SGA limit. In addition, there is a technical wrinkle in that for the first month one earns SGA during the EPE (the cessation month), one will still get their SSDI benefit for that month and the next two months, but after that it is purely an all or nothing situation in which one will not be entitled to an SSDI check for any month one earns SGA.

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When an allegation of abuse is reported, the organization is put in the position of protecting the rights of the individual, the accused, and the organization. The organization needs to have practices in place to gather as much reliable information as possible as fast as possible so that it can make decisions on what further action to take. Depending on the situation, organizations may issue a written reprimand, provide time off with pay, require time off without pay, suspend the staff person, terminate the staff person, reassign the staff person, or whatever other action may be appropriate for the situation. It is important for organizations to conduct thorough investigations so that there is evidence supporting the action(s) taken should the situation go to litigation.

Organizations should document all steps it followed and all statements of individuals who were interviewed. This is helpful if further investigation becomes necessary, as the prior documentation will show investigators if there are inconsistencies in the old and new reports. This is also helpful because the documentation shows the efforts the organization has taken to both safeguard the individuals and protect the rights of the person accused. Prior documentation also helps with determining if all the work was done with the initial investigation and helps catch any areas that were overlooked.

All staff should be familiar with the organization's investigation procedures. The procedures should describe step-by-step what will occur. They should describe the specific person who is responsible for addressing the situation. If that person is implicated or has a conflict of interest, there should be a second person identified who will follow-up on the allegation. Setting out the process, such as in a checklist, will assist the investigator. The procedure should set out a specific time frame for responding to an incident. Ideally, the entire process, from reporting of the incident to disposition of the investigation, should be completed within a week. A rapid pace informs everyone that reports are taken seriously. It also provides supervisors with timely information so that decisions can be made to safeguard individuals, staff, and the organization.

Organizations must know what laws apply to the situation. This may mean following employment law requirements if employees are removed from jobs. This may mean reporting the incident to State child protection and/or law enforcement. These steps must be set out in the policies so that organizations are not put in the position of creating procedures that comply with the law after an allegation is made.

Finally, organizations should attempt to create a protocol that all staff can understand. It should involve as few persons or layers within the organization as possible. The more complicated or bureaucratic the process, the less likely staff will utilize the process. When that occurs, less staff will contribute to the agency's mission of abuse risk management.

Conclusion

For many reasons, persons with disabilities, especially children, are more susceptible to abuse and neglect. Agencies that support such individuals in residential settings or day services are charged with protecting the rights of the people they serve, including the right to receive services in a safe atmosphere free of physical, verbal, and sexual abuse. The risk of abuse is always present. The steps organizations take to minimize such risks is risk management.

A good risk management plan includes employment screening and hiring practices, staff training and monitoring, internal feedback systems, consumer awareness, and a process for incident investigation and follow-through. As DRSD monitors facilities and service providers in South Dakota, staff will inquire about the risk management processes organizations have in place. Where there may be gaps, DRSD staff will make recommendations to assist the organization in steps to take to minimize the threat of abuse and neglect.

Information for this article was received from Wayne D. Duehn, Ph. D., Professor Emeritus of Social Work, The University of Texas at Arlington, at a training conducted for DRSD on April 20, 2017.

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The foregoing will be the standard over a three-year period, which begs the question: What happens after that three-year period? After the EPE is expired, the first month one earns SGA ($1,170 for non-blind in 2017), it is considered one's termination month. That person will be terminated from the program and not entitled to any SSDI for that month or any future month regardless of earnings amounts. For example, after one's termination month, if one earned only $500 in a subsequent month (well under SGA), it would not matter because the person was terminated from the program. At that point, one would have to reapply for benefits, which could start over that long arduous process one endured initially.

I encourage all SSDI beneficiaries to test their ability to work, but please do so within the parameters laid out in this article. Give it a shot. Work toward greater enjoyment and opportunities, but do so in a reasonable way that fits within the system and affords one the best chance at truly testing his or her ability to work.

Public Forum Notice
We Want to Hear From You!

On July 11, 12, and 13, 2017, representatives from the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), Protection and Advocacy for Individuals with Mental Illness (PAIMI) Program will visit South Dakota Advocacy Services in Pierre.

SAMHSA/CMHS invites you to send written comments about the PAIMI Program services and activities conducted by South Dakota Advocacy Services. Please send your comments to SAMHSA/CMHS by e-mail to PAIMI@samhsa.hhs.gov or mail, ATTENTION: The PAIMI Program Coordinator, SAMHSA/CMHS, 1 Choke Cherry Road, Room 2-1105, Rockville, MD 20857.

ATTENTION PARENTS!

Transition Strategies to Better Prepare Adult Children with Disabilities for Employment

by Marie McQuay

According to statistics from the Department of Labor's Office of Disability Employment Policy, only 20 percent of individuals with disabilities participate in the labor force, compared with 68.6 percent of individuals without disabilities. Educators feel this could possibly be because students with disabilities do not receive enough exposure to real-work environments, and there is not enough time spent by schools to develop workplace-appropriate communication and behavior skills before the students leave high school. Transition services should be designed to address both of these issues.

The IDEA requires districts to begin transition services at the age of 16, although many states require that transition services begin earlier. School districts should offer a continuum of services throughout the students' high school years which should be aimed at gradually building up the students' skills in communication, behavior, and hands on employment opportunities. Many students with disabilities continue their education beyond the 12th grade. Most of these students have met academic requirements, but they need extra transition services or activities such as daily living skills (cooking, balance a checkbook, riding a bus, shopping for furniture), community experiences (such as volunteering in schools or at Habitat for Humanity), and hands-on employment experiences (such as at grocery stores, car dealers, and restaurants). These activities are vital in preparing young adults with disabilities for attending college, working at a job, or learning to live independently.

Some suggestions of transition services and activities for your son or daughter to be successful in their future as an adult are:

- Students can be taken out in the community to learn how to call for and ride a bus. Teaching them about planning a weekly menu and then shopping at various supermarkets to purchase items needed for that weekly menu is very beneficial. They should be taught how to go to the bank to make withdrawals and deposits and how to balance their checkbook. They should be taught how to order at a restaurant or at a drive through if they have their own car.
- Students should work in areas of interest. This may require job sampling, job shadowing, and on-the-job assessments to see if their interests line up with the reality of the job. For instance, a student may think she would like to be a beautician she enjoys having her own hair done, but she does not have the experience of doing someone else's hair to see if she still wants to do this as a job. A mannequin could be used to create this experience. If a student expresses an interest in being a mechanic because he likes cars, he should have an opportunity to change a water pump, change oil, and get a little greasy to see if this is a job he wants to do on a daily basis. Such an assessment will answer both whether the student can do the tasks and whether the student is actually interested in that type of work.
- It is essential that students practice communication skills before beginning a work placement. They should practice and be comfortable doing the following things:
  1. How to introduce themselves.
  2. How to initiate a conversation and to know what topics may be appropriate to discuss.
  3. How to respond to emails.
  4. How to take praise or criticism for their actions.

  A good discussion to have with students is to talk about honesty and ethical issues; for example, that it is not okay to take office supplies home unless the employer says it is okay. Students also need to understand that situations in the workplace are not as controlled as they have been in school. Let them know that occasionally they might make mistakes or things may not go as planned, and they will need to be able to know how to handle and react to these situations. A discussion is needed on how to handle these situations, to learn from their mistakes, and then to go on with a positive attitude.
- Students should also be taken out in the community to train them how to access services that will be beneficial in providing support after they leave the school setting. They need to be connected with resources that will help them find suitable housing, get assistance with applying for the supplemental nutrition assistance program, access vocational rehabilitation services, address disability transport services, locate the Social Security Administration Office and learn how to apply for benefits, secure Medicaid or other health insurance, and/or access services from the division of developmental disabilities. Students should be aware of places in their communities that may be sources for food in an emergency. It may be helpful to keep a notebook listing various agencies, phone numbers, and the services they provide.

These are just a few of the things that can be addressed with young adults as they prepare to transition into a community setting and to become independent and pursue their lifetime dreams.

Mental Illness-Protected Individual Rights

by C.J. Moit

Mental Illness is a "hidden disability." Individuals with mental illness work, live, and play in their local community. Just like with a physical illness, many can be treated while at home, while some need to go to a hospital for temporary treatment.

Federal law requires that each state develop and implement a plan for the delivery of a comprehensive array of treatment and other services to individuals with mental illness. A qualifying state plan must meet certain requirements, including provisions for the establishment of an organized, community-based system of care for persons with mental illness and services designed to reduce the rate of hospitalization.

When individuals with mental illness are hospitalized, they have individual rights that protect them when they are at their most vulnerable. If they are to be admitted due to the possibility of harm to themselves or others, there are specific procedures which must be followed.

Once a concern has been noted, there are procedures for apprehension, which include filing for a petition. Any person eighteen years of age or older may file a petition with the county board of mental illness alleging that the subject is severely mentally ill and in such condition that immediate intervention is necessary for the protection from physical harm to him/herself or others. The petition must be on a form, verified by affidavit, and must include the reasons for its filing and other information mandated by statute. (SDCL 27A-10-1)

After examining the petition, the chair of the board of mental illness may order law enforcement or a designee to apprehend the person if the chair determines there is probable cause to believe that the person meets the commitment criteria. The person must be transported to an "appropriate regional facility." At this point, the person may not be taken to the South Dakota Human Services Center. Moreover, the person may not be detained in a jail unless there is no other appropriate regional facility available. **In that event, the person may not be held in a jail for longer than twenty-four hours on a mental illness hold alone.** (SDCL 27A-10-2)

A peace officer may apprehend a person even if a petition has not been filed. The officer, however, must have probable cause to believe that the person is severely mentally ill and in such condition that immediate intervention is necessary to prevent harm. The officer must transport the person to an appropriate regional facility other than the Human Services Center. The restrictions on use of a jail, explained above, continue to apply. A petition must be filed in a forthwith manner with the chair of the county board of mental illness. If a petition is not filed with the chair of the county board within twenty-four hours, the person must be released. (SDCL 27A-10-3; 27A-10-4) All commitments must be made under the emergency commitment procedures governed by SDCL 27A-10.

Substantive criteria used to determine if involuntary committal is needed includes:

a. The person has a severe mental illness, *as defined in* SDCL 27A-1-1(17).

b. Due to the severe mental illness, the person is a danger to self or others, *as defined in* SDCL 27A-1-1(5).

c. The individual needs and is likely to benefit from treatment, *as defined in* SDCL 27A-1- 1(4).

Once it has been determined a person needs to be involuntarily committed, there are protections in place to ensure he or she is not held for an excessive length of time. Immediately after a person is apprehended, the person must be notified both orally and in writing of the following:

a. The right to immediately contact a person of choice;

b. The right to immediately contact and be represented by an attorney;

c. That she/he will be examined by a qualified mental health professional, designated by the chair of the county board, within twenty-four hours of being taken into custody, to determine whether custody should be continued;

d. The right to an independent examination if custody is continued; and the right to a hearing within five days, six if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, and holiday within that time period.

e. The cost of post-commitment proceedings, including habeas corpus, and costs of court-appointed counsel are the person's responsibility and a lien may be filed upon the person's real and personal property to ensure payment.

An individual also has the right to a hearing within twenty-four hours of apprehension. At the hearing, the person will be examined by a qualified mental health professional designated by the chair of the county board. Preceding the examination, the examiner must identify himself/herself and explain the nature and purpose of the examination. The person must be informed that the examination is being performed to assist in the determination of whether custody should continue. The person must also be informed that the results of the examination may be used as evidence in a commitment hearing. The examiner must immediately report the findings to the chair of the county board.

If the chair of the county board determines that the examination does not support finding that the person meets the involuntary commitment criteria, the person must be released. The county in which the person was apprehended must provide transportation back to that county, if the person so desires.

If the examination and an investigation of the petition indicate that the person does meet the commitment criteria, the board chair may order continued detainment in an appropriate regional facility. At this point, the person may be transported to the Human Services Center, but only if necessary. (SDCL 27A-10-6; 27A-10-7)

If an individual does meet the criteria and is transported a mental health facility, the person has individual rights regarding

Mental Illness Rights
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25TH YEAR OF TRAINING COMPLETED

22 Graduate from Partners in Policymaking

by Sandy Stocklin Hook

Dr. Wayne Duehn, MSW, PhD, LCSW, of Arlington, TX, was the keynote speaker at the 25th annual graduation for Partners in Policymaking. Dr. Duehn's message to the people attending the banquet was direct and clear: "You are the people who will make things happen. You have the qualities and will face the challenges of today's leaders. Never tire of doing the right thing." Over 350 people attended the graduation at the Ramkota Hotel in Sioux Falls on April 22, 2017. Duehn, a professor emeritus in Social Work at the University of Texas/ Arlington, noted the importance of gatherings and training events such as Partners in Policymaking. "If we want to make a difference and change attitudes, we all need to join together and start with the basics. Leaders don't just appear,

Dr. Wayne Duehn

they develop and every person in this room has the quality to be a leader."

Twenty-Two South Dakotans spent six months, from November through April, training to be leaders. The class motto was "HOPE--Helping Others Promote Equality." Partners training analyzes issues related to developmental disabilities and helps build the skills the people selected for the class need to effectively advocate to obtain services for themselves and others.

Lori Douville of Chamberlain, a 1999 graduate of Partners in Policymaking, received the Robert J. Kean Advocacy Award given by the SDAS Board of Directors. Douville and her husband, Robert, are the parents of two children with disabilities. Douville has been a very active advocate for her children and others in South Dakota. When presenting the

Lori Douville

award to Douville, SDAS Board President, Juanita Harrington of Piedmont, stated, "Douville is a true advocate for ALL individuals. She is a volunteer, active in Special Olympics, and serves on many boards and councils."

Senator Troy Heinert of Mission, District 26, was the recipient of the SDAS Legislative Advocacy Award. In accepting his award, Heinert told the attendees he is "a voice for all people, a voice for those that don't have one." Morris Brewer, SDAS Board Vice President, presented

Senator Troy Heinert

the award to Heinert and noted, "Troy is an enrolled member of the Rosebud Sioux Tribe, Assistant Senate Minority Leader, husband, and father. He is a rodeo cowboy, poet, guitar player/singer, business owner, former school teacher, and wrestling coach." He went on to say Heinert is a strong voice in the South Dakota Legislature.

Class graduation speakers were Julie Reinert and Diana Treadway of Spearfish; Cassandra Rogat, Yankton; Dedric Rose of Flandreau; and Julie Niles, Pierre. Each speaker spoke about their experiences from Partners and how they will use the training. Stocklin Hook took on her alter ego persona as Swami Sandy, and using her crystal ball, looked into the future to predict how each graduate will go on to do bigger and better things. She gave each one "their magic wand to change the future."

Class Speaker Julie Reinert

Partners in Policymaking in South Dakota is sponsored in part by grants from the South Dakota Council on Developmental Disabilities, LifeScape, Center for Disabilities at Sanford School of Medicine at USD, and South Dakota Parent Connection. National and state speakers who are knowledgeable about disability-related issues present on current issues affecting people with disabilities, best practices, and the legislative processes at the local, state, and federal

Partners in Policymaking
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Partners in Policymaking

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levels. The overall goal of Partners in Policymaking is to achieve a productive partnership between people needing and using services and those in a position to make policy and law. The training is one weekend per month, for six months, and takes dedication and commitment on the part of the participant.

Class Speaker Cassandra Rogat

The training program in South Dakota is conducted by Disability Rights South Dakota, doing business as SD Advocacy Services (SDAS). Sandy Stocklin Hook of Pierre is the project coordinator for the statewide training course. She noted, "We just celebrated our 25th year of this life-changing training and now have over 600 individuals who have completed Partners in Policymaking in South Dakota. Their voices are being heard!" She also commented, "We strongly believe that individuals who use services should have a major role in determining what services they are being provided and how they are delivered. It

Class Speaker Diana Treadway

Class Speaker Dedric Rose

is really exciting to see the Partners' enthusiasm and commitment to improving national, state, and local services."

Friday evening, those in attendance enjoyed a program by Flutter Productions, a division of Black Hills Works of Rapid City. Flutter Productions shared original pieces about disabilities and disability culture from "ABLE: The Disability Chronicles," which was the first professionally produced production in the state of South Dakota that was written and performed by individuals with disabilities.

Class Speaker Julie Niles

In addition to graduation ceremonies, 162 graduates of prior years of SD Partners in Policymaking spent the weekend in Sioux Falls attending continuing education classes on current issues. "Networking is a very important part of the training initiative. We have made a commitment to gather all graduates with the current class and offer continuing education and networking. Once a Partner graduates from the course, they are not forgotten," commented Stocklin Hook. Continuing education offered ten diverse sessions for past graduates to choose from based on their interests.

Cynthia Roan Eagle, Flutter Productions, performing "Runt"

In addition, a youth SibShop was hosted by Parent Connection and South Dakota Advocacy Services sponsored a free Disability Rights Legal Clinic on Friday and Saturday.

Year Twenty-Six of Partners in Policymaking will begin in November 2017. For more information on the program, contact Sandy Stocklin Hook, Disability Rights South Dakota, 221 S. Central Ave., Pierre, SD 57501 or call 1-800-658-4782. Or you can visit the SDAS Website for Partners in Policymaking information at www.sdadvocacy.com or email sandy.hook@drsdlaw.org.

Flutter Productions performing "Hoops"

Mental Illness Rights

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his or her care and treatment at the facility. These rights are applied under SDCL Chapter 27A-12 and govern the rights of any individual under the mental health code, whether admitted on a voluntary or involuntary basis, and include:

1. Competence. No person may be deemed incompetent to exercise any right or privilege accorded citizens of South Dakota solely by reason of detention, admission, or commitment under the mental health code. (SDCL 27A-12-1.2)

2. Privacy and Dignity. Each person has the right to a humane environment that affords appropriate individual privacy, individual dignity, and reasonable protection from harm. These rights shall be respected at all times and upon all occasions, including when a person is taken into custody, detained, or transported. (SDCL 27A-12-1)

3. Notice of Rights. A person is entitled to prompt oral and written notice of his/her rights upon entering a facility or program. A written list of rights shall be prominently displayed in an accessible location. (SDCL 27A-12-3)

4. Rights Enumerated. Any person, if otherwise qualified, has the right to:

a. Refuse to be photographed or fingerprinted;

b. Remain silent and fully clothed;

c. Have access to: Toilet facilities upon request; His/her own money unless a conservator has been appointed; To keep as much money in his/her personal possession as he/she deems is necessary; To purchase personal articles; and A minimum of two hours exercise daily;

d. Receive any visitors during regular visiting hours; communicate with individuals outside the facility; send and receive unopened mail; adequate writing material, envelopes and stamps; access to a telephone; local calls without charge; and long distance calls if paid for or charged to another number.

e. Wear his/her own clothes; keep his/her own toilet articles; adequate storage space;

f. Converse with others in private;

g. Receive prompt, adequate medical treatment;

h. Voluntary participation in religious services in accordance with personal needs, desires, and capabilities and also in accordance with the basic right to freedom of religion.

Reasonable Limitations. *Reasonable limitations may be placed on the above-listed rights on an individual basis if essential to prevent the person from violating a law or to prevent substantial and serious physical or mental harm to himself or others. Each limitation must be approved by the facility director.* (SDCL 27A-12-3.1)

5. Spiritual Treatment. Each person has the right to treatment by spiritual means through prayer. (SDCL 27A-12- 3.2)

6. Access to Rights Protection Services. A person has the right to engage in private communications in appropriate facilities with any available right protection service or system, such as South Dakota Advocacy Services. (SDCL 27A-12-3.3)

7. Access to Attorney and Physicians. A person may communicate with a legal representative or a private physician subject to the facility's normal access restrictions. The person's legal representative shall have access to all records and information pertaining to the person. (SDCL 27A-12-3.18)

8. Labor. A person may perform labor for a facility only upon a voluntary and compensated basis. One-half of such compensation is exempt from collection for services provided by the facility. Discharge may not be conditioned on performance of labor. (SDCL 27A-12-3.4; 27A-12-3.5)

9. Treatment Programming. Each person shall have a physical and mental examination within forty-eight hours (excluding Saturdays, Sundays, and holidays) of admission. (SDCL 27A-12 -3.8)

10. Each person has the right to a comprehensive individualized treatment program developed by appropriate qualified mental health professionals, including a psychiatrist. The treatment plan may not consist solely of chemical or drug therapy unless supported by sufficient psychiatric and medical opinion. A person has the right, according to his/her capabilities, to participate in the planning of services to be provided. This right includes participation in the development, review, and revision of the treatment program.

The person is entitled to a reasonable explanation of:

a. Such person's mental and physical condition;

b. The objective of treatment;

c. The nature and significant possible adverse effects of recommended treatments;

d. The reasons why a particular treatment is considered appropriate;

e. The reason for any limitation on rights; and

f. Any appropriate and available alternative treatments, services, and types of providers. (SDCL 27A-12-3.6)

11. Treatment programs shall be designed to achieve discharge at the earliest possible time and to maximize each person's development and skill acquisition. A treatment team of qualified mental health professionals must periodically review, follow-up, and update all individualized programs. (SDCL 27A-12-3.6)

12. Each person has the right to an aftercare program, which outlines available services and recommendations for continued post-discharge placement or treatment. Participation in the plan is discretionary and refusal to participate shall not be a reason for continued detention. (SDCL 27A-12-3.7)

13. Within ten days after commitment, the facility or program director shall review the need for continued commitment and assess whether an individualized treatment program has been implemented. If a treatment program has not been implemented within ten days, the person shall be released immediately unless he/she agrees to continue treatment on a voluntary basis. (SDCL 27A-12-3.9)

14. Within thirty days after the above review and within every ninety days thereafter, the director shall assess whether commitment should be continued. (SDCL 27A-12-3.9)

Mental Illness Rights
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Two DRSD PAIMI Advisory Council Members Excel in NAMI

by Laura Greenstein

"There are too many people who don't have anyone," states Loran Harris, who lives with bipolar disorder, PTSD, and a panic disorder. This is especially the case where he lives in the rural Midwest, as mental health resources are scarce and stigma is widespread. That is why Harris and his partner, Timothy Flaskamp, have made it their mission to help connect people to mental health support and each other.

The dynamic duo of Harris and Flaskamp (who deals with depression) helped build the National Alliance on Mental Illness (NAMI) Northern Hills Affiliate in Western South Dakota and they are now its secretary and president (respectively). They have been familiar with NAMI and have presented NAMI's "In Our Own Voice" to any schools, businesses, jails, and churches that would have them. Their efforts unveiled the need for a support group in their area, where it is common to drive 30 or 40 miles or more to see a mental health professional. So, almost seven years ago, they started the NAMI Northern Hills Connections Recovery Support Group. People travel up to 100 miles - from the corners of Wyoming, Montana and different parts of South Dakota - to join this supportive community.

Harris and Flaskamp are part of NAMI's Elite Speakers Gold Club Membership, having been honored this last year at NAMI Nationals in Denver, Colorado. The NAMI Northern Hills Connection's Recovery Support Group, which is for folks with mental illness and which Harris and Flaskamp Co-facilitate, also won National awards. The National awards put two very large feathers in each these men's hats and rewarded a group of folks that are very, very active in the Affiliate and Community.

As the group continued to grow, it became clear that many members needed more peer support than just one night per week. More and more people came to Harris and Flaskamp asking if they could call them if they needed help or someone to talk to. The pair never refused, and they reached a point where they were receiving up to 30 calls per day.

TIME FOR A NEW SYSTEM

During a weekly meeting, Harris and Flaskamp passed around a piece of paper labeled "Phone-A-Friend," with their

PAC Members Excel
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Legal Clinic a Success

by Kate Hoekstra

South Dakota Advocacy Services hosted its third Legal Clinic on April 21 and 22, 2017, at the Ramkota Hotel in Sioux Falls. The Legal Clinic provided the public the opportunity to ask attorneys specific disability-related legal questions. SDAS intends to incorporate presentations at future Legal Clinics, while still having attorneys available to answer individual disability-related legal questions.

SDAS attorneys who participated included John Hamilton, Gail Eichstadt, Brian Gosch, and Kate Hoekstra. SDAS staff assisting with intake, setup, and organization included Carrie Geppert, Sandy Hook, Dianna Marshall, C.J. Moit, Rod Raschke, Cole Uecker, and Twila Stibral.

Alison Ramsdell and Kevin Koliner from the United States Attorney's Office in Sioux Falls and Craig Eichstadt from the Office of Attorney General in Pierre generously volunteered their time and expertise to provide free legal advice at the Legal Clinic.

Sixteen individuals received free legal advice from one of the attorneys at the Legal Clinic. SDAS is planning a Special Education Legal Clinic in the fall and another Legal Clinic next spring during the Partners in Policymaking graduation weekend.

Anyone with a disability-related issue is encouraged to contact SDAS intake for information, referrals, or assistance.

(l-r): John Hamilton; Alison Ramsdell; Brian Gosch; Craig Eichstadt; Gail Eichstadt; Kevin Koliner; and Kate Hoekstra

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CHANGE SERVICE REQUESTED

PAC Members Excel

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numbers at the bottom. They explained that this list was voluntary, but putting your number down meant that you were willing to provide a listening ear to someone having a rough time. One vital component of Phone-A-Friend is that each participant is asked what they would want to hear if/when they were in a panic or crisis. The idea was for everyone always to have an informed, helpful person to call -- a person on the other end of the line who could confidently state, "I'm going to listen to you, and I know what you need to hear."

Affiliate members connected with one another based on whom they felt comfortable talking to. Some linked with people who shared the same mental health condition and veterans linked with other veterans, but ultimately people spoke to whomever they believed would be the most helpful to them -- which often meant anyone. Remarkably, since Phone-A-Friend's inception, there has not been a single suicide by any participants.

One might think a rural affiliate with the challenge of vast geographical distances among members might fall short of other affiliates where all members are centrally located. But, NAMI Northern Hills is an example of an affiliate where members looks out for each other far beyond what is expected, and Phone-A-Friend has become a symbol of support in their now interconnected community. The fact that people are willing to drive up to an hour and a half to go to a weekly meeting shows how impactful this affiliate's work is in their lives. As Harris eloquently notes, "If not for our NAMI group in this area, things would be really tough. I often wonder what people did before NAMI."

Harris and Flaskamp are both active with NAMI and Disability Rights South Dakota and sit on the PAIMI Advisory Council. Their "Give Back and Pay Forward" philosophy, as Flaskamp states, "serves them well."

Adapted from NAMI'S ADVOCATE, NAMI NORTHERN HILLS, "NOT JUST PHONING IT IN"

Calendar

- **September 15, 2017** - Partners in Policymaking Application Deadline
- **September 15-16, 2017** - DRSD Board of Directors Meeting, Pierre
- **September 28-29, 2017** - SD NAMI Annual Conference, Spearfish
- **October 2-4, 2017** - SD RehabACTion Fall Conference, Pierre

Mental Illness Rights

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The preceding sets out many of the rights available to persons with mental illness. Per SDCL 27A-12-33.1, persons exercising any rights set out in SDCL Title 27A "are not subject to any reprisal, including reprisal through the actual or threatened denial of any treatment, benefits, privileges, or other rights." If you have questions about your rights, please contact DRSD at 1-800-658-4782.