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Date: November 20, 2014

To: All Supervisors
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cc: Kelly Bablitch
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From: Paul Bargren *PB*
Corporation Counsel

Re: Response to "Policy Issue" document on County Board Jurisdiction over Certain DHHS Programs

Introduction

Issue: I was asked to review an unsigned "Policy Issue" document that was recently circulated to Supervisors and others. The "Policy Issue" document questioned whether the County Board "has the authority to approve contracts that will come before it," presumably from the County Department of Health and Human Services (DHHS).

Short answer: The County Board has full jurisdiction to vote on contracts that come before it from DHHS. Under 2013 Act 203, the County Board retains full jurisdiction over DHHS.

The fact that DHHS programs may serve clientele with mental health needs does not deprive the County Board of jurisdiction over those programs. To suggest that the County Board does not have jurisdiction to vote on DHHS contracts or programs ignores key provisions of Act 203, which created the Mental Health Board (MHB). If the County Board feels DHHS programs or contracts are worthy, they should be approved. The issue of "jurisdiction" raised in the "Policy Issue" document lacks merit and should not be an excuse for delay or for penalizing clients who might benefit from DHHS programs.

Analysis

The thesis of the "Policy Issue" document appears to be that because certain DHHS programs, such as housing programs, serve clients with mental health issues, Act 203 has placed these

programs beyond the jurisdiction of the County Board. There is no question that Act 203 granted jurisdiction over mental health programs found in the Behavioral Health Division to MHB. But just as clearly, Act 203 left jurisdiction over non-BHD programs with the County Board, regardless of whether they serve clients with mental health needs.

The “Policy Issue” document is unsigned, but I am advised it was distributed by Joseph Volk. Based on an earlier letter, Mr. Volk is a resident of Waukesha County and is operating as Wisconsin Advocacy Project. Until January 2014, he was CEO of Community Advocates, Inc., which ran the north side Crisis Resource Center until the County terminated its contract in July 2013.

The dividing line of jurisdiction in Act 203 is found in Act § 53, which states that Org Units 6300 and 8700 will constitute the jurisdiction of MHB:

(3) JURISDICTION OF THE MILWAUKEE COUNTY MENTAL HEALTH BOARD. The mental health functions, programs, and services over which the Milwaukee County mental health board has jurisdiction upon appointment of the Milwaukee County mental health board are those functions, programs, and services that Milwaukee County included in its 2014 budget under the behavioral health division unit 6300 and under the behavioral health community services branch of unit 8700.

MHB jurisdiction is thus clearly defined to include these two Org Units, and only those two. All remaining DHHS Org Units remain under County Board jurisdiction; these are Director’s Office & Management Services, Delinquency & Court Services, Disabilities Services Division, and Housing Division (including the Harm Reduction Housing model mentioned in the “Policy Issue” document). All remain within the jurisdiction of the County Board.

One could argue that the specific delineation of Org Units 6300 and 8700 in § 53 of Act 203 is at odds with some of the more sweeping statements elsewhere in Act 203. Act 203 states, for example, that “The Milwaukee County board of supervisors has no jurisdiction over any mental health policy, functions, programs or services.” § 51.41(5)(a). And Act 203 states that MHB shall “make the final determination on mental health policy in Milwaukee County.” § 51.41(1s)(c). But those statements must be read in light of the specific jurisdiction set out in § 53 of the Act, and in light of the Act’s traditional statutory approach to the topic of mental health. Act 203 is couched in terms of Chapters 46 and 51 of the statutes, which address mental health services, but Act 203 does not address other areas that might provide services of use to those with mental health needs. And, the County Board retains responsibility for the developmentally disabled, unless expressly delegated to MHB. § 51.41(1)(b). The delegation of Org Units 6300 and 8700 to MHB is consistent.

Thus in looking at jurisdiction under the Act, it is immaterial whether a program serves someone with mental health needs or carries a mental health label. The question as to jurisdiction is strictly one of legislative directive: if the program is in Org Unit 6300 or 8700, it is under MHB jurisdiction. If the program is in some other Org Unit (even if the program serves those with mental health needs) it remains under County Board jurisdiction.

To take the very broad view suggested in the “Policy Issue” document is not consistent with the boundary set by Act 203. Criminal courts, for example, serve a population that many would contend has a very large percentage of individuals with mental health needs. So do the Sheriff’s Department, the Jail and the House of Corrections. But no one seriously contends that all court and corrections matters should now be under the jurisdiction of the MHB. Act 203’s approach

was to define specific areas that are identified *only* with mental health services, and place them under MHB jurisdiction. Programs that are not specifically called out as under MHB jurisdiction remain where they are.

The “Policy Issue” document also mentions Comprehensive Community Services (CCS). Whether intentionally or not, this reference creates needless confusion. CCS is not a program or a contract but rather is a new benefit offered through BHD, including to some Housing clients. CCS makes federal and state aid available to individuals where County tax levy had been needed in the past. Per the administration, BHD will work with Housing clients who are currently supported by tax levy to use the CCS benefit to support their needs, resulting in savings to DHHS, Housing and the County. The net effect is to reduce general County tax levy pressure or, stated differently, free up tax levy capacity for other general County purposes. That does not create any issue of “jurisdiction” for the County Board or its committees.

Likewise, there is no question that Certified Peer Support Specialists are BHD personnel. The fact that they may serve clients at a DHHS Housing site does not deprive the County Board of the ability to continue to approve DHHS Housing programs. DHHS leadership has advised that Housing has not and will not bill for such services. Those are billed directly through CCS and BHD. The contention in the “Policy Issue” document that Housing “anticipates being able to bill” for these services is not only spurious conjecture but is false, and it underscores the lack of reliability in the document.

The “Policy Issue” document is also misleading in stating that “Special Needs Housing continues to operate out of BHD.” That DHHS unit had an office in the BHD building, but since 2009 has been a part of DHHS Housing and not part of Org Unit 6300 or 8700. Moreover, it is moving to new quarters at 6th and Walnut.

There are provisions in Act 203 for transferring programs outside Org Units 6300 or 8700 into MHB control if the programs pertain to or are highly integrated with mental health. *See* § 51.41(5)(b). Until December 31, 2014, this would be by agreement of MHB and the State; starting January 1, 2015, it would be by agreement of MHB, the County Board, and the County Executive. But these programs would not require transfer if they were already part of MHB. This shows again that jurisdiction for programs in DHHS is with the County Board, even though they may have a strong mental health component.

To summarize: Programs and contracts in the DHHS Org Units are under the jurisdiction of the County Board. The County Board and its committees can and should consider DHHS requests to approve such programs. Such programs may serve clients with mental health needs, but Act 203 has placed them in the County Board’s hands.