



# OHIO LEGAL RIGHTS SERVICE COMMISSION

... for people with disabilities

## PROCESS FOR CONDUCTING HB 1 STUDY TO EVALUATE TRANSITION OF P&A AND CAP TO NOT FOR PROFIT CORPORATION

### I. Introduction

The final version of the 2010-11 biennial budget bill, House Bill 1, requires the Ohio Legal Rights Service Commission (LRSC) to conduct a study to evaluate "a potential transition [of Legal Rights Service functions] from a public entity to a nonprofit organization." The study must evaluate:

- (1) The feasibility of a transition to a nonprofit organization;
- (2) The potential effects on service delivery, including client service and access to required resources, and any other service delivery advantages or disadvantages that might result from the transition to a nonprofit organization;
- (3) Potential organizational effects, including cost savings and non-state funding sources, and any other organizational advantages or disadvantages that might result from the transition to a nonprofit organization;
- (4) The approximate amount of time necessary to achieve a transition to nonprofit status.

A report of the results of the study, including a "process plan" for the transition, must be completed "not later than six months after the effective date of [HB 1]." That date is July 17, 2009, and the study must, accordingly, be completed by January 19, 2010.<sup>1</sup> The bill states that any transition must occur by no later than July 1, 2011, which is the end of the current biennium.

This document identifies the process through which the LRSC will conduct the study, including identification and allocations of tasks and timelines. The process was approved by the LRSC by unanimous vote at its July 13, 2009, meeting.

### II. Conceptual Underpinning for Study

The primary focus of the study will be service to LRS' clients, people with disabilities. While the LRSC recognizes that collateral or subsidiary considerations (such as personnel and fiscal matters) can be factors in service delivery and must be considered in the larger analysis, no one has suggested that those interests be preeminent.

### III. Process

Conducting the study is in addition to ongoing obligations placed on the LRSC and LRS by state and federal law. The agency had recently begun a new, three year, strategic planning process by completing a client assessment survey and meeting with a facilitator to discuss

<sup>1</sup> January 17, 2010, is a Sunday, and January 18<sup>th</sup> is the Martin Luther King, Jr. Holiday. By operation of statute, official dates falling on a Sunday or state holiday are automatically moved to the next official business day.

that ongoing process. The agency must review and update its programmatic priorities / goals and objectives for FFY 2010 by the end of September 2009, including public comments, review by the PAIMI Advisory Council, and approval by the LRSC.

The LRSC and LRS staff will engage in intense activity in order to complete the study and report within the short time line provided by the budget bill. The following tasks will be undertaken.

A. Functional analysis of LRS programs, including legal framework for designation of P&A and CAP programs

The LRSC and LRS staff will conduct an in depth analysis of programmatic functions in order to compare and contrast what would be likely for the program if transitioned to a not for profit corporation (NPO). This analysis will be in the realms of the tangible (*e.g* employee benefits, including cost of health insurance) and the intangible (*e.g.* perception of agency as independent; policy level access to state officials and legislators).

Various functions include accounting; legal; risk management; personnel, including benefits and retirement; fiscal management; fundraising; leasing; equipment; IT. Evaluation of comparable NPO costs and opportunities in these areas will be undertaken. For example, LRS now depends on OBM and the state auditor for services; accounting and audit in an NPO would be through an outside accounting firm. Outside resources with experience in NPO operation such as United Way and legal services organizations will be contacted.

Funding and development issues will be carefully reviewed, particularly in light of the changing nature of the state and federal budgets. Contrasting eligibility for foundation or grant funding between a state agency and a NPO will be evaluated. Issues related to ongoing participation in the WIPA program, and whether LRS will be eligible to compete for that award, will factor into this calculation, as will proposed P&A programs being considered by Congress and through the Social Security Administration.

A profound issue in this analysis will be a review of the existing statutory structure of LRS' programs to evaluate and contrast the authority granted by state and federal statute. The feasibility of maintaining state statutory language in support of the not for profit will be evaluated.

Similarly profound is the issue of state dollars, which while declining still provide support for approximately 2.5 FTEs and the DD and mental health Ombudsperson program. Expanded dispute resolution is provided in the Ombudsperson statutory structure. The Governor's original proposal was to transfer the state funded functions to the Ohio Department of Aging. That department, however, was unaware of the proposal and initially resisted it. Nationally, several NPO P&As receive state funding in addition to the federal grants. GRF dollars also provide "match" for the WIPA / Return to Work grant from Social Security Administration, and this cannot be paid for with other federal dollars.

B. Evaluation of transactional issues

In addition to the analysis of LRS programs, preparation of both the study and the process plan require evaluation of transactional issues related to a redesignation. Staff will provide information on the various statutes and regulations governing the DD P&A and CAP redesignation process. Discussion with grant authorities to determine any specific requirements or other concerns involved in redesignation will be had.

In particular, the study and plan will address creation of the NPO and obtaining 501(c)(3) status, and whether outside counsel is needed for this transaction. Board composition including federal requirements must be addressed,<sup>2</sup> along with a process to create by laws and policies for the board and for staff of the NPO. Additional issues include: professional responsibility for legal cases; asset and liability transfers from LRS to the NPO (governed by federal law, to a large degree); naming and branding the NPO, including costs and activities related to roll out; and interim staff and offices for the NPO. The study and plan will review and, where necessary, suggest statutory language related to public contract and state ethics issues implicated in a transfer of funds from LRS to an interim NPO.

### C. Obtaining client, staff, and stakeholder input

The LRSC, and LRS through testimony in the General Assembly, has committed to obtaining broad input for the study from LRS' client community. The concerns of the experienced staff, including senior management, at LRS will be taken into account. Other stakeholders, including the PAIMI Advisory Council and the DD Act partner agencies, will be consulted.

Obtaining input from people with disabilities is difficult in this case because of the arcane nature of the question, which is very basic to LRS and P&A structure but is difficult to translate into the external impact on clients, particularly as LRS has a reputation for independence and significant advocacy. In fact, many LRS clients do not know that LRS is a state agency. At the same time, some who do know this question LRS' independence because it is part of "the state." The ambiguities of the P&A and CAP designation process are complex, as is the nature of P&A and CAP funding.

Because of this, the LRSC has determined that a traditional survey or simply seeking "input" from the usual mainstream advocacy groups are unlikely to generate meaningful input.

Instead, the LRSC will conduct a number of targeted and facilitated forums. This allows for outreach to all geographic regions of the state and to all populations of people with disabilities.

The first step in this process is to identify an external consultant well versed in planning and development. The consultant, LRSC, and LRS staff will engage in intensive planning to identify target audiences and create meaningful discussion points.<sup>3</sup> LRS staff will schedule and manage logistics for, and the consultant will facilitate the dialogue at each forum. Necessary supports will be provided to allow people with disabilities and their advocates to attend the forums, and one or more will be held at state or private institutions.<sup>4</sup> The consultant will then draft a report to the LRSC, including any conclusions that can be reached from the forums.

Additionally, the consultant will engage in a similar process for LRS staff, providing a report on their viewpoints and concerns to the LRSC. Members of the LRSC will also meet with staff.

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<sup>2</sup> For example, the Chair of the PAIMI Advisory Council of a not for profit P&A is statutorily mandated to be member of the P&A's board.

<sup>3</sup> Communication must be effective. This will require ASL translators, at a minimum. DD self advocates should be consulted with to ensure effective communication with people with intellectual or developmental disabilities.

<sup>4</sup> These forums will also be used to facilitate LRS' FFY 2010 goals.

The PAIMI Advisory Council (AC) will be consulted with. This may be accomplished through the consultant or through a joint meeting with the council, depending on scheduling concerns. The next AC meeting is on September 19<sup>th</sup>, at which time they will review and update the PAIMI programmatic priorities for FFY 2010.

The LRSC will also invite and consider input from existing advocacy groups, state and county officials, and other "stakeholders," such as the DD Council and Ohio's two UCEDDs (the "DD Network").

**D. Review of other P&A transitions, including input from national leaders**

The LRSC, along with LRS staff, will conduct interviews with grant managers at ADD and others in the P&A network regarding their experiences in redesignating P&A / CAP grants from state government to NPOs, or in maintaining a state agency P&A when other options were considered. Documents regarding these transitions will also be reviewed.

**E. Drafting report and "process plan"**

Upon completion of these tasks, the consultant will provide the LRSC with a draft study report, recommendation, and plan. The LRSC will review, revise, and approve the report, and it will be transmitted to the Governor and leadership of the General Assembly. The report will also be widely disseminated through LRS' list serves and web page.

**V. Commission Activity**

While LRS staff and a consultant will perform the day to day tasks involved in the study, providing drafts of written materials, etc., the LRSC will meet more frequently during this period than is currently scheduled or is required by law. Because of the current make up of the LRSC (only four active Commissioners), it will meet in regular or special meetings. Related to this, efforts will be made to engage legislative leadership in appointment of a full slate of Commissioners. Also, as specified in LRSC By Laws, the LRSC chair has authority to act on behalf of the LRSC between regularly scheduled meetings.

**VI. Timeline**

These proposed timelines and tentative dates recognize that the report is due in mid-January, 2010. The commission will maintain existing meeting dates, in addition to scheduling special meeting dates. Scheduling a special meeting requires compliance with state law and the notice requirements of the LRSC rule.

July 13	<ol style="list-style-type: none"> <li>1. Adopt plan</li> <li>2. Determine model for LRSC participation in study process</li> <li>3. Schedule meetings for remainder of calendar year</li> </ol>
August 17 (special meeting)	Review proposals and make final decision related to consultant / facilitator
August 31 (special meeting)	<ol style="list-style-type: none"> <li>1. Review and approve plan for forums, including locations, target audiences, talking points</li> <li>2. Schedule interviews (individual commissioners, committee, or full commission) with various stakeholders and interested parties.</li> </ol>

September 19 (possible special meeting)	PAIMI Advisory Council meeting
October 5	Regularly scheduled Commission meeting
November 30	1. Complete forums 2. Complete interviews with other interested parties, including other P&A and federal grants personnel
December 7	Regularly scheduled Commission meeting 1. Consultant presents report on client and staff forums, internal and statutory analysis provided by staff 3. Commission provides consultant with guidance for final report and plan
January 11	Staff circulates final draft report and plan for comment
January 19 (Tuesday)(special meeting)	Approve final report and process plan and submit to Governor and GA

## **VII. Conclusion**

The LRSC recognizes that the process must be built around the recognition that there are several options available to Ohio for management of the P&A and CAP grants, as well as the state funded Ombudsperson section. It may be that it is in the interest of LRS' clients to move the grants, perhaps including currently available state dollars, to a non profit corporation.

Evaluation of these interests may also produce a conclusion that the best alternative is to leave the grants in state government. Should this be the case, however, the LRSC may need to recommend statutory language that clarifies LRS' independence from certain administrative areas within the Executive Branch, in particular DAS, OBM, and OIT, over federally funded and regulated activities in order to avoid conflict in independent management of federal monies and client activity.