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Striving for Excellence

The Case for a Comprehensive, Collaborative Review of Ohio's Major Unusual Incident/Unusual Incident System (MUI/UI)

Implementing a system for reporting and investigating abuse, neglect and other incidents of significance in a statewide developmental disabilities system is mandatory, not optional. Ideally, the process aspires to ensure the health and safety of those served not just through timely reporting and investigation but through the collaborative creation of proactive preventative measures based on experience. Of this there is little disagreement among Ohio's system stakeholders.

Ohio's MUI/UI system is admirably administered by the Department of Developmental Disabilities and favored by the Centers for Medicare and Medicaid Services (CMS) as a model for replication. Arguably it is a process understood and accepted by most of the entities responsible for implementation.

The MUI/UI process has evidenced significant safeguards and progress for many people with DD. As well, this process has revealed unintended consequences that are worthy of thoughtful consideration and improvement. Given years of experience, it is time to take full advantage of the mandatory five-year rule review period and undertake a fundamental examination of the MUI/UI rule and entire process.

This paper provides reasons why this moment in our system's history offers a unique opportunity for candid conversation and improvement of Ohio's MUI/UI rule and process.

Why now? If the process works why change?

- 1) **Its all about the facilitation of and delivery of supports.** Developmental Disability systems exist for the sole purpose of the facilitation of and delivery of service at the direct support level. All other systemic activities should act as a compliment to those efforts. MUI/UI systems are designed to ensure the imperative that individuals are healthy and safe in their respective environments. They should be woven seamlessly into the larger service delivery model(s). So the natural, ongoing question should be--Is the MUI/UI

system improving the facilitation of and the delivery of service at the direct support level and can it be improved?

- 2) **The MUI/UI Process offers a panoramic view of our entire service delivery system.** Few other regulatory processes within Ohio's DD system offer as comprehensive a view of the effectiveness of our service delivery as does the MUI/UI process. Its tentacles touch the entire spectrum from acute health care, coordination of care and internal provider compliance systems to the roles and responsibilities of county DD boards and private providers. The MUI/UI process can help us to identify gaps in our current service delivery models as well as focus on the effective coordination and communication between county DD boards and private providers.
- 3) **The inexorable creep of bureaucracy.** Every government regulatory system no matter how well administered, intentioned or important is subject to the inevitable creep of process adherence. Over time adherence to the process can become the primary objective for many involved at the expense of the originally desired outcomes. An overly burdensome regulatory structure necessitates the movement of scarce human and financial capital from the delivery of service to compliance. All affected parties should continually engage to ensure the proper *balance* between necessary regulations and the time and effort spent complying.
- 4) **Professional relationships exist that will allow for productive conversations and action.** Professional relationships are built, nurtured and strengthened in any human endeavor for the purpose of creating an environment where candid conversation can occur leading to the resolution of disagreement or collaboration on improvement. Arguably the relationships between staff of the Association of County DD Boards and OPRA have never been stronger and the integrity of DODD MUI/UI leadership is unquestioned. Now is the time to take full advantage.
- 5) **Existing experience and expertise.** Ohio's DD System stakeholders have enough experience and expertise with the MUI/UI rule and process to provide a thoughtful, comprehensive review of all its components and offer substantive suggestions for revision and improvement.
- 6) **Workforce shortage.** The recruitment and retention of direct support professionals (DSPs) and front line supervisors is believed by many to be the number one challenge facing Ohio's DD System. Providers believe the current MUI/UI reporting and investigation process actually drives good DSPs and front line supervisors out of the system, causing an ongoing barrier to recruitment and retention.

How/Why? The overarching factor most indicated is that DSPs feel an ever-present, looming threat of consequence for every mistake, some of which are sure to happen due to the complexity of disabilities and unavoidable circumstances. No reasonable person, DSP or other, disputes the absolute need for intolerance for intentional harm, harmful neglect, or theft from individuals with disabilities. What is proper cause for reconsideration is this: The MUI/UI Department leadership is adamant this process is not a "gotcha" system...that the intent is to bring issues to light, implementing immediate

care action, and further preventing recurrence. So, we must close the gap between the intent of the process and its current implemented reality. Good faith efforts to do so will not dilute the health and safety of individuals with DD as there will be no compromise where clear abuse, harmful neglect, and theft have been committed. In fact, there is a strong case to be made that the improvement sought here (closing the gap) will improve the Health, Safety, and Welfare of all persons involved. That argument will be made in a future response. The bottom line is that the system must be careful and attentive to undesired, unintended consequences of implementation.

What have we learned? Thoughts on concepts and issues to be discussed.

- 1) **Recruitment and Retention of Direct Support Professionals.** If it is a reality that the MUI/UI process is a barrier to the recruitment of DSPs and hastens the exodus of quality DSPs and front line supervisors in a time of severe workforce shortage then an imperative exists to examine the process in detail to identify the causal factors and mitigate them.
- 2) **Improving the health and health care of individuals served.** Unscheduled hospitalizations are reported and investigated in large measure to determine if neglect was involved or if patterns or trends exist. But larger questions about the health and the coordination of health care remain unanswered and often un-discussed. For example, what is the role of the provider when an individual is admitted to the hospital? Who is responsible for coordinating care in anticipation of discharge? Are staffing levels routinely discussed between provider and county board as a result of increased (temporary?) needs? What do we actually know about the acute health care of the individuals we support and how might we achieve better outcomes?
- 3) **Coordination of care--what is the optimum role of the county DD boards?** Particularly in light of the changing responsibilities and functions of county DD boards the question of coordination of care upon admission and discharge from hospitals and rehabilitation facilities is timely. What role will county DD boards play in the future with respect to coordination of care and the overall health care of individuals served?
- 4) **Consistency between county DD boards in interpretation and application.** Arguably the significance of the MUI/UI process for the individuals served merits as much consistency in interpretation and application as possible between the eighty-eight county boards and COGS. This includes a consistent interpretation of the rule and expectation of providers. Inconsistency among counties and COGS inevitably result in additional administrative burdens for those providing direct supports and hinders their ability to timely and effectively comply with the rule.
- 5) **Investigations.** The role of investigative agents is essential to the successful protection of individuals served. Steadfast action by IAs in response to criminal acts is critical. By design the MUI/UI rule is broader in scope than criminal abuse, theft, or harmful neglect. The overarching goal of the rule is to improve the quality of care delivered by creating a proactive and preventative

provider environment. If the investigative approach is overly authoritarian or threatening regarding non-criminal or ill-intended incidents, it can have unintended consequences including driving otherwise quality DSPs from the system. "Bi-lateral cooperation" on reporting, details, timeliness of incident reporting, investigations, and investigative reports are also critical. Solutions to the processing of all of this could cause much relief to everyone involved and make for a better system.

- 6) **Unusual Incidents.** A thorough discussion of UIs and their intended outcomes is merited. Some projections indicate that the UI process can take up to 50% of the provider time spent on the MUI/UI process. Is the current UI process actually improving the lives of individuals served and how might it be improved in balance with the required administrative time providers of service spend on compliance.
- 7) **Neglect.** Neglect has become in some measure a catch-all category that ranges from intentional or disturbingly careless duty to mistakes made by well-intended staff due to the widely complex factors that would challenge anyone. While some argue that a proper neglect determination should include the latter, there is widespread concern that too many neglect determinations of this type have had a significant negative impact on the recruitment and retention of DSPs. Thus, conversations should focus on the definition of neglect and what types of neglect (intentional) require a punitive response and which might benefit as a learning experience.

The result of candid, comprehensive conversations on the MUI/UI rule and process can significantly improve the health and welfare of individuals served and the effectiveness and efficiency of our entire service delivery system.