

CONSUMER TASK FORCE
Michigan Quality Community Care Council
June 23, 2009 10:00 - 12:30
AGENDA

INTRODUCTIONS

APPROVAL OF THE APRIL MINUTES

MISSION STATEMENT

SINGLE POINTS OF ENTRY

STATUS OF OFFICE

CHCS TECHNICAL ASSISTANCE GRANT FOR INTEGRATED LTC PLANS

FY 2010 DEPARTMENT OF COMMUNITY HEALTH BUDGET

PROJECT ACTION TEAMS (PATS)

MI CHOICE AMENDMENT TO PROVIDE SERVICES IN LICENSED FACILITIES

STATE PROFILE TOOL

MIG ACTIVITIES

SYSTEM CHANGE IDEAS (Action in bold)

- Increase the number of DHS staff **(Budget cuts have delayed this recommendation)**
- Change the financial eligibility for programs so it is consistent across the array of services. Rob Curtner is working on a grid that identifies the eligibility criteria for the array. Susan Steinke will send Doug Chalgian's eligibility descriptions from the Commission workgroup.
- Integrate acute and long-term care services. This is a national issue as well. **(This will be considered with the CHCS TA grant and subsequent proposed managed care plan.)**
- Treating multiple chronic conditions. Most physicians do not treat multiple conditions, only one at a time. **(This should be part of the prevention project action team.)**
- Physicians prescribe things that are not covered and as such must come out of the consumers pocket
- If you have multiple insurances, their policies sometimes contradict each other. For example, Medicare will not allow in-home physical therapy unless you are

homebound. Or a consumer must be at home to receive in-home nursing, but insurance won't allow a visiting physician, so the person has to go to the doctor so they really aren't home bound so can't get the nursing!

- There is no back-up plan for home help

OTHER

- PROJECT STATUS REPORTS
- MEETINGS WITH CHAIR OF LTC SUPPORTS AND SERVICES
ADVISORY COMMISSION

REMINDERS:

NEXT MEETINGS:

August 25, 2009

MICHIGAN QUALITY COMMUNITY CARE COUNCIL, 3186 PINE TREE
ROAD, LANSING, MICHIGAN 48911

October 27, 2009

MICHIGAN QUALITY COMMUNITY CARE COUNCIL, 3186 PINE TREE
ROAD, LANSING, MICHIGAN 48911

PHONE IN NUMBER: 877-873-8018, passcode 7989381

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CONSUMER TASK FORCE

JUNE 23, 2009

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REVENUE COUNCIL

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AARP BENEFITS QUICKLINK BROCHURE

MINIMUM OPERATING STANDARDS FOR MI CHOICE WAIVER
PROGRAM SERVICES

ABSTRACT FOR TBI GRANT

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ADA SYMPOSIUM

DD COUNCIL NOTICE OF MEETING

WORKSUPPORT NEWSLETTER

PROJECT UPDATES

Consumer Task Force
Michigan Quality Community Care Council
April 28, 2009 10:00 am - noon

MINUTES

ATTENDEES: Roxanne Chang, Jacqui Day, Norm DeLisle, Laura Hall, Sharon Hall, Sara Harrison, Suanne McBrien, Susan Steinke, Cyndy Viars, Jane Alexander, Nora Barkey, Tandy Bidinger, Rob Curtner, Tari Muñiz, Jackie Tichnell, Drew Walker

APPROVAL OF THE DECEMBER AND FEBRUARY MINUTES - Minutes were approved.

EXECUTIVE COMMITTEE MINUTES - There was brief discussion regarding consumer stipends for participation on LTC Commission workgroups. Jane Alexander is still in the process of obtaining the Department's policy on consumer stipends. Cyndy and Tandy are on the Commission Public Education Workgroup and are looking for consumers to represent themselves, not the CTF. Other methods of participation were discussed. Conference calling is a possibility but has its difficulties. It was noted that conference calls should be an option and not used in lieu of transportation expenses unless necessary. The Commission workgroup meeting schedules are on the Office web site.

<http://www.michigan.gov/ltc/0,1607,7-148--194979--,00.html>

Nora requested input on what consumers want to know, at first contact, about LTC. One suggestion is that the families want reassurance that the consumer would be safe in the community.

MISSION STATEMENT - The Office provided a revised CTF mission statement for CTF approval. Laura provided a summary of the changes. She was also concerned that "consumer-driven" does not specifically include other stakeholders, but the CTF did not think this was an issue.

There was also discussion regarding the intent of "inform." It was decided that the sentence should read: "...and to enhance the work of the state as it relates to long-term care supports and services..." Peggy Brey must still approve this change.

CHCS TECHNICAL ASSISTANCE GRANT FOR INTEGRATED LTC PLANS - Jane Alexander provided a summary of this grant. The Center for Health Care Services will provide technical assistance to the state to

develop a plan to provide services to Medicare and Medicaid (dual eligible) consumers using both funding streams.

It has been submitted to the Center for Health Care Services for approval. Laura did review it before it was submitted. She suggested the plan all dual eligibles.

OFFICE UPDATE - Jane Alexander provided an overview of the Process Action Teams (PATs) in the Office and their relationship to the Commission workgroups. All PATs are looking for stakeholder help. If you are interested, you should contact the Office.

STATE PROFILE TOOL - An abstract of the tool and the Index were provided. The draft tool was sent to CMS on March 31. We are currently waiting for the final approval of the various sections from the state staff experts. Once approved, it will be given to the Stakeholder Council for review. The tool should be approved in 6 months. Several of the Task Force noted that this Michigan LTC is very complex with many departments involved. The next step is to create national LTC benchmarks with CMS.

FY 2010 DEPARTMENT OF COMMUNITY HEALTH BUDGET - Jane Alexander provided a narrative and flow chart of the state budget process. Members should note that, by the time the budget process gets to the Legislature, much opportunity to influence the budget has already passed. People need to provide input to the department all the time.

Boilerplate language was defined as the description of the budget items and includes earmarked projects and limitations or restrictions on certain items.

The current budget for 2010 has passed the House and is in the Senate. It was noted that the House, historically, allows for more public comment. But, people can always provide copies of written testimony. The legislative web site has the schedule of hearing for the budget. You can also sign up for committees on-line.

[http://www.legislature.mi.gov/\(S\(y5fs0045awoll5e41nl104ix\)\)/mileg.aspx?page=CommitteeMeetings](http://www.legislature.mi.gov/(S(y5fs0045awoll5e41nl104ix))/mileg.aspx?page=CommitteeMeetings)

PERSON-CENTERED PLANNING DEFINITION, CORE VALUES/PRINCIPLES AND ESSENTIAL ELEMENTS - Nora provided the CTF with this document, and noted that it has been adopted by the Commission and approved by the DCH director who supports the principles and is commits the department's leadership to adopt these principles

across the department. The next step is to move these principles across state government.

Tari is working on training materials. The Office is developing materials for consumers and what they should know about PCP up front, e.g., the consumer has control and provide examples. Videos on the web could be very useful, as well. (The Flint video was cited as a good example.)

The next meeting of the Commission PCP workgroup is June 10, 10am, in the OSA Conference Room. If you wish to participate, contact Nora. Tari's subcommittee on training has a meeting on May 13, 3pm, in the Office conference room.

MI CHOICE AMENDMENT TO PROVIDE SERVICES IN LICENSED FACILITIES - The amendment to the MI Choice waiver to include "residential services" as a new coverage was submitted to CMS on April 1. This will allow MI Choice services to be provided in a licensed AFC or Home for the Aged (HA). Also included in the amendment was a new prioritization of the wait list, increase in the number of slots for the waiver, and a change in the methodology of determining the administrative reimbursement rate that includes an acuity measure. Susan noted that she, Sarah Slocum, and Alison Hirschel will be talking to MSA regarding the low MI Choice administrative rate.

MIG ACTIVITIES - The amendments to the Freedom To Work legislation have been introduced in the House and Senate. These amendments include changing the eligibility to allow spend-down consumers to become eligible for FTW and change the premium structure. Both bills have sponsors. Laura will send talking points to Jackie.

There is also work on developing training for different types of benefits counselors to be sure that all are providing the same and correct message.

The workgroup continues to seek funding for the db101 internet tool. This tool will provide people with information on how a specific situation may affect their benefits.

SYSTEM CHANGE IDEAS -

- Increase the number of DHS staff
- Change the financial eligibility for programs so it is consistent across the array of services. Rob Curtner is working on a grid that identifies the eligibility criteria for the array. Susan Steinke will send Doug Chalgian's eligibility descriptions from the Commission workgroup.

- Integrate acute and long-term care services. This is a national issue as well.
- Treating multiple chronic conditions. Most physicians do not treat multiple conditions, only one at a time.
- Physicians prescribe things that are not covered and as such must come out of the consumers pocket
- If you have multiple insurances, their policies sometimes contradict each other. For example, Medicare will not allow in-home physical therapy unless you are homebound. Or a consumer must be at home to receive in-home nursing, but insurance won't allow a visiting physician, so the person has to go to the doctor so they really aren't home bound so can't get the nursing!
- There is no back-up plan for home help

The Office will review the situation and the policies. Then determine the best method for dealing with the barrier. The Office will maintain a list of the system change issues and the progress to alleviate them.

OTHER

- PROJECT STATUS REPORTS
 - Tari provided a template for agencies to use for self-determination. Comments are welcome. At this point, there are 890 people on self-determination in MI Choice.
 - The QC3 has 5 more counties who have met their goals of new consumers using the QC3.
- ADAPT - Are in DC. They are advocating for the Community Choice Act to be part of the Administration's Health Care Reform.

REMINDERS:

NEXT MEETINGS:

August 25, 2009

MICHIGAN QUALITY COMMUNITY CARE COUNCIL, 3186 PINE TREE ROAD, LANSING, MICHIGAN 48911

October 27, 2009

MICHIGAN QUALITY COMMUNITY CARE COUNCIL, 3186 PINE TREE ROAD, LANSING, MICHIGAN 48911

PHONE IN NUMBER: 877-873-8018, passcode 7989381

Meeting Name CTF Executive Committee		Highlights Date: June 1 Time: 4pm Location: OLTCSS Conference Room		
Meeting Lead:		Recorder: Jackie		
Meeting Purpose:		CTF Executive Committee		
Participants:		Cyndy Viars, Laura Hall, Jackie Tichnell, RoAnne Chaney, Jacqui Day, Jane Alexander, Margaret Biggs		
1	Welcome & Review Meeting Purpose/Objective			
2	Review Agenda			
3	Mission Statement			
4	Status of Office			
5	CHCS Technical Grant			
6	State Profile Tool			
7	Budget			
8	PATs			
9	MI Choice Amendment for Licensed Settings			
10	MIG			
11	Next Meeting Agenda			
12	Review Record: Action Items, Open Issues, Decisions			

Discussion/Decisions:

Item	Discussion/Decisions
Mission Statement	Has CTF and Office Director approval. Add to manual
Office Status	Kraus is holding a public hearing on the office status at Capitol View, June 29, 1:30 - 3:30, Conf A-C. CTF members may present as CTF members or as their own advocate
CHCS TA Grant	Michigan did receive the grant. Peggy, Susan Yontz, and Bob Orme are going to DC on June 16/17 to discuss the grant. There may be a report for the CTF meeting.
State Profile Tool	Was submitted to Ascellon, they had comments. The revised final report is due July 6. The Stakeholder group will now work on the benchmarks. Ascellon will provide 500 benchmarks and the state must choose 25-35 to use.
Budget 2010	Still in Senate. The SPEs are gone as of June 1. It was suggested this be added to the next agenda as a discussion topic. RoAnne and Jane will provide copies of the legislative powerpoint that will include a summary of the changes and recommendations to relieve the state.

Item	Discussion/Decisions
Project Action Teams (PATs)	Most have combined with the Commission workgroups. They are still looking for consumers to participate on these teams. Stipends are available. They usually meet every other month. Jane has discovered a foundation that provides stipends to consumers for various issues. She is pursuing the possibility of using their funds as consumer stipends. She will work with Laura on any letter that may be submitted to the foundation.
MI Choice Amendment	This is to provide “residential services” in a licensed setting. It was submitted to CMS, they have minor questions. Once MSA has responded to their issues, it will be resubmitted and should be approved.
MIG	The number of FTW enrollees has climbed to the point that Michigan may now submit for a comprehensive grant. Laura recently held an Employment Forum with their partners.
CTF Manual	Include on the web. At this point, we are not sure of whom will be responsible for maintaining the web. But we will try to get the manual included.

Action Items:

Item	Action/Note	Person Responsible
Mission Statement	Provide final copies to CTF	Jackie
Office Statue	Provide notice of the public hearing	Jackie
Budget	Provide copies of portions of the legislative powerpoint that include the summary of changes and possible recommendations	Jackie
Updates	Updates on the Office status, CHCS TA grant, budget, and State Profile Tool.	Jane Alexander
MI Choice update	Ask Jane Church to provide an update	Jackie
MIG Update	Ask Joe to provide update	Jackie

Consumer Task Force Mission Statement

The Michigan Consumer Task Force is a consumer-driven group that is committed to the principles of Person-Centered Planning, Self-Determination, and choice in long-term care options. These commitments are accomplished through using our unique knowledge and personal experience to advise the State on the development and implementation of grants related to the long-term care system and to enhance the work of the state as it relates to long-term care supports and services, particularly within grants and policies.

April 2009



STATE OF MICHIGAN

DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEWSKI
DIRECTOR

**NOTICE OF PUBLIC HEARING
May 27, 2009**

**EXECUTIVE ORDER No. 2009 – 3
Integration of the Office of Long Term Care Supports and Services**

The Department of Community Health will hold a public hearing on **Monday, June 29**, from **1:30 – 3:30 p.m.** at the Capital View Building, 201 Townsend, Lansing, Michigan 48913, **Conference Center A, B, and C.**

Kurt Krause, Chief Deputy Director for the department will be convening this hearing for the purpose of receiving commentary regarding the integration of the Office of Long Term Care Supports and Services within the Department of Community Health. The Office is being integrated into the Department under the authority of Executive Order No. 2009-3.

For submitting written testimony please direct to:

Department of Community Health
Office of Long Term Care Supports and Services
201 Townsend, 1st Floor
Lansing, MI 48913
Attention: Peggy Brey, Interim Director
E-mail address: brey@michigan.gov

A copy of Executive Order 2009 - 3 may be obtained by contacting the Office of Long Term Care Supports and Services at the address noted above. Electronic copies may also be obtained at <http://michigan.gov/gov/0,1607,7-168-21975-208702--,00.html>.

All hearings are conducted in compliance with the 1990 Americans with Disabilities Act. Hearings are held in buildings that accommodate mobility-impaired individuals and accessible parking is available. An individual who requires accommodations in order to participate in a hearing should call Marlene Simon at (517) 337-3860 to make the necessary arrangements. To ensure availability of the accommodation, please call at least 1 week in advance.

DRIVING DIRECTIONS

Capital View Building

201 Townsend Street, Lansing, Michigan

The Capitol View Building is located on the southeast corner of West Allegan Street and Townsend Street. Parking is available, for a fee, in two city-run parking ramps. One ramp is located on Townsend Street, adjacent to the Capitol View Building. The other ramp is at the corner of West Allegan Street and South Capitol Avenue. Parking is also available at meters throughout the downtown area.

From Grand Rapids: Take I-96E to I-496E. Follow I-496E to the Pine Street Exit (Exit 6). Follow the off ramp to West Main Street and continue down West Main Street. Turn left on to Walnut Street (see map below).

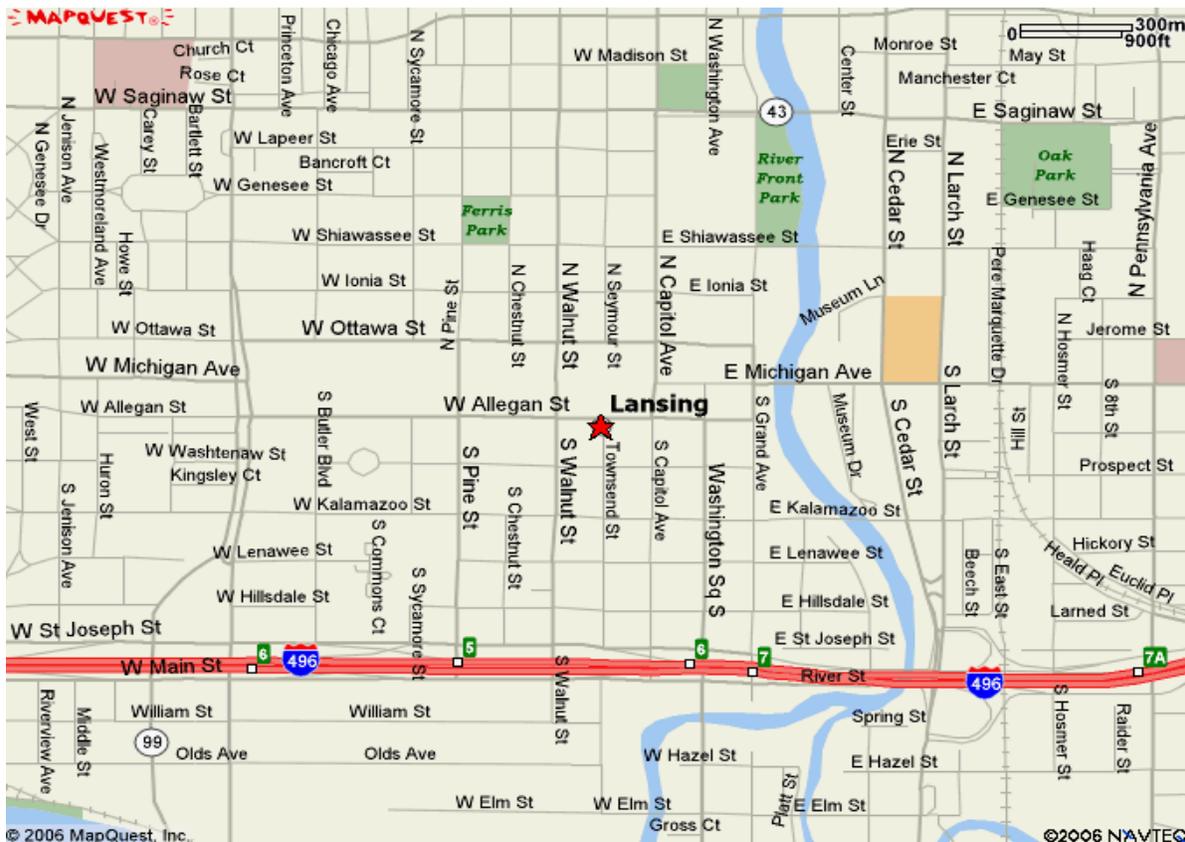
From Clare and Points North: Follow US-127S to I-496W. Take I-496W to the Walnut Street Exit (Exit 6). Follow the off ramp to West St. Joseph Street and continue on St. Joseph Street for one block. Turn right on to Walnut Street (see map below)

From Flint: Take I-69W to US-127S. Follow US-127S to I-496W. Take I-496W to the Walnut Street Exit (Exit 6). Follow the off ramp to W. St. Joseph St and continue on St. Joseph St. for one block. Turn right on to Walnut Street (see map below)

From Detroit: Take I-96W to Lansing which runs right into I-496W. Get on I-496W and continue to Exit 6 which is Walnut Street. Follow the off ramp to W. St. Joseph St and continue on St. Joseph St. for one block. Turn right on to Walnut Street (see map below)

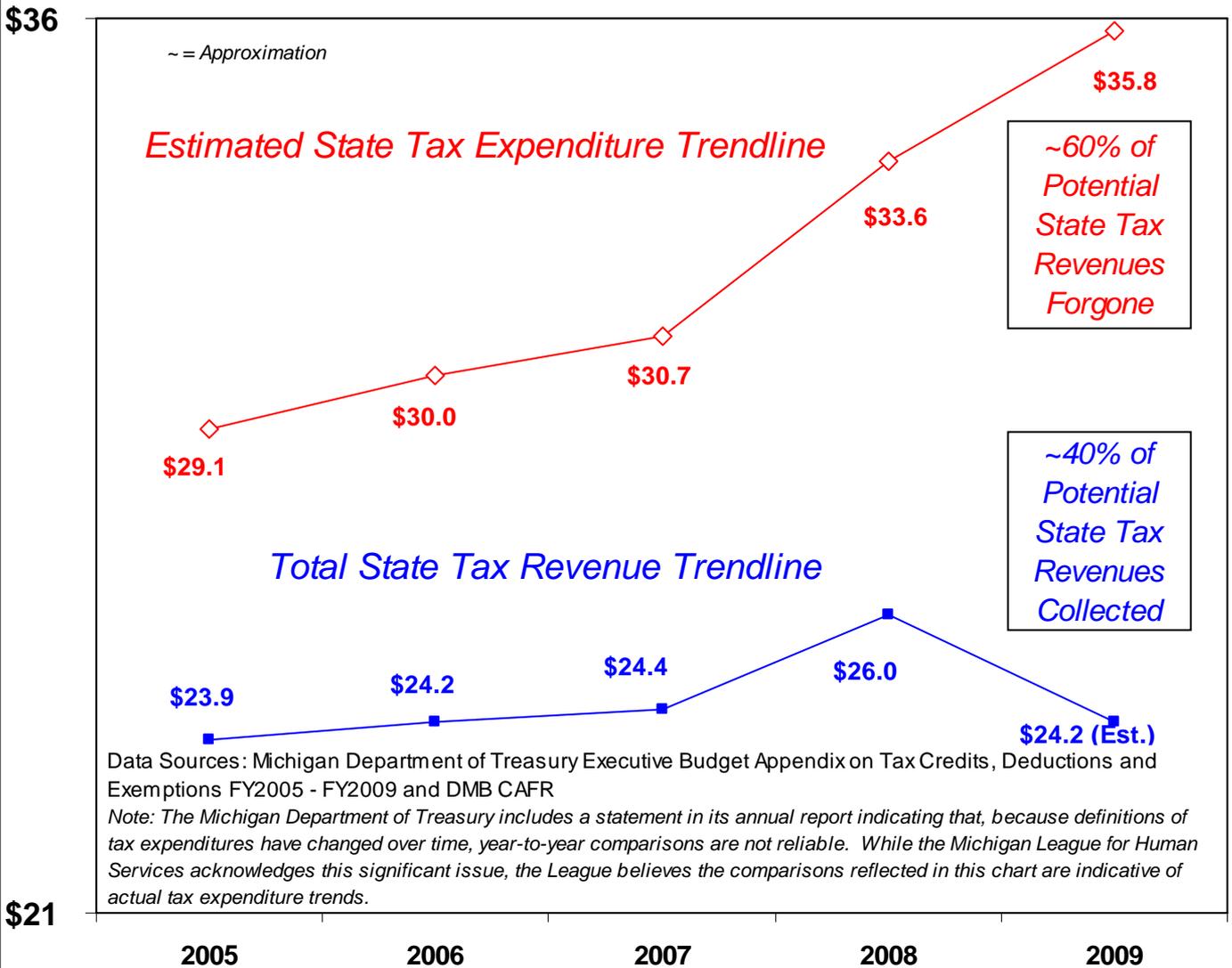
From Jackson and Points South: Take US-127N from Jackson to Lansing. At I-96, I-496 will join US-127N. Follow I-496W to the Walnut Street Exit (Exit 5). Follow the off ramp to W. St. Joseph St and continue on St. Joseph St. for one block. Turn right on to Walnut Street (see map below)

From Southwest Michigan (Kalamazoo-Benton Harbor-St. Joseph Area): Travel North on I-69 to Lansing. Follow I-69 to I-496E. Follow I-496E to the Pine Street Exit (Exit 6). Follow the off ramp to W. Main Street and continue down W. Main Street. Turn left on to Walnut Street (see map below)



CAPITOL VIEW BUILDING • 201 TOWNSEND STREET • LANSING, MICHIGAN 48913
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Estimated Michigan Tax Revenue and Tax Expenditure Trends ((\$s in Billions))



Michigan's Defining Moment: Report of the Emergency Financial Advisory Panel

Prepared for the Office of the Governor -- February 2, 2007

Executive Summary Excerpts:

"A persistently weak economy, tax cuts, spending pressures, and inattention to essential government reform have triggered this crisis."

"The state must restructure taxes in a manner that would immediately increase revenues."

"After careful study and considerable discussion, this bipartisan panel believes that Michigan

- needs fundamental reform of both spending and taxes;
- must create a modern tax structure...;
- must end disinvestment in education...;
- must develop a fiscal plan that includes a combination of revenue increases, spending cuts, and reform of how public services are delivered."

Excerpt from Conclusion:

"Members of this panel have advocated tax increases from time to time, and we have opposed them at other times. ... One thing upon which we agree today is that somewhere between today's state revenues and the state constitution's limitation lays the appropriate level of taxes and public spending."

Emergency Financial Advisory Panel Members

Former governor's William G. Milliken and James J. Blanchard, former Senate majority leader Dan L. DeGrow, former budget director Don Gilmer, former co-speaker of the House of Representatives Paul Hillemonds, former Michigan attorney general Frank J. Kelly, Michigan Catholic Conference president and CEO Sr. Monica Kostielney, former state superintendent of public instruction Dr. John W. Porter, former state treasurer Douglas B. Roberts, former U.S. Congressman John Schwarz, M.D., Michigan State University president Dr. Lou Anna K. Simon and former state department director S. Martin Taylor

**Seven Alternatives Projected to Close
50 Percent (\$3.65 BIL) of the Recognized Gap
Between the Headlee Limit and Current State Revenues**

<u>Alternatives</u>	<u>Revenue Increases/ Cost Savings</u>
1. Extend 6% sales tax to a limited number of services (excludes medical, nonprofit and business-to-business services valued at over 80% of total)	\$1.8 BIL
2. Institute a graduated income tax that would marginally increase the state tax burden for fewer than 10 percent of filers.	\$.6 BIL
3. Reduce senior tax preferences to a level equal to Virginia, the second most generous state. (Michigan is #1 in this category by over 27%.)	\$.2 BIL
4. Restore two-thirds of the loss in purchasing power of state beer tax revenue since that tax was last adjusted (reduced) in 1966. This would effectively increase the tax from 2 cents to 6 cents per 12 ounces.	\$.1 BIL
5. Decouple from the Federal Estate Tax which currently precludes MI from receiving a share of revenues collected from approximately 1/2 percent of Michigan estates (non-farm estates with a value in excess of \$5 MIL).	\$.25 BIL
6. Reduce tax expenditures not considered in recommendations above (~\$20 BIL) by 2 percent and establish pay-go rules to limit future growth.	\$.4 BIL
7. Reduce the incarceration rate and average cost per prisoner differential between Michigan and the other Great Lakes states by 50%. (While this action is not a revenue enhancement, it would free up revenues to offset anticipated out-year deficits.	\$.3 BIL
Total Potential Revenues and Expenditure Savings	\$3.65 BIL

Notes: While the alternatives outlined above would close ~50% of the gap between the Headlee limit and actual revenues that have materialized since the passage of Proposal A in 1994, they would close only ~30% of the estimated \$12.3 billion state revenue gap that has materialized since the passage of the Headlee constitutional revenue limit in 1978. Restoring 50% of the decline in pre-Proposal A revenues used to support state funded services would require an additional \$2.5 billion in revenue enhancements. (Excludes highway and transportation related revenue trendline issues.)

From Tandy Bidinger:

The next Revenue Group meeting will be Thursday, July 2nd at 3:00 at the AFL office, 419 S Washington Square. Lansing, MI 48933-2138. (517) 487-3139

Karen Holcomb-Merrill
State Fiscal Project Director
Michigan League for Human Services
1115 S. Pennsylvania Ave., Suite 202
Lansing, MI 48912
517.487.5436
KarenH@michleagueforhumansvs.org

Things to do in the Detroit area for about \$165

- **Christmas or birthday shopping for loved ones**
- **Get a nice new coat and/or boots**
- **Round-trip tickets for two seniors and one child on Amtrak from Detroit to Chicago**
- **Two good seats at a Pistons' game**
- **Reserved grandstand seats for two at the Belle Isle Grand Prix**



MiCAFE

Michigan's Coordinated
Access to Food for the Elderly



Fun Things To Do With \$16 in the Detroit Area

If you use your Bridge card to pay for food at the grocery store, you can use your cash for fun things!

- 2 senior tickets to the zoo (\$7 ea.)
- A cheap seat at a Pistons game (\$10)
- Bleacher seat at a Tigers game (\$12)
- 3 matinee movie tickets (\$5 ea.)
- 4 tickets to the Ford-Wyoming drive-in (\$4 ea.)
- Round trip bus fare and movie passes for 1 adult and 2 children to a discount movie theater
- Senior monthly bus pass (\$17)
- Tickets for 1 senior and 1 child to Detroit Auto Show (\$6 ea.)
- Ticket to the Detroit Science Center
- Annual senior pass to Kensington Metro Park (\$12)
- Round-trip bus fare and tickets for 1 senior and 1 child to the Museum of African-American History
- Take the grandkids to McDonald's
- A round of miniature golf for 2



\$16 is the minimum amount you may receive each month

If you are 60 years or older, call us for more information about a Bridge Card.

LET US HELP YOU WITH FOOD SO YOU CAN SPEND YOUR CASH ON FUN!

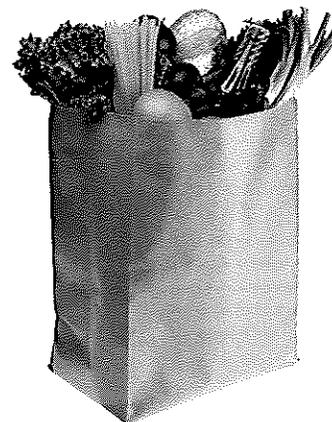
Call Toll-Free to find the MiCAFE site nearest you!

1-877-664-2233

MiCAFE is a program of:



ELDER LAW OF MICHIGAN, INC.



Michigan Elder Economic Security Standard™ Index

The Elder Index is a realistic determination of the basic costs for older citizens to make ends meet each month. The Elder Index is determined by county and includes variables such as the cost of housing, food, transportation, family size, health care, the individual's health situation, and necessary items like toothpaste and clothing. The data shows that older adults are having a hard time living independently. It's Not Your Fault! AARP Benefits QuickLINK can help!

Wider Opportunities for Women developed the Elder Economic Security Initiative of which the **Elder Index** is a key component. For more information about the Elder Economic Security Initiative, go to:
www.wowonline.org/ourprograms/eesi/



AARP Benefits QuickLINK is supported by the AARP Foundation. www.aarp.org/foundation

AARP

AARP Michigan
309 N. Washington Square, Suite 110
Lansing, MI 48933

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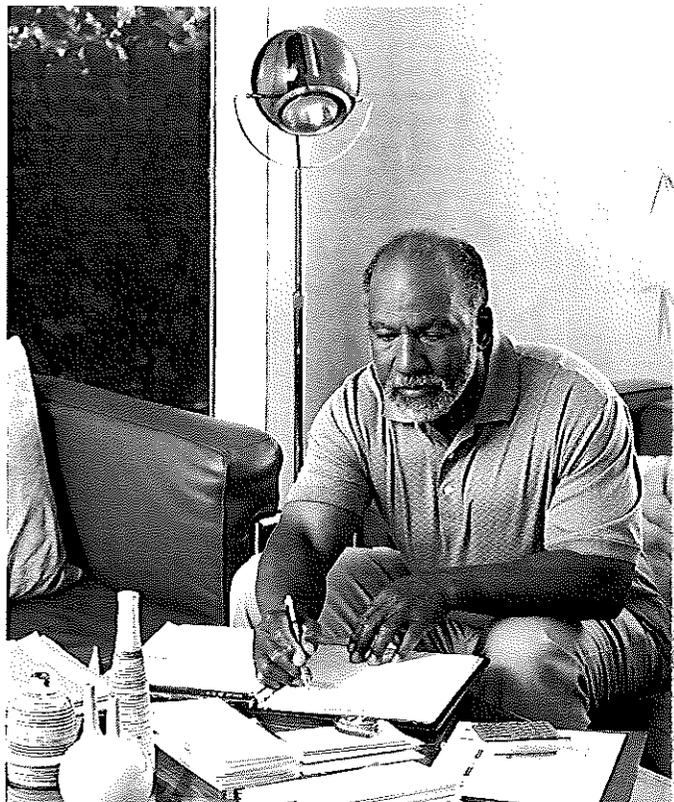


It's Not Your Fault!

Worried about making ends meet?
AARP Benefits QuickLINK can help!

Michigan Elder Economic Security Index
A project of the Michigan Elder Economic
Security Initiative

You are not alone in these hard times! Families in Michigan are struggling to make ends meet. It's Not Your Fault! With rising costs and fixed incomes, older adults may not be able to make it on their own. AARP, the Legal Hotline for Michigan Seniors, and the Michigan Coordinated Access to Food for the Elderly (MiCAFE) have volunteers ready to talk to you about programs and services to make your life easier and help you remain independent.



Are you or someone you care about:

- Skipping meals to save money?
- Not taking **all** your medication to save money?
- Behind on your gas or light bill?
- Worried about how to pay the rent, mortgage, or your taxes?
- Having trouble paying Medicare or health care premiums?

AARP Benefits QuickLINK can help.

Find programs that can help you save money and cover the costs of:

- Prescription drugs
- Medicare premiums
- Property taxes
- Healthy foods
- Doctor's appointments
- Basic telephone service
- Utility bills
- Children's health care
- And much more

Through new data provided by the Michigan Elder Economic Security Index, we know how much it costs to live independently in Michigan. We are here to help you plan for your future.

For an appointment in person with a benefits specialist, contact:

AARP Information Center
4750 Woodward Avenue
Suite 404
Detroit, Michigan 48201
313-832-6846
www.aarp.org

Or

MICAPE

(located in a senior center near you)
1-877-664-2233
www.elderlawofmi.org/micape

For help with benefits over the phone, contact:

Legal Hotline for Michigan Seniors
1-800-347-5297
www.elderlawofmi.org/legalhotline

To use the AARP Benefits QuickLINK tool yourself go to:

www.aarp.org/quicklink

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
Minimum Operating Standards for MI Choice Waiver Program Services

NAME	Residential services, waiver
DEFINITION	Residential services include enhanced assistance with activities of daily living and supportive services. MI Choice participants who receive this service must reside in licensed homelike, non-institutional settings. These settings include continuous on-site response capability to meet scheduled or unpredictable resident needs and provide supervision, safety, and security. Third parties may only furnish this service with the approval of the participant, licensee, and waiver agent. Payment excludes room and board, items of comfort or convenience, and costs of facility maintenance, upkeep, and improvement.
HCPCS CODES	T2032 , Residential care, not otherwise specified (NOS), waiver; per month T2033 , Residential care, not otherwise specified (NOS), waiver; per diem
UNITS	T2032 - one unit per month T2033 - one unit per day
SERVICE DELIVERY OPTIONS	<input checked="" type="checkbox"/> Traditional/Agency-Based <input checked="" type="checkbox"/> Self-Determination

Minimum Standards for Traditional Service Delivery

1. Each direct service provider must have written policies and procedures compatible with the “General Operating Standards for Waiver Agents and Contracted Direct Service Providers”, and minimally, Section A of the “General Operating Standards for MI Choice Waiver Service Providers”.
2. Residential Services (RS) include assistance with:
 - a. Activities of daily living such as bathing, eating, dressing, and personal hygiene
 - i. The services and supports provided under RS are in addition to and shall not replace usual and customary care furnished to residents in the licensed setting.
 - ii. Documentation in the participant’s record must clearly identify the participant’s need for additional supports and services not covered by licensure.
 - iii. The plan of care must clearly identify the portion of the participant’s supports and services covered by RS.
 - b. Homemaking tasks incidental to the provision of assistance with activities of daily living may also be included in RS, but shall not replace usual and customary homemaking tasks required by licensure.
 - c. Non-medical care (not requiring nursing or physician intervention)
 - d. Preserving the health and safety of the individual so that he/she may reside, receive services, and be supported in the most integrated and independent community setting.
3. RS excludes nursing and skilled therapy services.
4. RS does not include the costs associated with room and board.
5. Waiver agents authorize this service when necessary to prevent the institutionalization of the participant served and allow the participant to reside in the most independent setting of their choice.
6. Waiver agents cannot approve RS in circumstances where the service duplicates services available under the state plan, by licensure, or elsewhere. When more than one service is included in the participant’s plan of care, the waiver agent must clearly distinguish services by unique hours and units approved.

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH**Minimum Operating Standards for MI Choice Waiver Program Services**

7. Individuals providing RS must be at least 18 years of age, have the ability to communicate effectively both orally and in writing and follow instructions.
8. Members of a participant's family may provide RS to the participant. However, waiver agents shall not directly authorize MI Choice funds to pay for services furnished to a participant by that person's spouse.
9. Family members who provide RS must meet the same standards as providers who are unrelated to the individual.
10. The waiver agent, provider agency, and/or licensee must train each worker to perform properly each task required for each participant the worker serves before delivering the service to that participant. The supervisor must assure that each worker can perform every task assigned competently and confidently for each participant served.
11. When the RS provided to the participant include assistance with activities of daily living, the direct service providers furnishing RS must also:
 - a. Be supervised by a registered nurse licensed to practice nursing in the State. At the State's discretion, other qualified individuals may supervise RS providers. The direct care worker's supervisor shall be available to the worker at all times the worker is furnishing RS services.
 - b. Develop in-service training plans and assure all workers providing RS are confident and competent in safety and body mechanics before delivering RS to MI Choice participants, as applicable to the needs of that participant.
 - c. Provide an RN to individually train and supervise RS workers who perform higher-level, non-invasive tasks such as maintenance of catheters and feeding tubes, minor dressing changes, and wound care for each participant who requires such care. The supervising RN must assure each worker's confidence and competence in the performance of each task required.
 - d. Be trained in first aid and cardio-pulmonary resuscitation (CPR).
 - e. MDCH strongly recommends each worker delivering RS complete a certified nursing assistance training course.

Minimum Standards for Self-Determined Service Delivery

1. When authorizing RS for participants choosing the self-determination option, waiver agents must comply with items 2 through 7 of the Minimum Standards for Traditional Service Delivery specified above.
2. Each chosen provider must minimally comply with Section C of the "General Operating Standards for MI Choice Waiver Service Providers".
3. The individual furnishing RS must also be trained in CPR. This training may be waived when the provider is furnishing services to a participant who has a "Do Not Resuscitate" order.

Project Abstract

Project Title: Michigan TBI Implementation Partnership Grant

Applicant Organization: Michigan Department of Community Health
Project Director: Michael Daeschlein
Contact Person: Michael Daeschlein
Address: Michigan Department of Community Health
Office of Long-Term Care Supports and Services Washington
Square Building, 7th Floor
109 West Michigan Avenue
Lansing, MI 48909

Telephone Number: (517) 335-5106
Fax Number: (517) 241-2345
E-Mail Address: daeschleinm@michigan.gov
Website: www.michigan.gov/tbi
Project Period: April 1, 2009 – March 31, 2013

PROBLEM: Data on Michigan hospitalizations and deaths in which TBI was a diagnosis or contributing cause have been analyzed annually since 1999, through 2006. On average, there are 1,551 deaths and 9,430 nonfatal hospitalizations of Michigan residents with a diagnosis of TBI every year. There are 94 nonfatal TBI hospitalizations per 100,000 Michigan residents annually. From 1999 to 2006: The rate of TBI-related nonfatal hospitalizations has increased from 87.31 to 102.60 per 100,000 people. The risk of having a fatal or hospitalized TBI is highest among 15-24 year-old males and persons older than 75 years of age. Within the public sector, individuals with TBI can be served through public health, behavioral health, or social service agencies – presenting a confusing array of agencies and eligibility processes for survivors, family members, and even professionals trying to refer individuals for services.

GOALS AND OBJECTIVES:

Goal I. Facilitate the implementation of systems change to ensure state capacity to enhance access to comprehensive and coordinated services for individuals with TBI and their families

Objectives: 1) Implement and Evaluate Michigan’s TBI Medicaid Waiver; 2) Create a 1.0 FTE TBI Program Director position within the MDCH; and 3) Create an ombudsman structure to represent individuals with TBI and their families

Goal II. Increase state and local capacity to serve all individuals in Michigan, through partnerships with public and non-profit associations that will target key high-risk populations

Objectives: 1) Partner with Michigan’s AAAs, OSA, and LTCC; 2) Partner with Michigan DVA, VISN 11, VISN 12, and Veterans Service Organizations; 3) Partner with MDE, Public Schools, MHSAA, and parks for children aged 5-19; and 4) Partner with organizations representing African American and Arab-American communities,

Goal III. Enhance Michigan’s TBI educational and outreach products and partner with state, local, and private entities to incorporate TBI content in ongoing training activities, thereby ensuring sustainability

Objectives: 1) Augment Michigan’s web-based TBI training modules; 2) Integrate TBI Training into certification and licensing programs and require TBI Waiver service providers to pass Michigan’s TBI online training; 3) Work with hospital emergency departments management of concussion

Goal IV. Monitor, assimilate, and disseminate data to ensure that Michigan policy makers, the TBI Council, Michigan citizens, and state and local agencies have needed information on the significance of TBI, as well as the risk factors, service needs, and program effectiveness related to TBI

Objectives: 1) Continue to compile and utilize data on TBI incidence; 2) Continue to analyze and disseminate Medicaid claims and encounter data; 3) Analyze the Nursing Home Minimum Data Set; and 4) Re-administer Michigan's State Needs Assessment and Action Plan

METHODOLOGY: The methodology for implementing Michigan's TBI goals and objectives is designed to improve state and local capacity to enhance access to comprehensive, coordinated, person/family directed and culturally competent services for individuals with TBI and their family members; to successfully reach out to the most at-risk communities; to maintain Michigan's capacity to continuously evaluate and improve TBI services; and to apply best practices in all areas of activity.

COORDINATION: Interagency coordination at multiple levels will be facilitated to meet Michigan's TBI goals and objectives. The project is guided and monitored by an appointed, diverse SPC, with strong interagency commitment, as well as diverse consumer and advocate participation. At the county level, agencies are expected to collaborate when serving individuals with TBI. Outreach is continuously directed to statewide local service agencies, community organizations, and Veterans organizations.

EVALUATION: Throughout the project period, constant evaluation of grant activities will occur through review and feedback from the SPC. Additional methods of evaluation will include the tracking of all project processes and outputs, consumer surveys, provider feedback, and building in systems to monitor accountability, outcomes, and efficacy of TBI services.

Residential Services Staff Training

June 9, 2009
Presented by:

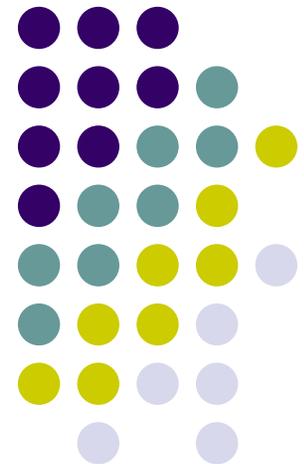
Allen Adams, DHS Adult Services Adult Community
Placement Program Analyst

Michael Daeschlein, Manager HCBS Section

Elizabeth A. Gallagher, Waiver Program Manager,
Program Development Section

Tom McWhorter, DHS Office of Children and Adult Licensing
Program Specialist

Sarah Slocum, LTC Ombudsman





Objectives

- Learn about the Background of the MI Choice Services in Licensed Settings Initiative
- Learn about staff roles
- Learn about licensed settings
 - What is an Adult Foster Care (AFC) home?
 - What is a Home for the Aged (HFA)?
 - What services do they provide?
- Learn how to find AFCs and HFAs in your area





Initiative Background

- 2005 LTC Taskforce recommendation
 - Goal to create a better continuum of care
 - Enhance affordable setting options
 - Allow persons to reside in the most integrated setting of their choice and receive HCBS
- Subcommittee convened in 2007 during MI Choice renewal process
- Subcommittee sent recommendations to MDCH management in March 2008
- MDCH sent waiver amendment to CMS on April 1, 2009
- Anticipated implementation July 1, 2009

RS Staff Roles



- Nursing Facility Outreach and Training
 - Meet with NF staff to explain this option
 - Meet with NF residents to inform them of the NFT program
 - Interview NF residents (and their family members) interested in transitioning to a home or community-based setting
 - Facilitate NF transitions



RS Staff Roles



- AFC/HFA Provider Development
 - Meet with local DHS staff to inform them of this option available through MI Choice and their roles
 - Adult Services Staff
 - Eligibility Staff
 - Research AFC/HFA homes in service area
 - Meet with AFC/HFA home staff/management
 - Enroll AFC/HFA as MI Choice providers





RS Staff Coordination

- Work with other RS Staff positions within agency
- Work with other waiver agents
 - Limit duplication
- Work with CILs
 - Assist with transitions
 - Assist with finding resources
 - Assist with disseminating information



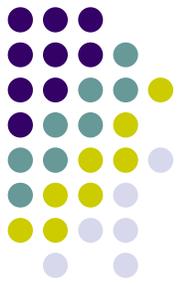
Quarterly Report



- See Handout
 - Available Electronically
 - Waiver agent should submit one report for all RS positions
 - Due on:
 - August 1 (May-June)
 - November 1 (July-September)
 - February 1 (October –December)
 - May 1 (January – March)



Relationship with AFC/HFA



- Must be familiar with the home
 - Usual and customary services
 - Residents
 - Specialized licensing
- Providers
 - Will the AFC/HFA allow outside providers
 - Will the AFC/HFA allow self-determined providers
- Setting Rates
 - Either monthly or per diem
 - Based on PCP for each participant

Relationship with AFC/HFA



- MI Choice Providers for Residential Services
 - AFC/HFA staff
 - Outside agency
 - Self-determination
- Participant, AFC/HFA, and Waiver Agent must agree on staff providing MI Choice services in licensed setting.



Implementing Residential Services for MI Choice



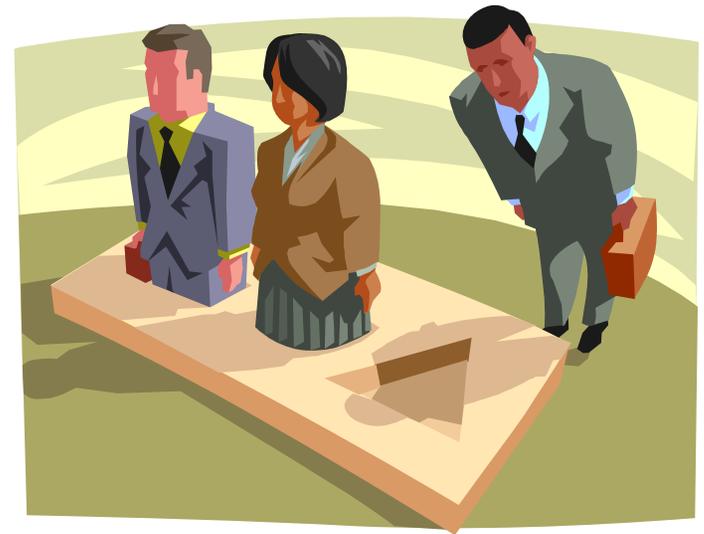
- Accessing MI Choice Services
 - NFT Transitions
 - Current AFC/HFA residents
 - Current MI Choice participants moving to AFC
- No additional wait list categories



Implementing Residential Services for MI Choice



- Helping Participants Select an AFC/HFA
 - AFC/HFA has responsibility to make sure new residents will “fit” with current residents
 - Participant visit AFC/HFAs to ensure informed choice
 - Waiver agents still need to protect the health and welfare of MI Choice participants



Implementing Residential Services for MI Choice



- Person-Centered Planning
- Plan of Care Development
 - POC must include services provided by AFC/HFA
 - POC must delineate MI Choice services
 - Residential Services can be either per diem or per month
 - Rate will be different for each resident
- AFC/HFA not eligible for DHS personal care payment if also receiving RS through MI Choice



Licensed Settings



- What are AFC/HFA
 - Services provided
 - Licensing Categories
 - Temporary (new home)
 - Regular
 - Provisional (on probation)
 - Definitions
 - Prohibitions
 - Admissions and residential assessments





Licensed Settings

- DHS AFC/HFA website
 - www.michigan.gov/afchfa
- Includes:
 - Overview
 - Licensing & Requirements
 - License look up
 - Training
 - Contact information
 - Resources



Statewide Search for Adult Foster Care / Homes for the Aged Facilities

Search by one or more of the following choices:
(Partial names may be used.)

Facility Name
Address
County
City
Zip Code
 * **Facility Type**
License Number

* Facility Type

Family Home	Congregate	County Infirmary	Large Group	Medium Group	Small Group
Capacity 1-6 licensee resides on-site	Capacity Greater than 20	Capacity Greater than 20	Capacity 13 - 20	Capacity 7 - 12	Capacity 1-6 may reside off-site

Home for the Aged

A supervised personal care facility, that provides room, board, and supervised personal care to 21 or more unrelated nontransient, individuals 60 years of age or older.



Statewide Search for Adult Foster Care / Homes for the Aged Facilities

Search by one or more of the following choices:
(Partial names may be used.)

Facility Name

Address

County [Clickable Map](#)

City

Zip Code

* Facility Type

License Number

* Facility Type

Family Home	Congregate	County Infirmary	Large Group	Medium Group	Small Group
Capacity 1-6 licensee resides on-site	Capacity Greater than 20	Capacity Greater than 20	Capacity 13 - 20	Capacity 7 - 12	Capacity 1-6 may reside off-site

Home for the Aged

A supervised personal care facility, that provides room, board, and supervised personal care to 21 or more unrelated nontransient, individuals 60 years of age or older.



Statewide Search for Adult Foster Care / Homes for the Aged Facilities

Click on the name of the facility for more detailed information including online inspection reports completed on or after July 1, 2002. Effective February, 2005 investigation reports that determine no violation of rule or statute are not placed on the website. Investigation reports with violation of rule or statute are removed after 2 years from the site. These reports may be obtained by making a [Freedom of Information Act request](#).

Investigations by the Office of Children and Adult Licensing of suspected child abuse or neglect by child care providers are subject to the Child Protection Law, 1975 PA 238, as amended (MCL 722.621 - 722.638). Reports of such investigations are considered confidential records under MCL 722.627 and, therefore, neither subject to the Freedom of Information Act (1976 PA 442, as amended), nor posted on this website.

License Number	Facility Name	City	County	Phone Nbr	Zip Code
AF330286611	ALJIN AFC	STOCKBRIDGE	INGHAM	(517)851-9402	49285 - 9285
AF330002512	AMBER PINES (AFC)	LANSING	INGHAM	(517)882-4090	48910 - 8910
AF330287064	BLANCA'S SENIOR HOME	HASLETT	INGHAM	(517)708-8464	48840 - 8840
AF330014862	CAROLYNS CARE HOME	LESLIE	INGHAM	(517)589-9118	49251 - 9251
AF330280941	COUNTRY LIVING CARE	MASON	INGHAM	(517)628-2305	48854 - 8854
AF330254410	DENA BOONE AFC	ONONDAGA	INGHAM	(517)628-2464	49264 - 9264
AF330279630	DORRIS' DAILY LIVING AFC	LANSING	INGHAM	(517)393-0652	48911 - 8911
AF330093389	HEAVENLY SUNSHINE FAMILY CARE	LANSING	INGHAM	(517)393-3350	48911 - 8911
AF330276213	LOVING CARE AFC	MASON	INGHAM	(517)676-2115	48854 - 8854
AF330263445	MAPLE OAKS	WEBBERVILLE	INGHAM	(517)521-5674	48892 - 8892
AF330092675	MCCALLA ADULT FOSTER	ONONDAGA	INGHAM	(517)628-8700	49264 - 9264
AF330002451	MORGAN CARE HOME	LANSING	INGHAM	(517)484-5694	48906 - 8906
AF330277453	OWEN COUNTRY HOME	STOCKBRIDGE	INGHAM	(517)851-4663	49285 - 9285
AF330002434	PARKS AFC	LANSING	INGHAM	(517)482-3537	48906 - 8906
AF330257032	QUINLAN MANOR	WILLIAMSTON	INGHAM	(517)655-5859	48895 - 8895
AF330002571	SHEPHERDS HOME	LESLIE	INGHAM	(517)676-9705	49251 - 9251
AF330282781	WALNUT ACRES	MASON	INGHAM	(517)676-2021	48854 - 8854
AF330269949	WHITE CRANE HOME	LANSING	INGHAM	(517)580-8906	48912 - 8912

1-18

Total Records Found : 18

[AFC Home](#)

[New Search](#)

Statewide Search for Adult Foster Care / Homes for the Aged Facilities

[See Online Reports](#)

Facility Information

Name: DORRIS' DAILY LIVING AFC
Address: 5519 HAAG ROAD LANSING, MI 48911-8911
County: INGHAM
Phone: (517)393-0652 **License Status:** ACTIVE

Licensee Information

Name: JACKSON DORIS
Address: 5519 HAAG ROAD LANSING, MI 48911-8911
Phone: (-)

License Information

Number	Type	Effective Date	Expiration Date	Facility Type	Capacity
AF330279630	REGULAR	12/29/2008	12/28/2010	Family	4

Services Offered

Serves: Mentally Ill - Aged -
Special Certification:
Certification for Community Living:

Reports Available

The reports on this site are available for downloading or viewing using the [Adobe Acrobat Reader](#).

Some minor adult foster care and homes for the aged rule noncompliances are documented in a Notice of Finding (see Definitions). When rule violations have been cited in a report, the licensee is required to submit a corrective action plan. Notices of Finding and written corrective action plans that are submitted by the licensee in response to the Department reports are available through the [Freedom of Information Act](#).

-  [Original Licensing Study Report](#)
-  [Renewal Licensing Study Report](#)
-  [Special Investigation Report # 2007A0574036](#)

Original and Renewal Licensing Study Report

- Completed in response to the initial or renewal application for license on all facilities.

Inspection Report

- Interim Inspections are conducted at or near the mid point of the effective dates of the license.

Focused Onsite Eligible Letter

- Offered to facilities that have met the following criteria for the last two regular license renewal periods.
- Full compliance or only violations that qualify for a NOF.
- Full fire safety and environmental approval or approval until the next required inspection.

Special Investigation Report

- Special Investigation Reports are conducted in response to rule related complaints received regarding a facility.
- Only those special investigation reports that substantiated rule violations are placed on the web site. Please read any report in its entirety.**

[AFC Home](#)

[Return to Search](#)

[New Search](#)

[Definitions](#)





Partnering with DHS

- Becoming the Responsible Agency for participants who reside in AFC/HFAs
 - What does this mean?
 - What happens when waiver agent receives a referral?
 - Working with DHS staff
 - Assessments
- In relation to participant
- In relation to AFC/HFA
- Learning about AFC/HFA from Adult Services workers/website





Partnering with AFC/HFAs

- Determining “Usual and Customary” care for each AFC/HFA
 - Read the Resident Agreements
 - Ask the owners/managers about their level of service
- What are “extra” services that MI Choice will provide?
- Title XIX payments
 - Waiver payments for residential services will replace this supplement for AFC/HFAs





Partnering with AFC/HFAs

- Differences in homes
 - Amenities
 - Atmosphere
 - Clientele
- Compatibility of Residents
 - New persons must be a match
 - Need to know the home so you can make appropriate referrals/requests for placement



Complaints Against AFC/HFA



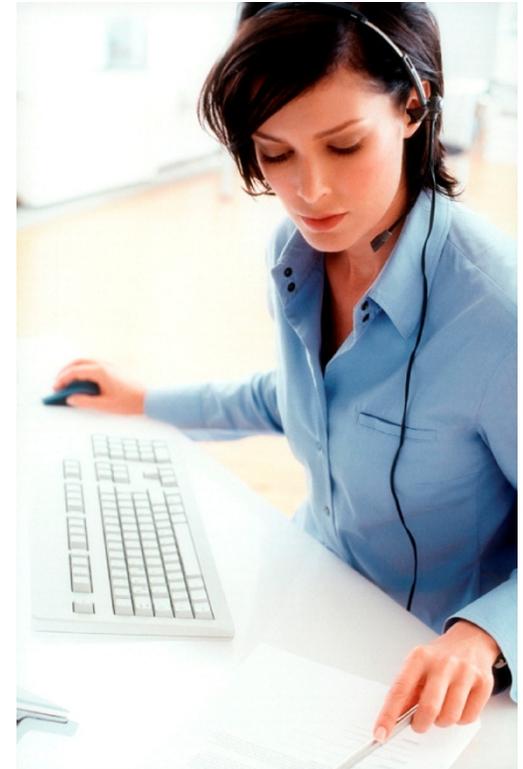
- Tom McWhorter
 - Questions about AFC/HFA conditions
- Complaints regarding AFC/HFA homes
 - 1-866-856-0126
 - www.michigan.gov/afchfa
- Ombudsman
 - 1-866-485-9393



Ombudsman Functions- Individual Advocacy



- Serve residents of licensed Facilities (NH, HFA, AFC)
- Investigate Complaints
- Help individual residents (or others on their behalf) resolve complaints
- Provide facility-specific compliance history/quality information



Ombudsman Functions- Individual Advocacy, cont.



- Refer residents for Nursing Facility Transition
- Support Resident Councils
- Support Family Councils
- Provide background information to nursing home surveyors



Ombudsman Functions- System Advocacy



- Policy work to improve quality of care and life
- Advocate in legislature, departments, and other venues for change
- Educate the public about LTC options/issues
- Promote and empower the voices of LTC residents





Contact Information

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 - SlocumS@michigan.gov
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 - 517-335-6483
 - TMcWho@michigan.gov
- Allen Adams
 - AdamsA2@michigan.gov





Questions?

Reasonable Accommodations For People With Psychiatric Disabilities Under The Americans With Disabilities Act (ADA)

**By Alan M. Goldstein,
Senior Attorney,
Equip for Equality**

Equip for Equality is providing this information under a subcontract with the
DBTAC: Great Lakes ADA Center, University of Illinois at Chicago, U.S.
Department of Education, National Institute on Disability Rehabilitation and
Research Award No. H133A060097.

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Reasonable Accommodations for People with Psychiatric Disabilities Under the Americans with Disabilities Act (ADA)

By Alan M. Goldstein¹

Introductory Fact Situation

A mid-Western gentleman we'll call Mr. B. worked for fifteen years as a custodian for a large city's school district containing thirty schools. Although he did not have any apparent disabilities when he was hired, Mr. B. developed "serious mental illnesses, including bipolar disorder, anxiety attacks and paranoid schizophrenia" and "went on a series of disability leaves." Possibly as a result of his age, disabilities, and/or his medication, Mr. B. walks slowly. After submitting supporting medical documentation from his psychiatrist, Mr. B. was granted the ADA reasonable accommodation of not having to clean classrooms at the relatively small-sized high school where he worked. Mr. B.'s job duties included cleaning "hallways, stairwells, locker rooms and the like..." Mr. B. was a good employee and was able to adequately perform his job with the accommodations of modified work duties and occasional medical leave. Most recently, Mr. B. was on one year of disability leave resulting from his mental illness. He is now ready to return to work and excited about the opportunity.

Ms. S., the school district's employee relations director, informs Mr. B. that he must undergo a medical examination, a requirement for all employees returning from disability leave. He is also told that he will be moved to one of the city's largest high schools and that "he would not receive any special accommodations" at the new school. Mr. B. looks at to the school with his foreman and they agree that he will not be able to do the work without accommodations. Mr. B. becomes anxious fearing that he will show up for work, do an inadequate job, and be terminated. Therefore, he does not report to work or for the medical examination.

Immediately thereafter, Ms. S. mails a letter to Mr. B. stating that he is terminated for not reporting to work or showing up for the medical examination. Before receiving the letter, Mr. B. provides tells his employer that he is not resigning but that he does not feel "up to the task" and submits a letter from his psychiatrist stating, "due to Mr. B.'s illness and his past inability to return to work, it would be in his best interest to return to a school that might be less stressful." The employer does not respond to this letter and terminates Mr. B.'s employment.

This fact situation is taken from the case of *Bultemeyer v. Fort Wayne Community Schools*.² The story of Robert E. Bultemeyer and his employer will be continued at the

¹ This legal brief was written by Alan M. Goldstein, Senior Attorney with Equip for Equality, the Illinois Protection and Advocacy Agency (P&A). Equip for Equality is providing this information under a subcontract with the DBTAC: Great Lakes ADA Center, University of Illinois at Chicago, U.S. Department of Education, National Institute on Disability Rehabilitation and Research Award No. H133A060097. Mr. Goldstein would like to thank Equip for Equality Legal Advocacy Director Barry C. Taylor for his valuable assistance with this article.

² *Bultemeyer v. Fort Wayne Community Schools*, 100 F.3d 1281 (7th Cir. 1996).

end of this legal brief. The situation described in *Bultemeyer* is not uncommon and raises many interesting issues involving the reasonable accommodations for employees with psychiatric disabilities under the Americans with Disabilities Act (“ADA”). Some of the issues raised in *Bultemeyer* are: what is the meaning of a “qualified individual with a disability,” what constitutes a reasonable accommodation request, what duty do the employer and employee have to engage in the “interactive process,” and when must an employer rescind discipline or termination decisions.

For Mr. Bultemeyer and all employees with psychiatric disabilities, disclosure of their condition is necessary in order to obtain a reasonable accommodation under the ADA.³ However disclosure can be risky due to societal stigma regarding mental illness. In addition, evidence demonstrates that wages for employees with mental illness are 72-85% lower than wages for people without mental illness.⁴

Accommodating employees with psychiatric disabilities is also a complicated issue for employers. While recent studies have demonstrated that the costs of accommodations for a worker with mental illness are likely to be indirect costs,⁵ there are also administrative difficulties that must be addressed when accommodation issues arise. Administrative issues involved may include: the satisfactory performance of job duties, maintaining regular attendance, a need for medical leave, compliance with workplace rules, instituting discipline, and managing how an employee interacts with others. An understanding of how the ADA addresses these issues is necessary in order to ensure proper decision making by employers and employees.

Overview of Reasonable Accommodations Under the ADA⁶

In 1990, Congress enacted the ADA, a civil rights law, to “assure equality of opportunity, full participation, independent living, and economic self- sufficiency” for

³ “Keep it to Yourself? The Costly Stigma of Mental Illness,” *Health Management and Policy*, W.P. Carey School, Arizona State University; October 11, 2006, www.knowledge.wpcarey.asu.edu/article.cfm?articleid=1312.

⁴ *Id.*

⁵ *Id.*

⁶ This legal brief is not intended to be an in-depth discussion on the legal requirements regarding reasonable accommodation; nor will it provide a full discussion of many important ADA terms and concepts, such as the definitions of “disability,” “qualified,” “undue hardship,” “fundamental alteration,” “interactive process,” appropriate “medical inquiries,” “direct threat,” and “essential functions.” For additional information on these topics, please see *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship*, No. 915.002 (October 22, 2002), www.eeoc.gov/policy/docs/accommodation.html; *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)*, No. 915.002 (July 27, 2000), www.eeoc.gov/policy/docs/guidance-inquiries.html; 42 U.S.C. §§ 2102(2), 12111(8); 29 C.F.R. §1630.2(g)-(n); 29 C.F.R. pt. 1630 app. §§ 1630.2(g)-(n).

See also, DBTAC: Great Lakes ADA Center 2007 Legal Briefs titled: *Reassignment as a Reasonable Accommodation Under the Americans with Disabilities Act*; *Employee Leave as a Reasonable Accommodation Under the Americans with Disabilities Act*; *Medical Examinations and Inquiries Under the Americans with Disabilities Act*; *The ADA Restoration Act* (for information how the bill for the ADA Restoration Act proposes changing the ADA definitions of disability).

individuals with disabilities.⁷ Congress found that discrimination against individuals with disabilities existed in many areas, including employment and that people with disabilities have been relegated to “lesser” jobs and opportunities.⁸ To combat this discrimination, Title I of the ADA specifically bars employers from discriminating against an individual with a disability because of that disability.⁹ Discrimination includes, “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability” absent undue hardship,¹⁰ defined as “an action requiring significant difficulty or expense.”¹¹

An employer’s duty to provide a reasonable accommodation is a “fundamental statutory requirement because of the nature of discrimination faced by individuals with disabilities.”¹² ADA regulations, promulgated by the Equal Employment Opportunity Commission (EEOC), define reasonable accommodations as:

Modifications or adjustments to the work environment, or to the manner or circumstances under which the position ... is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position ... or ... enjoy equal benefits and privileges of employment...¹³

The ADA provides a non-exhaustive list of reasonable accommodations that “may include”:

[J]ob restructuring, part- time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.¹⁴

With the possible exception of “qualified readers or interpreters,” any of these accommodations may be required for an employee with a psychiatric disability.¹⁵

⁷ See 42 U.S.C. § 12101(a)(8).

⁸ 42 U.S.C. § 12101(a)(4), (5).

⁹ 42 U.S.C. § 12112(a).

¹⁰ 42 U.S.C. §12112(b)(5)(A).

¹¹ 42 U.S.C. §12111(10)(A).

¹² See *EEOC Enforcement Guidance on Reasonable Accommodation*, *supra*, Questions 1 and 2.

¹³ 29 C.F.R. § 1630.2(o)(1)(ii), (iii).

¹⁴ 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o).

¹⁵ See *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship*, *supra*. See also *e.g.*, *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002) (modifying workplace policies); *Garcia-Ayala v. Lederle Parenterals, Inc.*, 212 F.3d 638, 646 (1st Cir. 2000) (leave); *Carr v. Reno*, 23 F.3d 525, 530, (D.D.C. 1994) (work at home).

As used in this legal brief, the term “psychiatric disability” follows the definition in *EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities*, *supra*, www.eeoc.gov/policy/docs/psych.html; See also, 29 C.F.R. §1630.2(h)(2). Question 1 of the EEOC Guidance states: “The ADA defines a mental impairment as ‘[a]ny mental or psychological disorder, such as . . . emotional or mental illness.’ Examples of

The Reasonable Accommodation Process

The reasonable accommodation process generally begins with a request for a reasonable accommodation. Any statement by an employee, or someone speaking on behalf of the employee, that lets an employer know that an adjustment or change at work is needed for a reason related to a medical condition is considered a request for a reasonable accommodation under the ADA.¹⁶ The request need not be in writing.¹⁷ The request for a reasonable accommodation triggers the employer's duty to engage in an informal, interactive process with the employee to determine an appropriate reasonable accommodation.¹⁸ Specific accommodations do not need to be identified by the employee although it is usually best if specific accommodations can be recommended. The employer should give "primary consideration" to the employee's preferred accommodation although employers are not obligated to provide the requested accommodation as long as an "effective" reasonable accommodation is provided.¹⁹

The reasonable accommodation process might also be triggered without an accommodation request if the employer has knowledge of an employee's disability and a reasonable basis exists for the employer to believe that an accommodation is required.²⁰ In such a situation, a dialogue with the employee should begin. At any point during the reasonable accommodation process, if the employee refuses to engage in the interactive process, provide legally required information, or try a proposed effective reasonable accommodation, the employer's obligation to accommodate the employee could be extinguished.²¹

Medical Inquiries Under the ADA²²

When the disability and/or need for the accommodation are not obvious, the employer may request reasonable medical documentation of a disability and the need for

'emotional or mental illness[es]' include major depression, bipolar disorder, anxiety disorders (which include panic disorder, obsessive compulsive disorder, and post-traumatic stress disorder), schizophrenia, and personality disorders. The current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (now the fourth edition, DSM-IV) is relevant for identifying these disorders."

¹⁶ See *EEOC Enforcement Guidance on Reasonable Accommodation*, *supra*, Questions 1 and 2.

¹⁷ *Id.* at Question 3.

¹⁸ *Id.* at Question 1; 29 C.F.R. § 1630.2(o)(3).

¹⁹ *EEOC Enforcement Guidance on Reasonable Accommodation*, *supra*, Question 35; See also, 29 C.F.R. pt. 1630 app. §1630.9.

²⁰ See *Mulholland v. Pharmacia & Upjohn, Inc.*, 52 Fed.Appx. 641, 647 (6th Cir. 2002) (involving a request for written instruction from an employee who had a traumatic brain injury).

²¹ See, e.g., *Jackson v. City of Chicago*, 414 F.3d 806, 808-809 (7th Cir. 2005).

²² See *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA*, *supra*, www.eeoc.gov/policy/docs/guidance-inquiries.html; DBTAC: Great Lakes ADA Center 2007 Legal Brief on *Medical Examinations and Inquiries Under the Americans with Disabilities Act*.

an accommodation.²³ The request for medical information must be “job-related” and “consistent with business necessity” and should be limited in scope so that it relates to the accommodation request.²⁴ In most cases, “an employer cannot ask for an employee’s complete medical records” as such a request may lead to acquiring “information unrelated to the disability at issue and the need for accommodation.”²⁵ All medical information must be kept confidential; meaning that medical information should be kept separate from personnel information and only staff who needs to know the medical information should have access to it.²⁶ State confidentiality laws may also apply.²⁷ For these reasons, caution is often advisable in obtaining and maintaining medical information from employees.

When an employee is returning to work from medical leave, an employer may make disability-related inquiries or require a medical examination if the “employer has a reasonable belief” the employee’s medical condition impairs “the employee’s present ability to perform essential job functions” or that the employee “will pose a direct threat due to a medical condition.”²⁸ However, such inquiries or examination “must be limited in scope to what is needed to make an assessment of the employee’s ability to work.” An “employer may not use the employee’s leave as a justification for making far-ranging disability-related inquiries or requiring an unrelated medical examination.”²⁹

Reasonable Accommodations for Employees With Psychiatric Disabilities

Reasonable Accommodations are only required for employees who meet the ADA’s definition of disability although many employers find it good business to accommodate non-disabling conditions. Regarding psychiatric disabilities, EEOC Guidance states that conditions such as: major depression, bipolar disorder, anxiety disorders, obsessive compulsive disorder, post-traumatic stress disorder, schizophrenia, and personality disorders may constitute disabilities under the ADA if the impairment or its treatment result in a “substantial limitation of one or more major life activities.”³⁰ Some major life activities that people with psychiatric disabilities may be limited in include: thinking, concentrating, learning, sleeping, interacting with others, caring for oneself, speaking, performing manual tasks, or working.³¹

²³ *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA, supra*, Questions 5-7.

²⁴ *Id.* at Questions 7, 10; 42 U.S.C. §12112(d)(4)(A).

²⁵ *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA, supra*, at Question 10.

²⁶ 42 U.S.C. §12112(d)(4)(C).

²⁷ *See, e.g.*, Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110, *et seq.* (2002).

²⁸ *Id.* at Question 17.

²⁹ *Id.*

³⁰ *EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities, supra*, Question 1. 42 U.S.C. § 12102(2); 29 C.F.R. § 1630.2(g).

³¹ *Id.*; *EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities, supra*, at Question 3.

In addition to the ADA's listing of possible reasonable accommodations, the Job Accommodation Network (JAN) identifies specific accommodations within these broad categories. These will be discussed further below. JAN also provides information regarding some of the possible limitations that individuals with psychiatric disabilities may experience.³² According to JAN, reasonable accommodations may be required to enable employees with psychiatric disabilities to effectively: maintain consistent attendance (or maintain stamina), work at full productivity, implement change (dealing with new supervisors, co-workers, job duties, or work environments), interact with others (including supervisors, co-workers, customers, or colleagues), handle stress or emotions, manage time, be organized, and/or remember relevant information.³³

Examination of ADA Cases Involving Reasonable Accommodations for Employees with Psychiatric Disabilities

ADA situations revolve around the particular facts that are present in the employee's workplace. Therefore, while examining cases is a useful tool for analyzing reasonable accommodation issues, it should be remembered that each situation is unique. The cases examined below, involving accommodation situations for employees with psychiatric impairments, are intended to provide illustrative guidance for addressing these situations. It is important to be aware that ADA cases involving employees with non-psychiatric disabilities are also relevant to any ADA analysis.

The Request for a Reasonable Accommodation

Generally, employers need only accommodate known disabilities. In *Estades-Negrone v. Associates Corp. of North America*, the court held that the employer did not violate the law when it denied an employee's request for a reduced workload prior to the employee being diagnosed with depression.³⁴ The court noted that there was no evidence that the depression was evident at the time of the accommodation request.³⁵

Further, a reasonable accommodation request must relate to an employee's disability. Therefore, in *Boutin v. Home Depot U.S.A., Inc.*, an employee with depressive disorder and anxiety who was previously granted a fixed schedule as a reasonable accommodation, was not entitled to a change in the start and finish times of his shift to accommodate his daughter's school schedule.³⁶ The court held that the employee's request was not reasonable, as the requested accommodation did not relate to the

³² See the Job Accommodation Network's Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.

³³ *Id.*

³⁴ *Estades-Negrone v. Associates Corp. of North America*, 377 F.3d 58, 64 (1st Cir. 2004).

³⁵ *Id.*; See also, *Stout v. Social Security Administration*, 2007 WL 707337 (E.D. Ark. Mar. 5, 2007) (where the court found no evidence that the employer knew of the employee's depression when she was demoted due to performance issues).

³⁶ *Boutin v. Home Depot U.S.A., Inc.*, 490 F.Supp.2d 98, 106 (D.Mass. 2007).

employee's disability even though the denial of the accommodation exacerbated the employee's anxiety.³⁷

In requesting the accommodation, the employee should let the employer know of the existence of a disability, identify the limitations that result from the disability, and try to identify possible accommodations, if possible.³⁸ In *Russell v. T.G. Missouri Corp.*, an employee with bipolar disorder stated to her supervisor, "I need to leave and I need to leave right now" and then left work before completion of her shift.³⁹ The employee claimed to be having an anxiety attack but did not mention any medical reason for her need to leave. Therefore, the court held that this statement was not sufficient to constitute a request for a reasonable accommodation under the ADA. Although the employer was previously aware of the employee's disability, the employee's failure to mention a medical basis for her statement was fatal to her case.⁴⁰

In *Taylor v. Principal Financial Group, Inc.*, an employee disclosed his bipolar disorder and asked his supervisor to investigate the condition.⁴¹ The employee also requested a "reduction in ... objectives" and "a lessening of the pressure." The court held that these statements did not sufficiently request a reasonable accommodation as no limitations resulting from the disability were disclosed. The court said, "This distinction is important because the ADA requires employers to reasonably accommodate limitations, not disabilities."⁴²

Similarly, in *Rask v. Fresenius Medical Care North America*, a case decided December 6, 2007; a kidney dialysis technician with clinical depression sought a reasonable accommodation due to adverse side effects from the medication used to treat her condition.⁴³ The technician worked two days per week and had a poor attendance history. After being terminated from her job, she filed suit claiming that she should have been provided with a reasonable accommodation under the ADA. The court further found that there was no duty to accommodate Ms. Rask, as she never sufficiently requested a reasonable accommodation.⁴⁴ Ms. Rask had let her employer know that she was "having problems" with her medication and that she might "miss a day here and there because of it." The court held that even if Ms. Rask had advised her employer that she had depression and suggested "what a reasonable accommodation might be, no reasonable person could find that Ms. Rask 'specifically identif[ied]' her 'resulting limitations.'⁴⁵

In *Rask*, the court put the "initial burden ... primarily upon the employee ... to

³⁷ *Id.*

³⁸ See *EEOC Enforcement Guidance on Reasonable Accommodation*, *supra*, Questions 1 and 2.

³⁹ *Russell v. TG Missouri Corp.*, 340 F.3d 735, 742 (8th Cir. 2003).

⁴⁰ *Id.*

⁴¹ *Taylor v. Principal Financial Group, Inc.*, 93 F.3d 155 (5th Cir. 1996).

⁴² *Id.* at 163-64. See also *Rask v. Fresenius Medical Care North America*, 2007 WL 4258620 (8th Cir. 2007), discussed below.

⁴³ *Rask v. Fresenius Medical Care North America*, 2007 WL 4258620, 1 (8th Cir. 2007).

⁴⁴ *Id.* at 2-3.

⁴⁵ *Id.*, (Internal citation and emphasis in original omitted).

specifically identify the disability and resulting limitations, and to suggest the reasonable accommodations.”⁴⁶ This holding was based on the fact that the ADA requires that employers make reasonable accommodations “to the known physical or mental limitations” of an individual with a disability.⁴⁷ The court stated, “Where, as here, ‘the disability, resulting limitations, and necessary reasonable accommodations, are not open, obvious, and apparent to the employer, as is often the case when mental disabilities are involved, the initial burden rests primarily upon the employee ... to specifically identify the disability and resulting limitations, and to suggest the reasonable accommodations.’”⁴⁸

In the cases discussed above, the courts did not require the employer to seek more information from the employee regarding the limitations caused by a known disability. EEOC guidance seems to recommend a different approach, *i.e.*, having employers seek more information from the employee if an accommodation request or documentation is deemed “insufficient.”⁴⁹ Other cases have followed this approach, requiring that the employer seek clarification or additional information if it feels the information the employee provided is insufficient.

While the court in *Rask*, put the burden on the employee with a mental disability to properly articulate a reasonable accommodation request, the court in the case discussed at the beginning of this brief, *Bultemeyer*, felt that employers needed to be understanding of employees with mental disabilities. In *Bultemeyer*, the employee’s psychiatrist requested a “less stressful” environment. No other specific accommodation was requested other than a “less stressful” environment, the employer was required to engage in the interactive process with the employee. The psychiatrist’s letter can be seen as requesting that accommodations previously in place be reinstated and that Mr. Bultemeyer be reassigned to a smaller school. The court stated that, if the employer thought that the doctor’s letter was vague ambiguous, it should have sought clarification.⁵⁰ The *Bultemeyer* discussed the issue in some depth stating:

An employee's request for reasonable accommodation requires a great deal of communication between the employee and employer ... [B]oth parties bear responsibility for determining what accommodation is necessary ... [N]either party should be able to cause a breakdown in the process for the purpose of either avoiding or inflicting liability... A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith.⁵¹

In a case involving an employee with mental illness, the communication process becomes more difficult. It is crucial that the employer be aware of

⁴⁶ *Rask*, 2007 WL 4258620 at 2 (internal quotation marks, original emphasis and citation omitted).

⁴⁷ 42 U.S.C. §12112(b)(5)(A).

⁴⁸ *Rask*, 2007 WL 4258620 at 2 (internal quotation marks, original emphasis and citation omitted).

⁴⁹ See *EEOC Enforcement Guidance on Disability-Related Inquiries*, *supra*, Questions 7, 11.

⁵⁰ *Bultemeyer*, 100 F.3d at 1285-86.

⁵¹ *Bultemeyer*, 100 F.3d at 1285 (internal quotations and citations omitted).

the difficulties, and ‘help the other party determine what specific accommodations are necessary...’ [P]roperly participating in the interactive process means that an employer cannot expect an employee to read its mind and know that he or she must specifically say “I want a reasonable accommodation,” particularly when the employee has a mental illness. The employer has to meet the employee half-way, and if it appears that the employee may need an accommodation but doesn't know how to ask for it, the employer should do what it can to help. ‘[T]he employer must make a reasonable effort to determine the appropriate accommodation ... through a flexible, interactive process that involves both the employer and the [employee] with a disability.’ [internal citations omitted].⁵²

The above language from *Bultemeyer* was cited favorably in the case *Taylor v. Phoenixville School District*.⁵³ In *Taylor v. Phoenixville School District*, the son and husband of a secretary with bipolar disorder requested accommodations although no specific accommodations were suggested. The court stated:

What matters under the ADA are not formalisms about the manner of the request, but whether the employee or a representative for the employee provides the employer with enough information that, under the circumstances, the employer can be fairly said to know of both the disability and desire for an accommodation.⁵⁴

Based on these cases, it seems to behoove employers to inquire further if they have knowledge of a disability but are unsure whether a reasonable accommodation was specifically requested. If the employee answers that no accommodation is needed, than the employer has likely fulfilled its duty under the law. If there an employee feels that an accommodation may be needed, than the interactive process should be initiated to identify possible effective reasonable accommodations.⁵⁵ This appears to be a safer practice for employers than taking the position that “as you only told us about your disability but not your limitations, we have no further obligations under the ADA.” For employees, identifying specific accommodations is desirable whenever possible.

As part of the interactive process, the employer and employee should work together to identify possible accommodations. Of the categories of possible reasonable accommodations listed in the ADA, the four most utilized by employees with psychiatric disabilities are: job restructuring, part-time or modified work schedules, reassignment, and reasonable modifications of the work environment and/or policies. A sampling of ADA cases involving these accommodations will be examined to illustrate some of the issues involved.

⁵² *Id.* (internal quotations and citations omitted).

⁵³ *Taylor v. Phoenixville School District*, 184 F.3d 296, 312 (3rd Cir. 1999).

⁵⁴ *Id.* at 313.

⁵⁵ See *EEOC Enforcement Guidance on Reasonable Accommodation*, *supra*, Question 5.

Job Restructuring

One category of possible reasonable accommodations listed in the ADA is job restructuring.⁵⁶ Job restructuring may include: reassigning non-essential functions, having an employee work from home, altering the manner in which a job function is performed, and changing interpersonal interaction among employees or between an employee and a supervisor.⁵⁷ An employer is not required to reallocate essential job functions, although it may choose to do so.⁵⁸ Appropriate and reasonable modifications in interpersonal interactions depend on the specific situation involved and may include: providing for regular meetings, modifying the manner in which expectations are communicated, (using written means instead of oral communication or vice versa), utilizing checklists, and redirecting activity when necessary.⁵⁹

Modifying Interpersonal Interaction

The case of *Taylor v. Phoenixville School District*, discussed earlier, is worth examining in more depth as it involves the reasonable accommodation of job restructuring, including interpersonal interaction and training issues.⁶⁰ *Taylor* involved an elementary school principal's secretary who worked at the school district for twenty years before she had an onset of bipolar disorder. Due to her condition, the secretary started experiencing paranoid delusions, hyperactivity, and psychoses necessitating a hospitalization.⁶¹ As a result, Mrs. Taylor was substantially limited in the major life activity of thinking. Mrs. Taylor had been an exemplary employee through the years but the arrival of her mental illness coincided with the arrival of a new principal. After her hospitalization, Mrs. Taylor's husband and son spoke with the personnel department in order to arrange for reasonable accommodations upon her return to work. Medical information to support the accommodation request was provided at the school's request.⁶²

The school did not provide any reasonable accommodations for Mrs. Taylor.⁶³ However, at the advice of an administrative assistant in the personnel department, the principal started documenting errors that Mrs. Taylor committed. Beginning four days after Mrs. Taylor returned to work, the principal started compiling his secretary's errors into a "bullet-format list" and calling Mrs. Taylor in for frequent disciplinary meetings. Although she had not previously been disciplined in twenty years with the school district, Mrs. Taylor began receiving formal disciplinary notices almost every month for about a year until she was terminated. The principal "did not speak to her informally and in-person about problems as they arose." The principal did, however, save "letters

⁵⁶ 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o).

⁵⁷ 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630 app. §§ 1630.2(o), 1630.9.

⁵⁸ See *EEOC Enforcement Guidance on Reasonable Accommodation*, *supra*.

⁵⁹ See JAN's Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.

⁶⁰ *Taylor v. Phoenixville School District*, 184 F.3d 296, 302-03 (3rd Cir. 1999).

⁶¹ *Id.* at 302-03.

⁶² *Id.* at 303.

⁶³ *Id.* at 314.

containing typos, photographed her desk and trash can, ...the office refrigerator, and waited to confront her with the evidence in the disciplinary meetings.”⁶⁴

In addition to these actions, the principal made many changes to Mrs. Taylor’s job upon her return to work.⁶⁵ These changes included: new office policies, new forms, relocating documents, rearranging furniture, discarding Mrs. Taylor’s “old filing system,” throwing out files, including files in Mrs. Taylor’s desk, and increasing the number of responsibilities in Mrs. Taylor’s job description from twenty-three to forty-two. A new computer system was also installed. Mrs. Taylor was disoriented by the changes and felt that they made it more difficult for her to do her job. The court acknowledged that it is expected for a new principal would make changes but was troubled by the “abrupt, seemingly hostile manner” in which the changes were made.⁶⁶

Less than one year after returning to work, Mrs. Taylor’s employment was terminated.⁶⁷ She then filed an employment discrimination lawsuit under the ADA. The appellate court held that the school district had notice of Mrs. Taylor’s disability and her need of reasonable accommodations due to the conversations between the personnel department and her family. The district also had notice of Mrs. Taylor’s disability due to the fact that she experienced symptoms at work prior to her hospitalization. The court found that the school district exercised bad faith and violated its duty to engage in the interactive process to identify appropriate reasonable accommodations.⁶⁸

Possible reasonable accommodations identified by the court included: increasing “job responsibilities slowly,” giving Mrs. Taylor more time and/or training to learn the computer, and lessening the amount of “formal, written reprimands.”⁶⁹ Regarding interpersonal interactions, the court cited the EEOC compliance manual stating that:

Supervisors play a central role in achieving effective reasonable accommodations for their employees. In some circumstances, supervisors may be able to adjust their methods as a reasonable accommodation by, for example, communicating assignments, instructions, or training by the medium that is most effective for a particular individual (*e.g.*, in writing, in conversation, or by electronic mail).” *2 EEOC Compliance Manual, Enforcement Guidance for Psychiatric Disabilities*, at 26.⁷⁰

By way of limitation, the court also noted that an “employee is not entitled to a supervisor ideally suited to his or her needs” and that the ADA “does not require lowering standards or removing essential functions of the job.”⁷¹

⁶⁴ *Id.* at 304.

⁶⁵ *Id.* at 304-05.

⁶⁶ *Id.*

⁶⁷ *Id.* at 305.

⁶⁸ *Id.* at 313-17.

⁶⁹ *Id.* at 319.

⁷⁰ *Id.* at 319, n. 10.

⁷¹ *Taylor*, 184 F.3d at 319, n. 10.

Taylor demonstrates that putting an employee with a disability under a microscope or treating them in a more hostile manner than other employees is not a good idea, especially when the employee has significant mental illness. Discipline should always be applied in an even-handed manner although reasonable accommodations should be considered if they would help an employee comply with workplace rules.

In another case, *Cannice v. Norwest Bank Iowa N.A.*,⁷² an employee with depression sought a private, unmonitored telephone line as a reasonable accommodation so that he could contact his “support network” when necessary. The court held that the employee was not entitled to this accommodation as he could not show that the lack of a private phone line “impaired his ability to work or aggravated his disability” even though the lack of a private phone caused some anxiety. The court found it significant that the employee did not allege that he would have been able to continue functioning in his job had the accommodation been provided.⁷³

Work At Home

On occasion, an employee may need to work at home on due to a psychiatric disability. The EEOC has prepared a fact sheet titled, Work At Home/Telework as a Reasonable Accommodation.⁷⁴ The fact sheet states that the ADA does not require that employers create a teleworking policy if none exists. However, people with disabilities should be able to participate in such a program if it does exist.⁷⁵ Even if an employer does not have a teleworking policy, the EEOC asserts that employers have to consider such an accommodation for a person with a disability.⁷⁶ While some courts have found working at home is a reasonable accommodation, most courts have strictly interpreted these types of reasonable accommodation requests.

For example, working at home was deemed unreasonable in *Mason v. Avaya Communications, Inc.*⁷⁷ In *Mason*, a service coordinator had post-traumatic stress disorder (PTSD) after witnessing the death of several of her co-workers at her prior job with the U.S. Postal Service. Later, while employed with Avaya, a co-worker named Lunsford pulled out a knife during a confrontation when the plaintiff was not present. However, Mason’s learning that the knife-brandishing employee would be returning to the worksite triggered her PTSD. She therefore requested permission to work at home when this seemingly dangerous co-worker was present at the workplace. In the alternative, Ms. Mason requested that Lunsford be transferred to a different location. The court held that these accommodation requests were not reasonable because physical

⁷² *Cannice v. Norwest Bank Iowa N.A.* 189 F.3d 723, 728 (8th Cir. 1999).

⁷³ *Id.*

⁷⁴ <http://www.eeoc.gov/facts/telework.html>.

⁷⁵ *Id.* at Question 1.

⁷⁶ *Id.* at Question 2.

⁷⁷ *Mason v. Avaya Communications, Inc.*, 357 F.3d 1114 (10th Cir. 2004).

attendance at the administration center was an essential function of the service coordinator position as it is a low-level position requiring supervision and teamwork.⁷⁸

On the other hand, in *Humphrey v. Memorial Hospitals Association*, the court held that working at home might be a reasonable accommodation for a medical transcriptionist with obsessive-compulsive disorder (OCD) when others in the same position were allowed to work from home.⁷⁹ The employee had previously been provided a flexible start time as an accommodation but it proved ineffective. *Humphrey* demonstrates two general rules. One rule is that workplace modifications provided to employees without disabilities may need to be required as reasonable accommodations for employees with disabilities. The second rule is that the duty to accommodate is ongoing and is not satisfied by one attempt.⁸⁰

Part-Time or Modified Work Schedules

In addition to job restructuring, part-time or modified work schedules may be appropriate accommodations for an individual with a psychiatric disability, especially someone who requires active treatment or whose stamina is limited due to their disability or medication.⁸¹ This accommodation may include: leave for a period of time, intermittent leave, extra break time, modifying shifts, or flexible work schedules.⁸²

In *Breen v. Department of Transportation*, a file clerk with obsessive-compulsive disorder (OCD) sought to modify her work schedule by taking one day off every two weeks and to make up the time by working an extra hour each workday after normal work hours.⁸³ The employee asserted that the extra hour after business hours would allow her the uninterrupted time necessary to do filing due to her OCD. The employer asserted that the employee's attendance at the workplace was required every business day and that one day off every two weeks was therefore not reasonable. The court disagreed and found that an issue of fact existed as to whether the employee's proposed accommodations were reasonable, especially as there were not critical duties requiring her presence at work.⁸⁴

⁷⁸ *Id.* at 1120. See also *Mobley v Allstate Insurance Company*, 2006 WL 2735906 (S.D. Ill. Sept. 22, 2006), where the court found that working from home was an unreasonable accommodation for a staff claims service adjuster who needed to be present at the workplace for meetings and mediations. The court also stated that the provided accommodation of a distraction free environment was effective.

⁷⁹ *Humphrey v. Memorial Hospitals Association*, 239 F.3d 1128, 1134 (9th Cir. 2001). The *Humphrey* court also examined leave as a possible reasonable accommodation.

⁸⁰ *Id.* at 1138.

⁸¹ 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o).

⁸² See JAN's Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.

⁸³ *Breen v. Department of Transportation*, 282 F. 3d 839, 840 (D.C. Cir. 2002).

⁸⁴ *Id.* See also, *Ralph v. Lucent Technologies, Inc.*, 135 F.3d 166, 172 (1st Cir. 1998) (finding that a four week interim part-time assignment was a reasonable accommodation, even though the employer had already afforded a wide variety of accommodations previously). But see, *Treanor v. MCI Telecomms. Corp.*, 200 F.3d 570, 575 (8th Cir., 2000) ("the ADA does not require an employer to create a new part-

However, in *Earl v. Mervyns, Inc.*, a store area coordinator with OCD was not allowed the requested accommodation of clocking in whenever she arrived as a modification to the employer's tardiness policies.⁸⁵ This accommodation was deemed unreasonable, especially as the employee's psychiatrist testified that there was no reasonable accommodation the employer could have provided that would have enabled the employee to arrive at work on time.⁸⁶ This demonstrates the need for employees to ensure that submitted documentation supports their accommodation request.

Similarly, in a case discussed earlier, *Rask v. Fresenius Medical Care North America*, the accommodation sought by a technician with depression was the ability to have sudden, unscheduled absences to manage the adverse reaction to her medications.⁸⁷ The court held that the employee was not qualified as she was unable to perform the essential job function of regular and reliable attendance with or without a reasonable accommodation. Regular and reliable attendance was particularly important as the job involved caring for "seriously ill patients." While the technician might personally benefit were the accommodation granted, it would not assist her in performing her job. Therefore, the accommodation request was deemed unreasonable.⁸⁸

Leave

In addition to the accommodations discussed above, leave for a period of time may be a reasonable accommodation for employees with psychiatric disabilities even though this may require modification of leave or attendance policies. Leave should be granted and an employee's job kept open absent undue hardship for the employer.⁸⁹ Utilizing temporary workers or having co-workers temporarily handle job duties may be reasonable in leave situations. It is important to note that leave situations may involve Family and Medical Leave Act (FMLA), which provides up to twelve weeks of leave per year, as well as the ADA.⁹⁰ Under the ADA however, the amount of leave that is reasonable depends on the circumstances of the particular situation. It is best if an

time position where none previously existed." The court did not explore whether current full-time position could have been done on a part-time basis).

⁸⁵ *Earl v. Mervyns, Inc.*, 207 F.3d 1361, 1367 (11th Cir. 2000).

⁸⁶ *Id.*

⁸⁷ *Rask v. Fresenius Medical Care North America*, 2007 WL 4258620, 1 (8th Cir. 2007).

⁸⁸ *Rask*, 2007 WL 4258620 at 1-2.

⁸⁹ See *EEOC Enforcement Guidance on Reasonable Accommodation*, *supra*, Question 44.

⁹⁰ The FMLA is found at 29 U.S.C. § 2601 *et. seq.* (1993). This legal brief will not address leave under the FMLA and will only discuss leave under the ADA. It should be noted that, if both the ADA and FMLA apply, "An employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take." *EEOC Enforcement Guidance on Reasonable Accommodation*, *supra*, Question 21. The law providing the broadest protection to the employee should then be followed. 29 C.F.R. § 825.702. See also, *EEOC Fact Sheet: The Family Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964*, July 6, 2000.

individual or their medical providers can specify a needed period of leave as requests for indefinite leave are sometimes deemed to be unreasonable.⁹¹

Medical leave of four to five months for treatment for an employee with PTSD was deemed reasonable in *Rascon v. U.S. West Communications, Inc.*⁹² Although the employer characterized the leave as “extraordinary,” the court found that the four to five-months of leave provided was actually “more restrictive” and “less accommodating” than leave required under company policy which provided up to one year of medical leave.⁹³

However, in *Byrne v. Avon Products, Inc.*, an “extended” period of leave was deemed unreasonable for an employee with major depression.⁹⁴ The employee was unable to stay awake on the job and could not show that the leave would enable him to become qualified to perform his job. Therefore, the leave request was unreasonable and rendered the employee unqualified under the ADA.⁹⁵

Reassignment

Reassignment to a vacant position for which the employee is qualified may be an appropriate accommodation under the ADA and may be useful for an employee has limitations in handling a heavy workload, workplace stress, or who needs periodic leave.⁹⁶ However, reassignment is generally not reasonable where it is sought to obtain a new supervisor or to escape certain co-workers.⁹⁷

Therefore, in *Gaul v. Lucent Technologies, Inc.*, the court denied reassignment due to “prolonged and inordinate stress” caused by co-workers.⁹⁸ The court noted that the employer would only be able to obtain temporary compliance as compliance depended on the employee’s “stress level at any given moment.” Further, the accommodation was administratively burdensome due to the number of factors beyond the employer’s control.⁹⁹

Reassignment was a possible reasonable accommodation for a police officer with depression in *Williams v. Philadelphia Housing Authority Police Department*.¹⁰⁰ In *Williams*, a police officer with depression who could not carry a gun sought a position in

⁹¹ See, e.g., *Wood v. Green*, 323 F.3d 1309 (11th Cir. 1998); *Walsh v. United Parcel Service*, 201 F.3d 718 (6th Cir. 2000).

⁹² *Rascon v. U.S. West Communications, Inc.*, 143 F.3d 1324, 1337 (10th Cir. 1998).

⁹³ *Id.* at 1334-35.

⁹⁴ *Byrne v. Avon Products, Inc.*, 328 F.3d 379, 381 (7th Cir. 2003).

⁹⁵ *Id.*

⁹⁶ 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o); See generally, *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002). See also, *Gile v. Untied Airlines*, 213 F. 3d 365 (7th Cir. 2000) (reassignment and leave were possible accommodations for an employee with depression and anxiety disorder);

⁹⁷ See, e.g., *Ozlek v. Potter*, 2007 WL 4440051, (3rd Cir. 2007); *Gaul v. Lucent Technologies, Inc.*, 134 F.3d 576, 580 (3rd Cir. 1998).

⁹⁸ *Gaul*, 134 F.3d at 580-81.

⁹⁹ *Id.* at 581.

¹⁰⁰ *Williams v. Philadelphia Housing Authority Police Department*, 380 F.3d 751, (3rd Cir. 2004).

the radio room or a training room assignment where he would not have to carry a weapon. The court held that a transfer in this situation could constitute a reasonable accommodation under the ADA.¹⁰¹ The *Williams* case is interesting as the court noted that reasonable accommodations may be required for employees who are “regarded as” being disabled.¹⁰² It should be noted that other courts have held that employees who are “regarded as being disabled are not entitled to reasonable accommodations.”¹⁰³

Reasonable Modifications of the Work Environment and/or Policies

Another possible reasonable accommodation is modification of the work environment and/or workplace policies and procedures.¹⁰⁴ For employees with psychiatric disabilities, these accommodations may include: revising policies regarding: attendance, working from home, leave, training, service animals, personal assistants, or job coaches.¹⁰⁵ Some of these accommodations have been discussed previously, *i.e.*, job restructuring; modified work schedules, including leave or working from home, and reassignment. In addition, employees with psychiatric disabilities may require: additional time for training or learning new tasks, that co-workers undergo sensitivity training, the elimination of distractions, including permitting music or white noise at work stations, or assistance with note taking or other job duties.¹⁰⁶

EEOC regulations and guidance stat that providing extra training, a temporary job coach to assist in training, or having another employee assist with job duties are possible reasonable accommodations.¹⁰⁷ For example, in *Borkowski v. Valley Central School District*, the court held that it was a question of fact whether providing a teacher’s aide to assist with classroom control for times that a school librarian taught classes is a reasonable accommodation.¹⁰⁸ However, in *E.E.O.C. v. Amego, Inc.*, a nurse at a medical facility could not fulfill the essential job function of administering drugs to patients due to the employee’s depression.¹⁰⁹ The court held that the employee was not entitled to a reasonable accommodation of having another employee perform this function.¹¹⁰

¹⁰¹ *Id.* at 773. *See also, Mustafa v. Clark County School District*, 157 F.3d 1169 (9th Cir. 1998). (A teacher with PTSD, depression, and panic attacks could be accommodated by being assigned to a non-classroom setting).

¹⁰² *Id.* at 773.

¹⁰³ *See, e.g., Kaplan v. City of North Las Vegas*, 323 F.3d 1226, 1231-33 (9th Cir. 2003); *Weber v. Strippit, Inc.*, 186 F.3d 907, 916-17 (8th Cir. 1999).

¹⁰⁴ 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o).

¹⁰⁵ *See* JAN’s Searchable Online Accommodation Resource on Psychiatric Impairments, www.jan.wvu.edu/soar/psych.html.

¹⁰⁶ *Id.*

¹⁰⁷ 29 C.F.R. pt. 1630 app. § 1630.9; *EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities, supra*, Question 27.

¹⁰⁸ *Borkowski v. Valley Central School District*, 63 F.3d 131, 143 (2nd Cir, 1995).

¹⁰⁹ *E.E.O.C. v. Amego, Inc.*, 110 F.3d 135, 148-149 (1st Cir, 1997).

¹¹⁰ *Id.*; Regarding essential function issues, *see also, Skerski v. Time Warner Cable Co.*, 257 F.3d 273 (3rd Cir. 2001) (A fact issue existed whether climbing was an essential function for a cable television installer with anxiety disorder).

As previously mentioned, extra training and time to learn job duties was seen as possible reasonable accommodations by the court in *Taylor v. Phoenixville School District*.¹¹¹ Likewise, in *Kennelly v. Pennsylvania Turnpike Commission*, the court held that extra training and reassignment were potential reasonable accommodations for an employee with panic disorder.¹¹² The court also held that a question of fact existed regarding whether the employer's failure to provide training exacerbated the employee's psychological trauma.¹¹³

In *Jarvis v. Potter*, a U.S. Postal Service employee with PTSD had previously punched a co-worker who startled him.¹¹⁴ He therefore requested that his co-workers be instructed, "not to startle him or approach him from behind." The case involved the Rehabilitation Act although such cases are analyzed the same as ADA situations.¹¹⁵ The request was not deemed reasonable in this circumstance, as it would not be effective in assisting the employee act appropriately in the workplace. In addition, the employee told his employer that:

[H]is PTSD was getting worse and that he could no longer stop at the first blow, that if he hit someone in the right place he could kill him, and that he could not return to the workplace and be safe.¹¹⁶

The court used a direct threat analysis in this situation. EEOC regulations define "direct threat" as "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."¹¹⁷ Note that employers must investigate reasonable accommodations in assessing direct threat situations. Direct threat situations require "an individualized assessment of the individual's present ability to safely perform the essential functions of the job." The individualized assessment must be based on "a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence." The factors to be considered in assessing a direct threat include:

- (1) The duration of the risk;
- (2) The nature and severity of the potential harm;
- (3) The likelihood that the potential harm will occur; and
- (4) The imminence of the potential harm.¹¹⁸

Courts generally have held that the existence of a direct threat is a defense to be proved by the employer.¹¹⁹ The court in *Jarvis* held that the employer met this standard

¹¹¹ *Taylor*, 184 F.3d at 319.

¹¹² *Kennelly v. Pennsylvania Turnpike Commission*, 208 F. Supp. 2d 504, 514-16 (D.C. 2002).

¹¹³ *Id.* at 514.

¹¹⁴ *Jarvis v. Potter*, 500 F.3d 1113, 1124 (10th Cir. 2007).

¹¹⁵ *Id.* at 1120; 29 U.S.C. § 794(a), *et seq.*

¹¹⁶ *Jarvis*, 500 F.3d at 1124.

¹¹⁷ 29 C.F.R. § 1630.2(r); *Jarvis*, 500 F.3d at 1121-23.

¹¹⁸ *Id.*

and that the employee posed a direct threat that could not be eliminated or reduced by a reasonable accommodation. To support this conclusion, the court pointed to prior incidences of violence and the employee's own incriminating statements quoted above. The court also noted that Mr. Jarvis' "symptoms would last indefinitely, he could erupt at any moment if startled, and it was highly likely that someone would startle him, even if inadvertently." The court also stated that, "the law does not require the Postal Service to wait for a serious injury before eliminating such a threat."¹²⁰

Rescinding Discipline as a Policy Modification

Another issue that arises is whether an employer must rescind discipline after learning of a disability. EEOC guidance states that employers are not required to excuse past misconduct, as "reasonable accommodation is always proactive."¹²¹ However, employers:

[M]ust make reasonable accommodation to enable an otherwise qualified employee with a disability to meet such a conduct standard in the future, barring undue hardship, except where the punishment for the violation is termination.¹²²

When a disability is known prior to instituting discipline, reasonable accommodations should be considered to enable an employee to comply with reasonable workplace and conduct rules.¹²³ However, if an employee's misconduct is not related to the disability, discipline is appropriate. In *Davila v. Qwest Corp., Inc.*, an employee with bipolar disorder engaged in misconduct by failing to report an accident involving the company vehicle.¹²⁴ The court held that this misconduct was unrelated to his disability and therefore the employer did not violate the ADA by disciplining the employee.

The cases discussed above demonstrate many issues that arise when assessing reasonable accommodations for employees with psychiatric disabilities. In order to probe the issue a little further, let us return to the situation of Mr. Bultemeyer described in the beginning of this legal brief.

Conclusion of the Introductory Fact Situation: The Court Decision in *Bultemeyer v. Fort Wayne Community Schools*

Remember Mr. Bultemeyer? Here is what happened next in his case:

¹¹⁹ *Jarvis*, 500 F.3d at 1122.

¹²⁰ *Id.* at 1123-24.

¹²¹ See *EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities*, *supra*, Question 31.

¹²² *Id.*

¹²³ See, e.g., *Bultemeyer v. Fort Wayne Community Schools*, 100 F.3d 1281 (7th Cir. 1996).

¹²⁴ *Davila v. Qwest Corp., Inc.*, 113 Fed.Appx. 849, 853-54, 2004 WL 2005915 (10th Cir. 2004) (unpublished).

After being terminated from his employment, Mr. Bultemeyer filed a Charge of the Discrimination with the EEOC and then a Complaint of Discrimination in the U.S. District Court. The district court found in favor of the employer on summary judgment and Mr. Bultemeyer appealed to the U.S. Court of Appeals for the 7th Circuit.¹²⁵

The appellate court decided the following issues:

1. Was Mr. Bultemeyer a qualified individual with a disability able to perform the essential functions of his job with or without a reasonable accommodation?

Appellate Court Decision: Yes. Mr. Bultemeyer was qualified even though he did not report for the medical examination or for work.¹²⁶

2. Did Mr. Bultemeyer request a reasonable accommodation for his return to work thereby requiring the employer to engage in the interactive process?

Appellate Court Decision: Yes. The letter from Mr. Bultemeyer’s psychiatrist was enough information to constitute a reasonable accommodation request and supported Mr. Bultemeyer’s assertion that he was “up to the task.”¹²⁷

- a. If there was an accommodation request, what accommodation was requested and what response was required from the employer?

Appellate Court Decision: As discussed on pages 8-9, the court held that the psychiatrist’s letter can be seen as requesting that accommodations previously in place be reinstated and that Mr. Bultemeyer be reassigned to a smaller school. The employer was therefore required to engage in the interactive process.¹²⁸

- b. If there was an accommodation request, did the employer and employee engage in the interactive process in good faith to determine necessary reasonable accommodations?

Appellate Court Decision: The employer caused the breakdown of the interactive process by refusing to respond to the psychiatrist’s letter. As noted above, Mr. Bultemeyer’s refusal to show up for work or a medical examination was not the cause of the breakdown of the interactive process.¹²⁹

¹²⁵ *Bultemeyer*, 100 F.3d at 1282.

¹²⁶ *Id.* at 1284-85.

¹²⁷ *Id.* at 1285.

¹²⁸ *Id.* at 1285-86.

¹²⁹ *Id.*

3. Did the termination of Mr. B.’s employment violate the ADA or must the employer rescind the termination?

Appellate Court Decision: As the employer had knowledge of Mr. Bultemeyer’s disability and that a reasonable accommodation was requested, the employer had an obligation to reconsider terminating Mr. Bultemeyer’s employment. The doctor’s letter was not “too little, too late” as the employer claimed.¹³⁰

As noted earlier, the Appellate Court went into a fair degree of depth exploring issues surrounding psychiatric disabilities in the workplace in finding in favor of Mr. Bultemeyer and reversing the trial court. The court emphasized that the employer’s failure to understand, or even try to understand Mr. Bultemeyer’s mental illness was a major problem in this case and chided the employer and the district court for “forgetting that Bultemeyer is mentally ill.”¹³¹

The Court also felt that the employer’s actions demonstrated a lack of good faith. This was particularly true as the employer:

[T]ried to take hasty advantage of what it saw as an opportunity to rid itself of a problem, a disabled employee... [W]hen it had the opportunity, it got rid of him, fired Bultemeyer as soon as it could... acting in bad faith.¹³²

Surprisingly, after criticizing the employer and district court for not understanding mental illness, the appellate court labeled as “irrational fear” Mr. Bultemeyer’s concern that he would pass the physical only to be unable to perform his duties at the new high school leading to termination of his employment.¹³³ However, based on the employer’s actions in terminating Mr. Bultemeyer’s employment as quickly as possible, it seems that his fear was not only quite rational but also prescient. Significantly, the court stated that even if the employer viewed Mr. Bultemeyer’s concerns as irrational, these were a result of his mental illness and the employer “had a duty to engage in the interactive process and find a reasonable way for him to work despite his fears.”¹³⁴ The fact that the employer “made no inquiry about what Bultemeyer found stressful at Northrop” was fatal to the employer’s position.¹³⁵

Lessons Learned

Bultemeyer contains the following lessons for employers that can be utilized as best practices in the area of reasonable accommodation:

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 1286-87.

¹³³ *Id.* at 1286.

¹³⁴ *Id.*

¹³⁵ *Id.*

- Try to understand the nature of an employee's disability, particularly in cases involving psychiatric disabilities.
- Use caution when discontinuing accommodations.
- Be careful in ascertaining whether a communication constitutes a reasonable accommodation request
- If an accommodation request or medical information seems vague or incomplete, seek clarification.
- When in doubt, engage in the interactive process and make sure that your actions demonstrate good faith.
- Before instituting discipline, be sure that there is no obligation to investigate reasonable accommodations.

Conclusion

While reasonable accommodations for employees with psychiatric disabilities generally do not involve out-of-pocket costs for employers, there are often administrative issues that must be examined. Employers can benefit by having proper policies and procedures in place and by making an effort to understand the nature of the employee's disability. It is important that employers engage in the interactive process and act in good faith when addressing reasonable accommodation requests. Both employers and employees should utilize available resources and be willing to be creative in finding reasonable accommodation solutions. Often, the interactive process will lead to an effective reasonable accommodation that will help the employee adequately perform the essential job functions in a way that also allows for a productive, well-functioning work environment.

JOINT/SPECIAL MEETING NOTICE

(see agenda on bac. k)

Health Issues Work Group

AND

Public Policy Committee Meeting

July 21, 2009

1:00 pm - 4 pm

Tentative meeting location

DD Council Office
3rd Floor Conference Room
1033 S. Washington Ave
Lansing, MI 48823

Please RSVP by July 10, 2009, only if you plan to attend in person, to Dee Florence at 517-334-6123 or floenced1@michigan.gov This will help us ensure that we have adequate meeting space.

Dial-In information for those wishing to teleconference is listed below.

Dial: 1-877-873-8018

Passcode: 1063784

See you at the meeting,

Dee Florence
Advocacy Secretary
MI Developmental Disabilities Council
1033 S. Washington Ave.
Lansing, MI 48910
Phone: 517-334-7239
Fax: 517-334-7353
Email: floenced1@michigan.gov

**Public Policy Committee
and
Health Issues Work Group Meeting
July 21, 2009**

***NOTE:** We are holding this joint meeting to help develop a DD Council Response/Advocacy strategy to Michigan's "Budget Crisis: All interested persons are encouraged to attend! Additionally, we're making a special request that each RICC's Public Policy Coordinator attend (by phone or in person). We are planning to invite several key guest speakers.*

AGENDA

1. Welcome & Introductions
2. Approval of minutes from June 9, 2009 PPC and June 16, 2009HIWG
- 3. MICHIGAN BUDGET CRISIS**
 - a. Current Situation: "review," forecast for 2010 & beyond
 - b. How did we get into this mess?
 - i. Structural deficit
 - ii. National and Michigan's recession/depression
 - c. What needs to be done to prevent further harm to PWD, and Michigan's budget?
 - d. What do we need to do about it?
 - i. DD Council
 - ii. RICCs
 - iii. Oral health project
 - iv. Individuals
 - v. Partnership with other group
 - vi. Lt. Governor Cherry's Commission on Government Efficiency & Consolidation (hearings: testimony opportunity)

OPTIONAL: If there is time

4. Federal Legislative Update
 - a. Health Care Reform bills
 - b. Federal Employment Opportunities for PWD
5. State Legislative Update
 - a. Mental Health Parity
 - b. Long Term Care Update/Hearing on LTCSS office integration
 - c. Employment for PWD
 - i. MI Works!: disability navigator program
6. Future Agenda suggestions for PPC and/or HIWG
7. Adjourn

PROJECT UPDATES

APRIL 2009

Long Term Care Supports & Services Advisory Commission
April 2009

In a letter dated April 17, 2009, DCH director Janet Olszewski responded back to the Commission indicating that MDCH leadership will facilitate the adoption of the person centered planning process definitions, principles and guidelines. The letter stated that this will take place not only in long term care, but across the department to ensure the same sets of expectations for all service systems. First steps will include incorporation of the PCP process into training, program policy and practice. Specific implementation plans are currently under development.

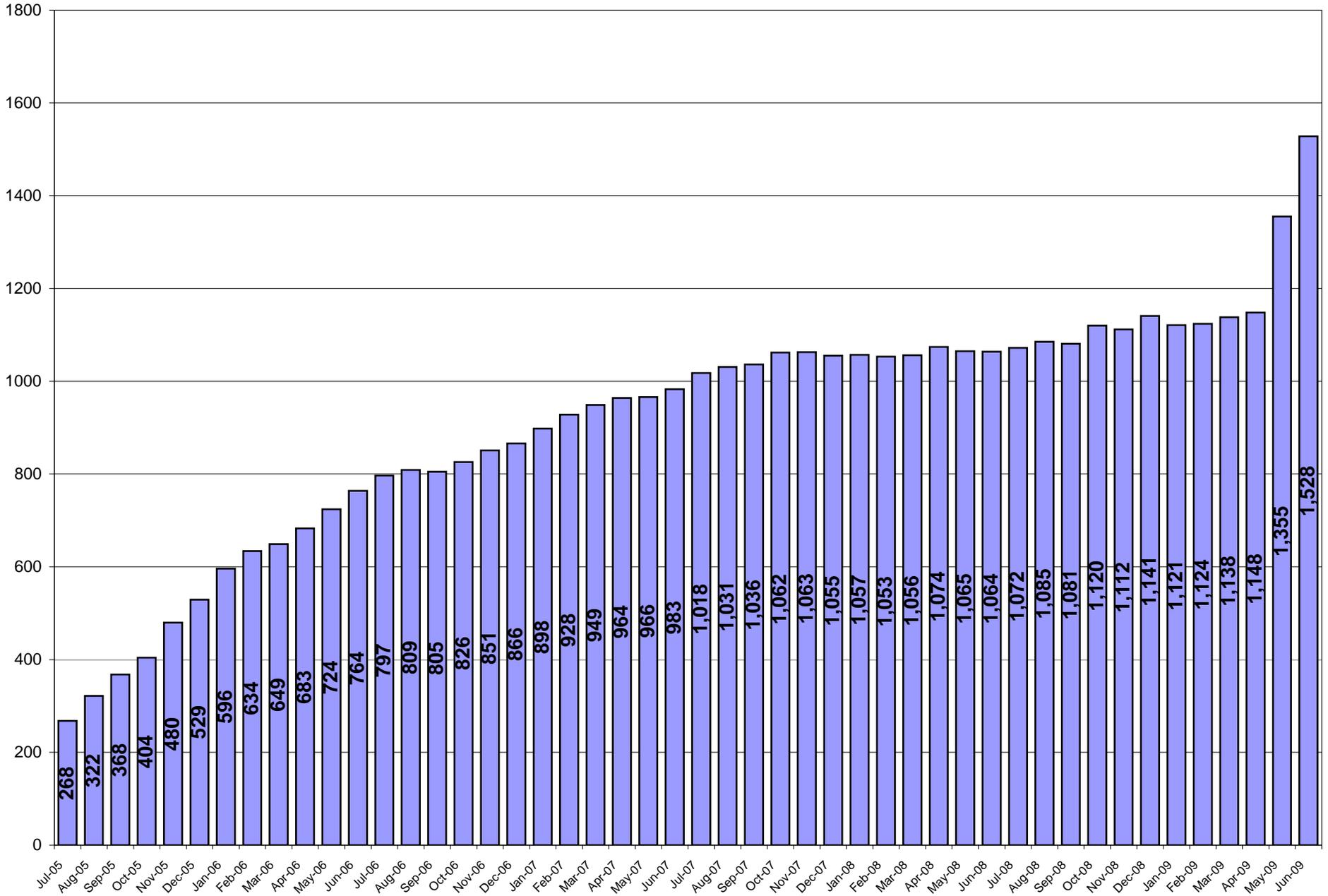
The Office project action teams continue to present Task Force recommendations logic model reviews to the Commission. The next Commission meeting is scheduled for July 27, 2009, from 10:00 a.m. until 4:00 p.m. in Lansing at the Capitol View Building, 1st Floor Conference Rooms.

Medicaid Infrastructure Grant
April 2009

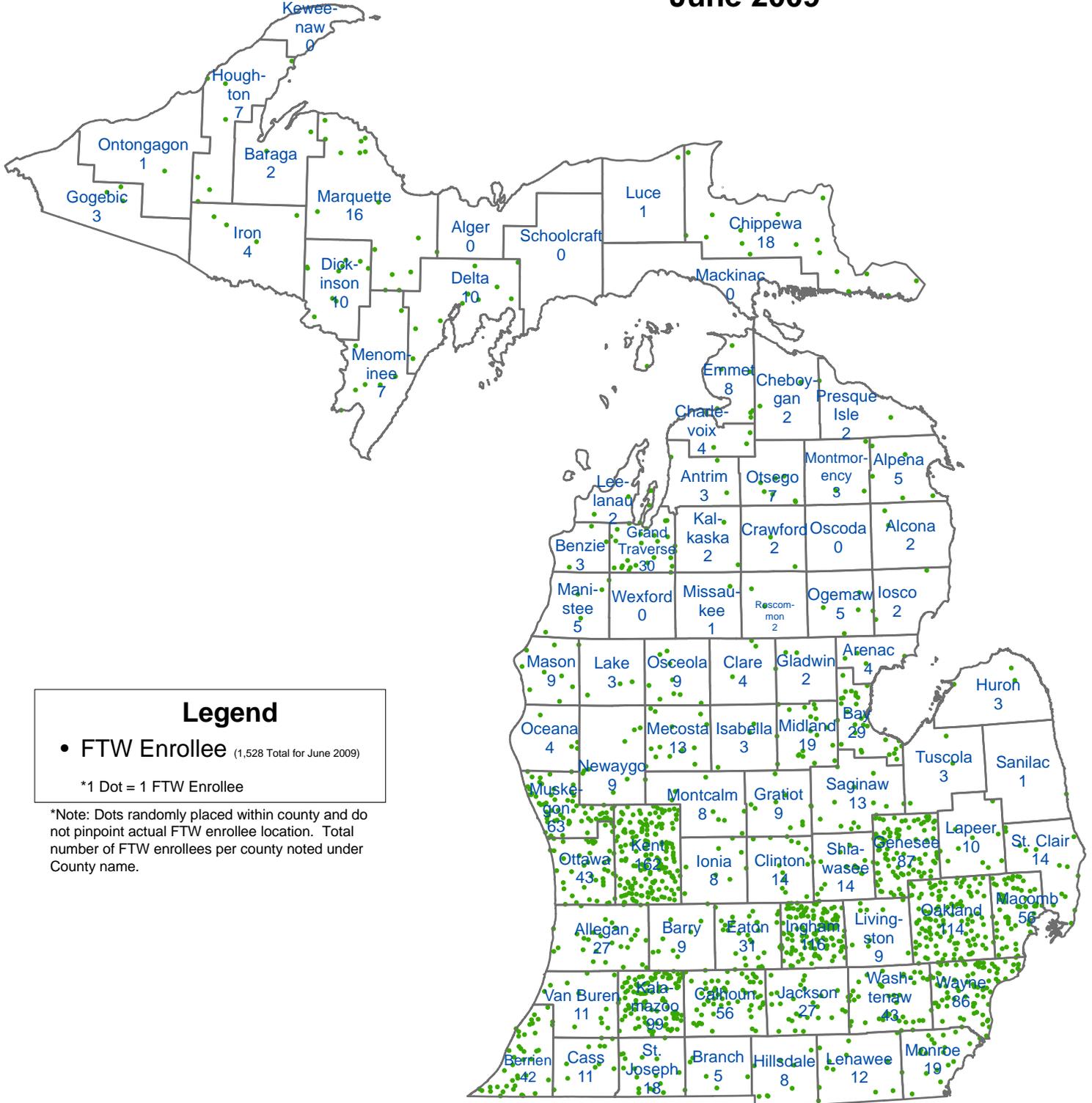
CCO. Code	County Name	Consumers		CO. Code	County Name	Consumers
1	Alcona	2		59	Montcalm	8
2	Alger	0		54	Mecosta	13
3	Allegan	27		55	Menominee	7
4	Alpena	5		56	Midland	19
5	Antrim	3		57	Missaukee	1
6	Arenac	4		58	Monroe	19
7	Baraga	2		59	Montcalm	8
8	Barry	9		60	Montmorency	3
9	Bay	29		61	Muskegon	63
10	Benzie	3		62	Newaygo	9
11	Berrien	42		63	Oakland	114
12	Branch	5		64	Oceana	4
13	Calhoun	56		65	Ogemaw	5
14	Cass	11		66	Ontonagon	1
15	Charlevoix	4		67	Osceola	9
16	Cheboygan	2		68	Oscoda	0
17	Chippewa	18		69	Otsego	7
18	Clare	4		70	Ottawa	43
19	Clinton	14		71	Presque Isle	2
20	Crawford	2		72	Roscommon	2
21	Delta	10		73	Saginaw	13
22	Dickinson	10		74	St. Clair	14
23	Eaton	31		75	St. Joseph	18
24	Emmet	8		76	Sanilac	1
25	Genesee	87		77	Schoolcraft	0
26	Gladwin	2		78	Shiawassee	14
27	Gogebic	3		79	Tuscola	3
28	Grand Traverse	30		80	VanBuren	11
29	Gratiot	9		81	Washtenaw	43
30	Hillsdale	8		82	Wayne	86
31	Houghton	7		83	Wexford	0
32	Huron	3		59	Montcalm	8
33	Ingham	116		60	Montmorency	3

CO. Code	County Name	Beneficiaries		CO. Code	County Name	Beneficiaries
34	Ionia	8		61	Muskegon	63
35	Iosco	2		62	Newaygo	9
36	Iron	4		63	Oakland	114
37	Isabella	3		64	Oceana	4
38	Jackson	27		65	Ogemaw	5
39	Kalamazoo	99		66	Ontonagon	1
40	Kalkaska	2		67	Osceola	9
41	Kent	162		68	Oscoda	0
42	Keweenaw	0		69	Otsego	7
43	Lake	3		70	Ottawa	43
44	Lapeer	10		71	Presque Isle	2
45	Leelanau	2		72	Roscommon	2
46	Lenawee	12		73	Saginaw	13
47	Livingston	9		74	St. Clair	14
48	Luce	1		75	St. Joseph	18
49	Mackinac	0		76	Sanilac	1
50	Macomb	56		77	Schoolcraft	0
51	Manistee	5		78	Shiawassee	14
52	Marquette	16		79	Tuscola	3
53	Mason	9		80	VanBuren	11
54	Mecosta	13		81	Washtenaw	43
55	Menominee	7		82	Wayne	86
56	Midland	19		83	Wexford	0
57	Missaukee	1			TOTAL	1,528
58	Monroe	19				

Michigan FTW Enrollees June 2009



Freedom to Work Enrollees June 2009



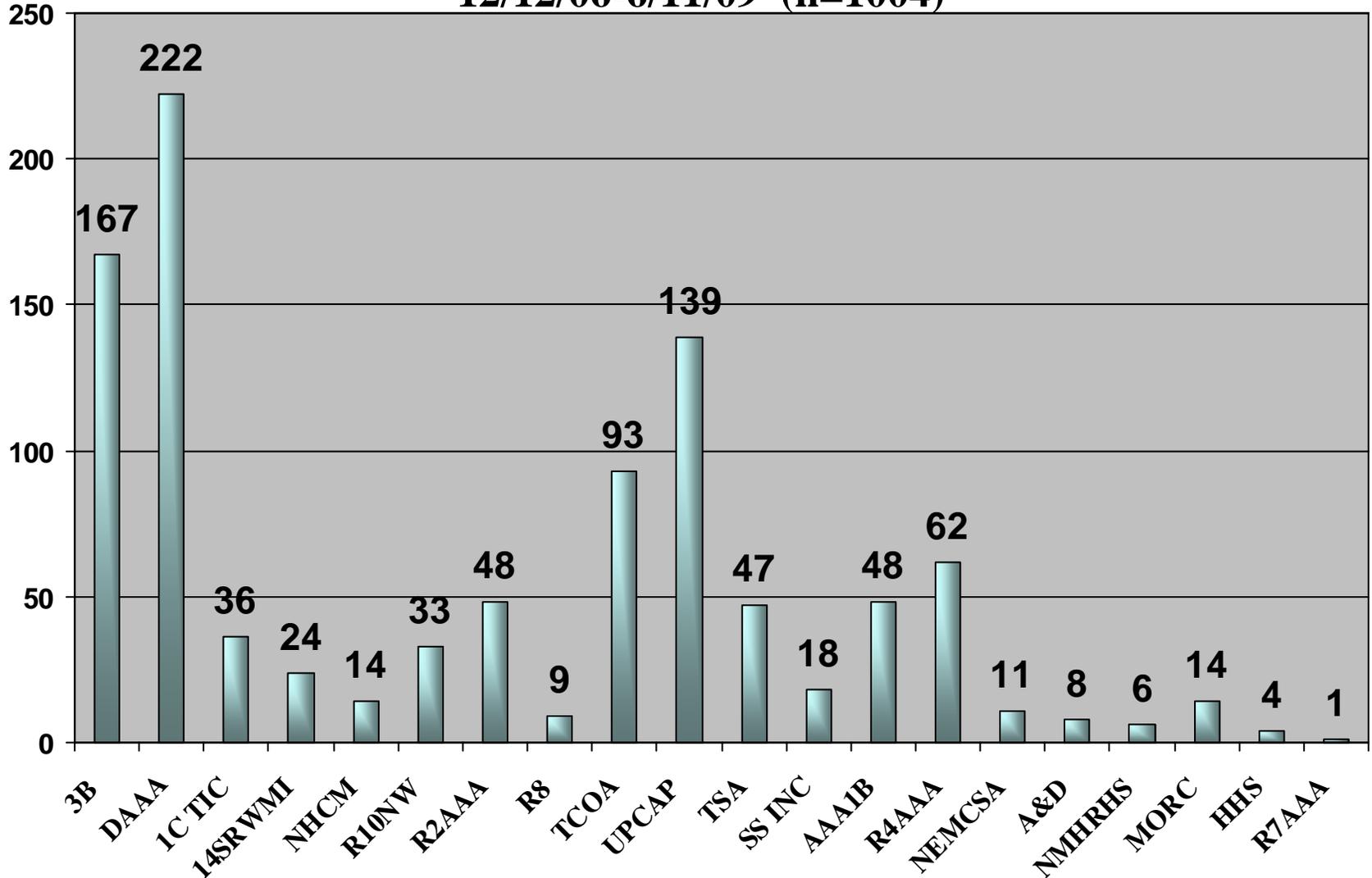
Legend

- FTW Enrollee (1,528 Total for June 2009)

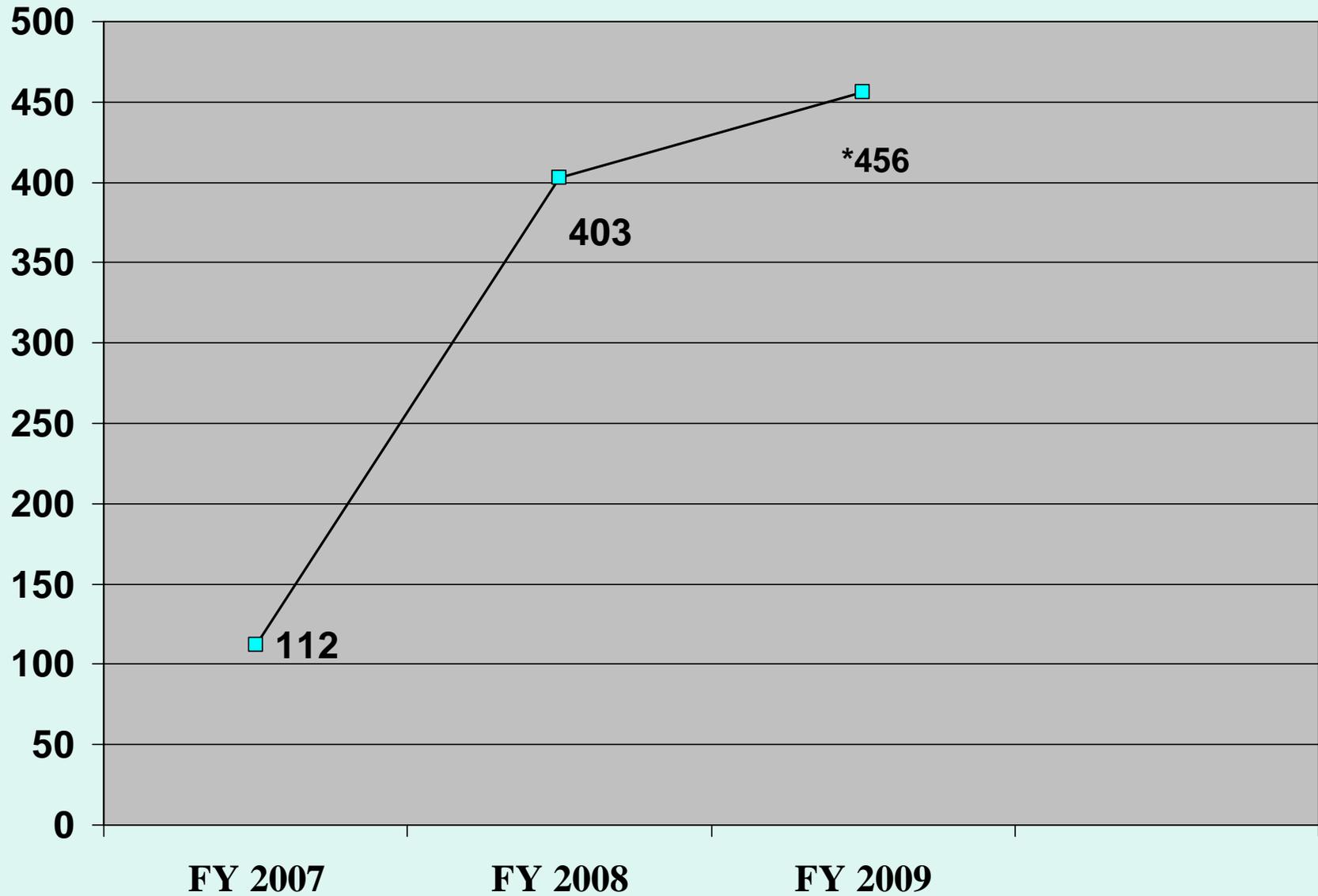
*1 Dot = 1 FTW Enrollee

*Note: Dots randomly placed within county and do not pinpoint actual FTW enrollee location. Total number of FTW enrollees per county noted under County name.

Person-Centered Planning MI Choice Number of Enrollments by Waiver Agent 12/12/06-6/11/09 (n=1004)



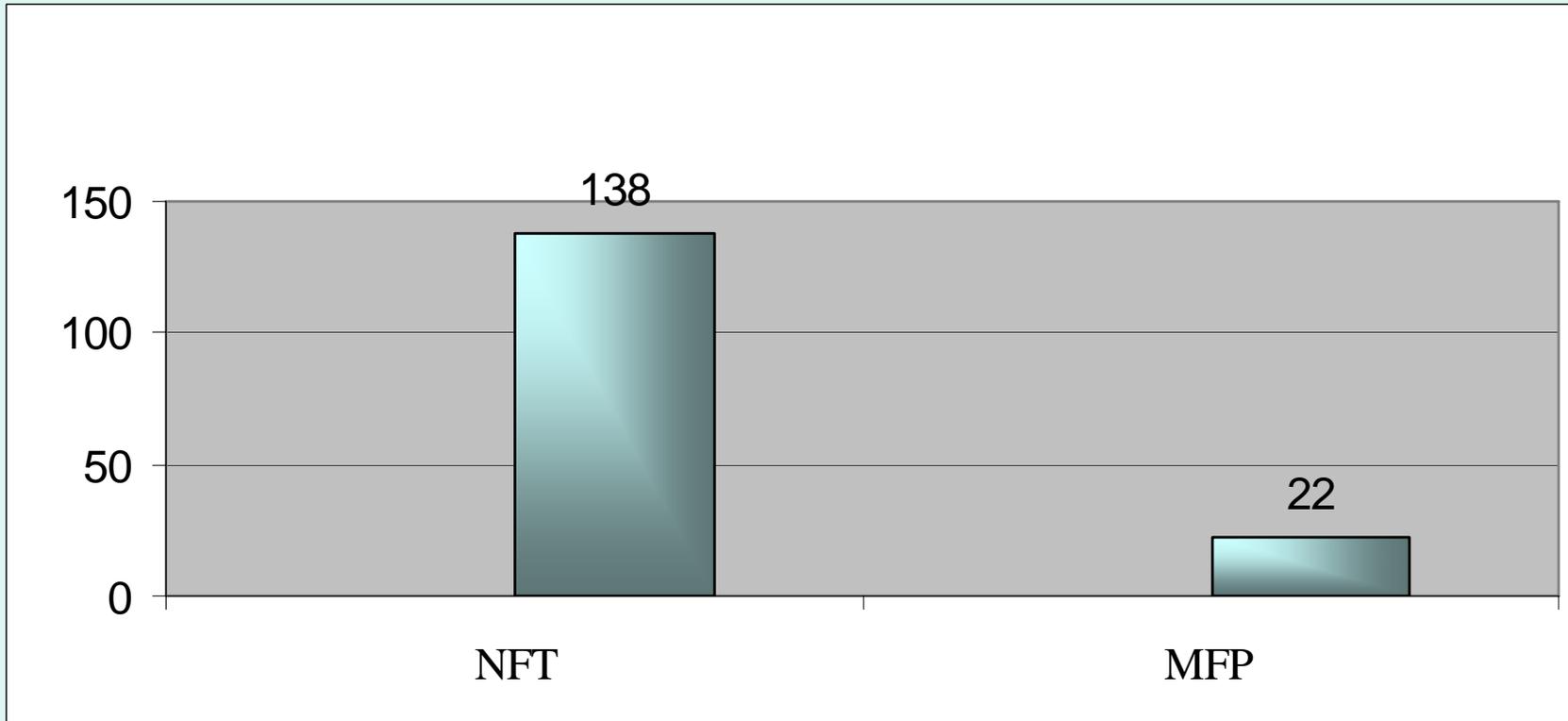
SD Enrollments for FY '07, '08, '09



* FY 2009 is updated as of 6/11//09

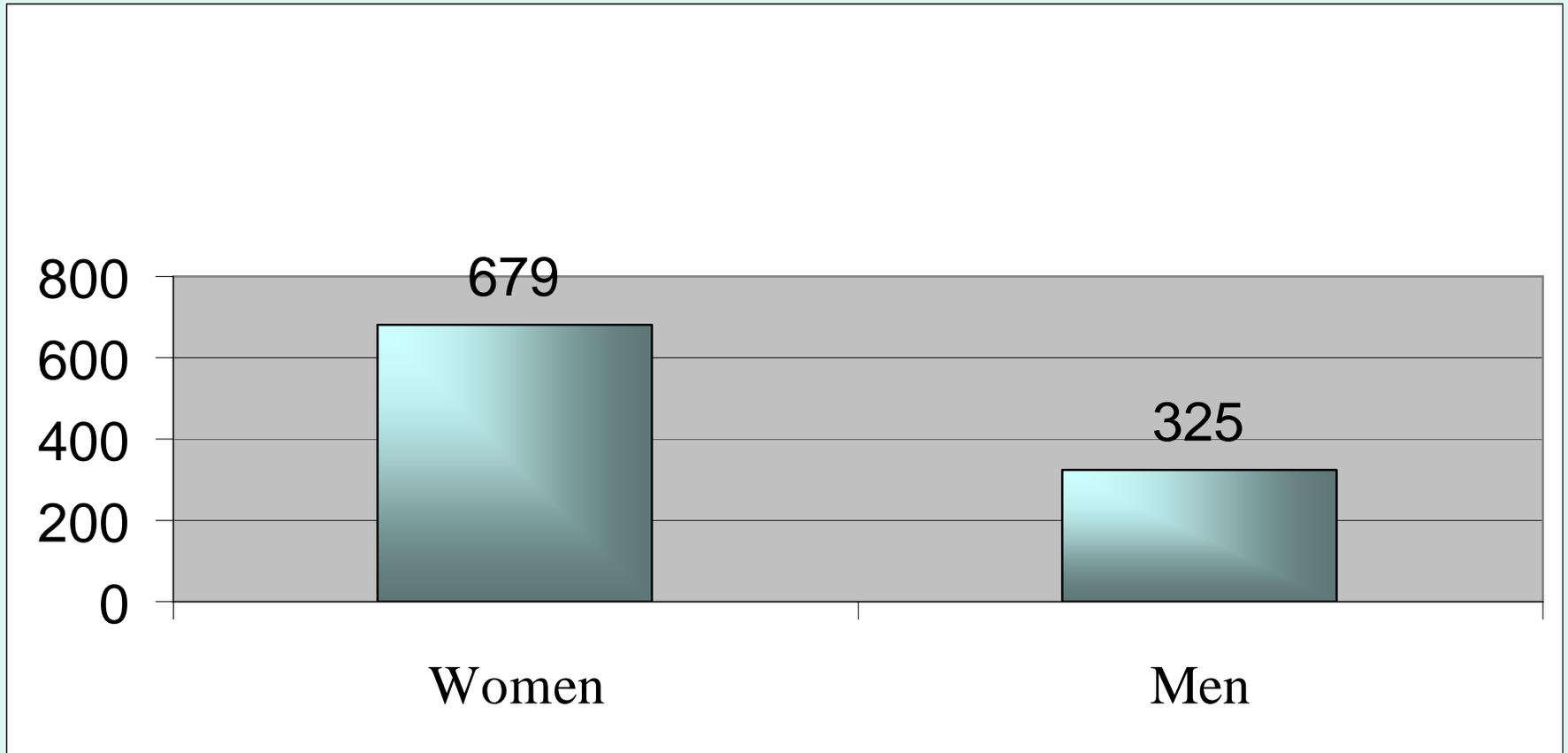
Number of NFT & MFP Enrollments in SD

7/10/08-6/11/09



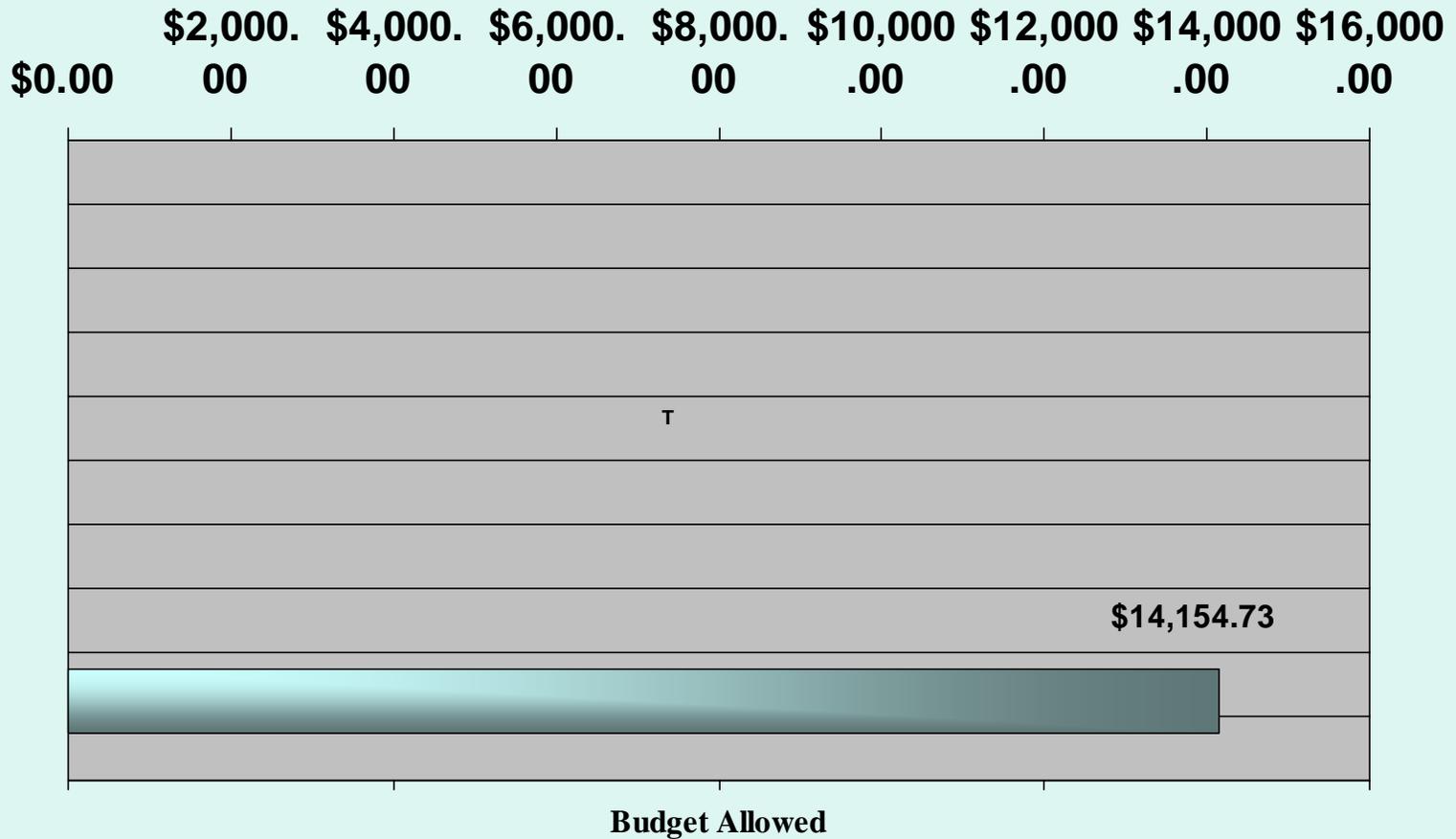
Recipients by Gender

12/12/06-6/11/09

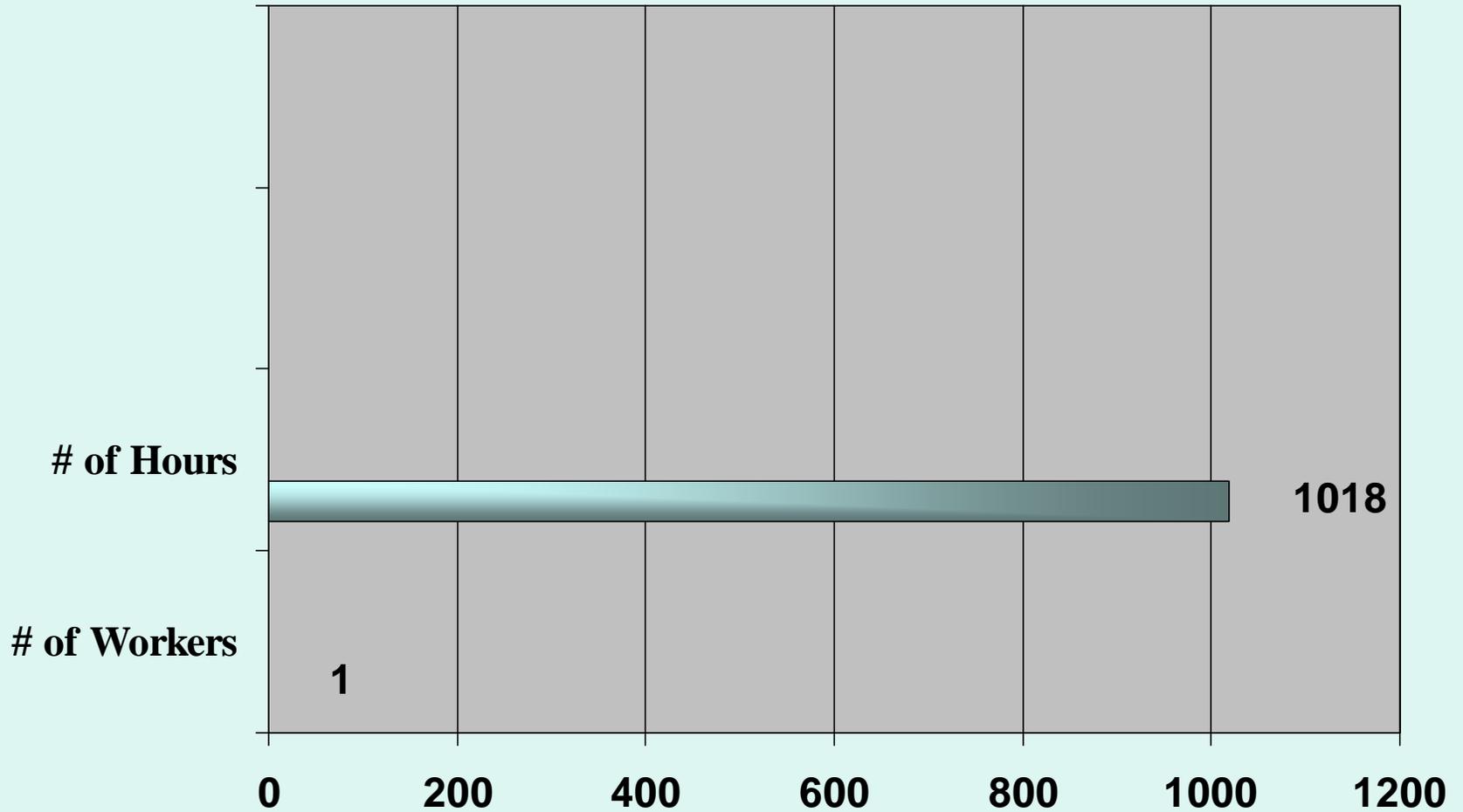


Average SD Budget Expensed

12/12/06-6/11/09

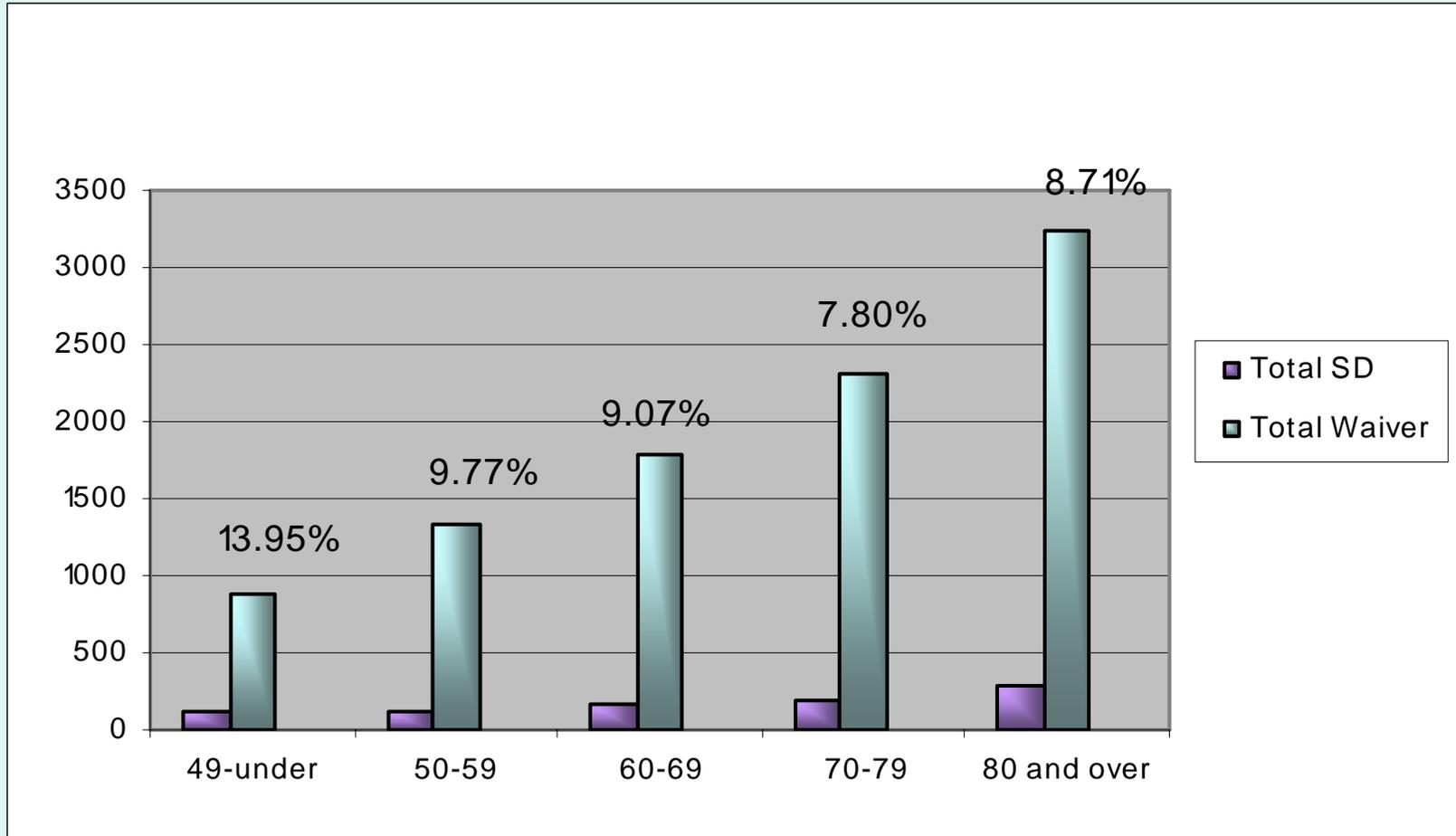


Average Number of Workers & Hours Annually for SD 12/12/06-6/11/09



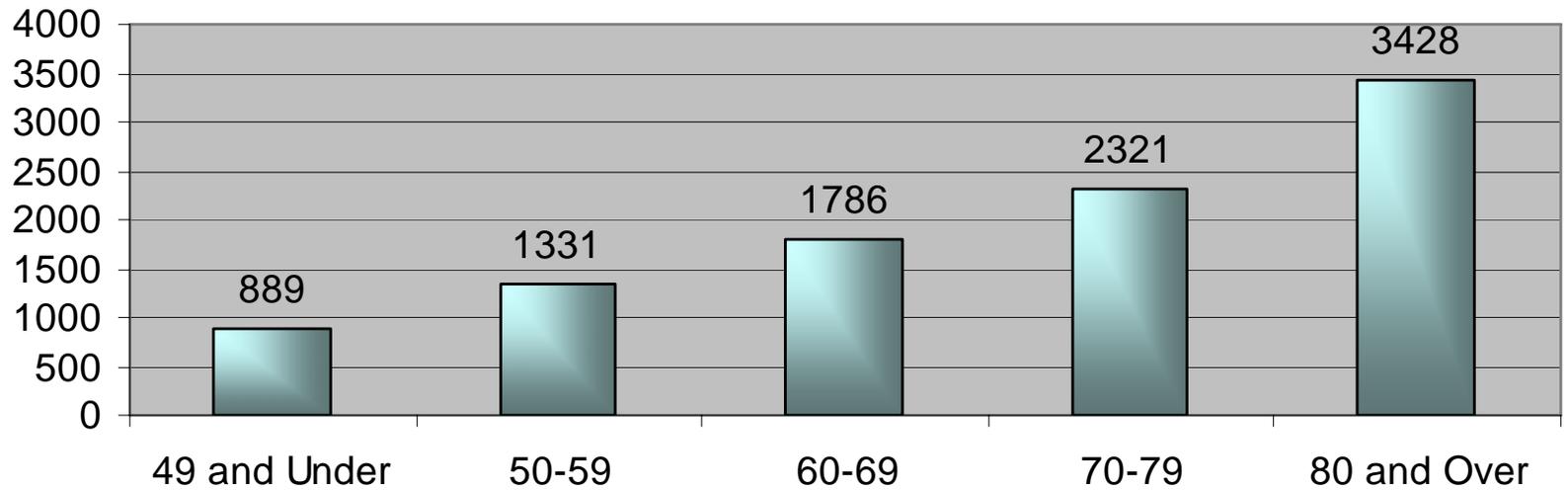
Age % of SD's in Waiver

12/12/06-5/7/09



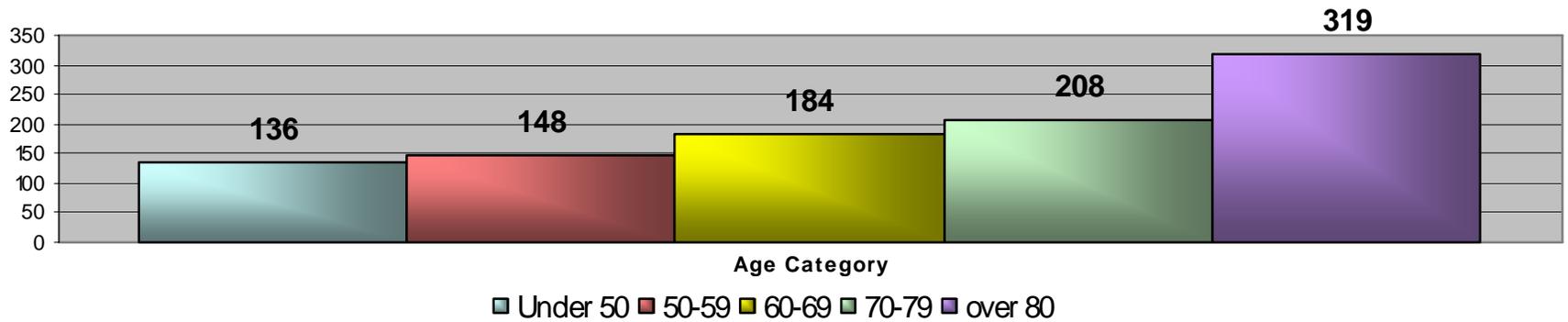
Total in waiver by Age Distribution

12/12/06-5/7/09
(n=9755)

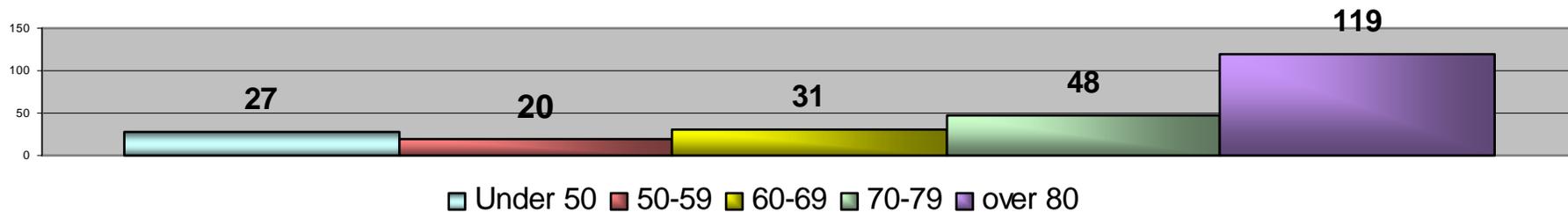


Age Distribution of Recipients in SD

12/12/06-6/11/09

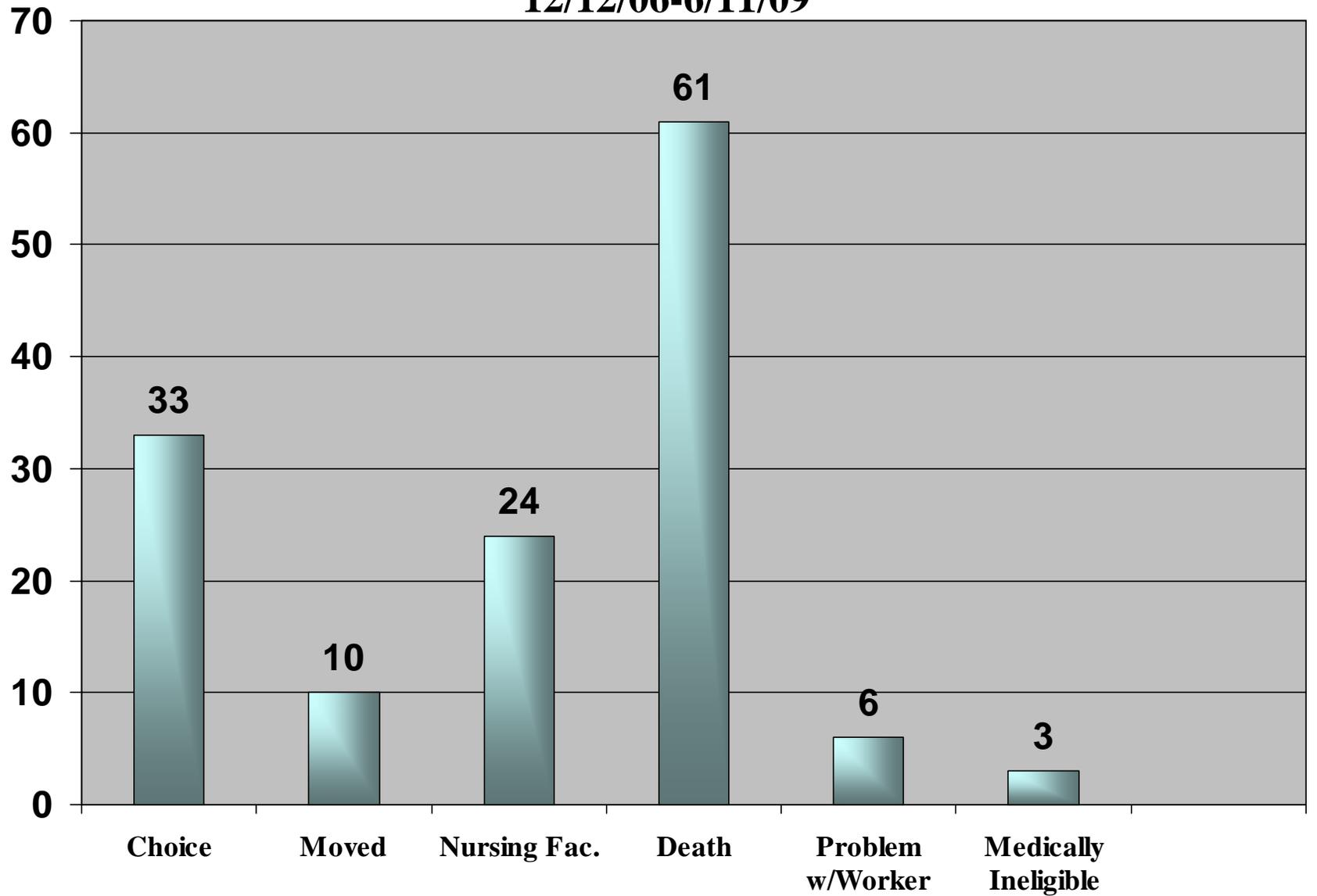


Age Distribution of Recipients in SD who have a Representative 12/12/06-6/11/09



Number of Dis-Enrollments in SD

12/12/06-6/11/09



Waiver Agents

12/12/06-6/11/09

- ❖ **3B**.....167 Enrollments
- ❖ **DAAA**.....222 Enrollments
- ❖ **1-C TIC**.....36 Enrollments
- ❖ **14SRWMI**.....24 Enrollments
- ❖ **NHCM**.....14 Enrollments
- ❖ **R10NW**.....33 Enrollments
- ❖ **R2AAA**.....48 Enrollments
- ❖ **R8**.....9 Enrollments
- ❖ **TCOA**.....93 Enrollments
- ❖ **UPCAP**.....139 Enrollments
- ❖ **TSA**.....47 Enrollments
- ❖ **SS INC**.....18 Enrollments
- ❖ **AAA1B**.....48 Enrollment
- ❖ **R4AAA**.....62 Enrollments
- ❖ **AMEMCSA**..... 11 Enrollments
- ❖ **A&D**..... 8 Enrollments
- ❖ **NMHRHS**..... 6 Enrollments
- ❖ **MORC**.....14 Enrollments
- ❖ **HHS**..... 4 Enrollments
- ❖ **R7AAA**.....1 Enrollments
- ❖ **R5**..... 0 Enrollments