

PATHWAYS BOARD

*George Botbyl, Elizabeth Brotherton, Patricia Bureau,
Katie Carlson-Lynch, Bill Davie, Frederick Margrif, Julie Moker, Nancy Morrison,
Kristin Peterson, Cathy Pullen, Gerard Tatrow, Glenn Wing*

PATHWAYS MISSION STATEMENT

We serve and empower people with Severe Mental Illnesses, Severe Emotional Disturbances, or Developmental Disabilities to enhance their quality of life.

**PATHWAYS APPROVED
REGULAR BOARD MEETING MINUTES**

November 4, 2020 12:15 P.M.

Via Lifesize Connection

Alger, Delta, Luce, and Marquette County

Present: Botbyl, George Brotherton, Elizabeth Bureau, Pat Carlson-Lynch, Katie (Absent) Davie, Bill Margrif, Frederick	Moker, Julie Morrison, Nancy (Luce) Peterson, Kristin Pullen, Cathy (Excused) Tatrow, Gerard Wing, Glenn
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Alger Staff/Guest: None

Delta Staff/Guest: Darcy Bergerson, Terry Burkhart, Jeanne Lippens, Shelly Sundstrom

Luce Staff/Guest: None

Marquette Staff/Guest: Nick Kolinsky, Karen LaFave, Joe Lavey, Matt Maskart, Josh Musser, Maria Snell, Mary Swift, Derick Wall,

CALL TO ORDER AND ROLL CALL

Vice Chairperson Wing called the meeting to order at 12:18 p.m. Roll call was taken by Dawn Mercier, Executive Assistant, a quorum was present.

ADOPTION OF AGENDA

Additions/Changes – Personnel: Additional Designated Paid Day Off

MOTION/SECOND/CARRIED TO ADOPT THE AGENDA AS AMENDED.
Davie/Brotherton

ADOPTION OF BOARD MINUTES

Committee of the Whole – September 22, 2020

MOTION/SECOND/CARRIED

Davie/Moker

TO APPROVE THE MINUTES FROM THE SEPTEMBER 22, 2020 COMMITTEE OF THE WHOLE AS PRESENTED.

MOTION/SECOND/CARRIED

Botbyl/Bureau

TO APPROVE THE MINUTES FROM THE OCTOBER 7, 2020 REGULAR BOARD MEETING AS PRESENTED.

PUBLIC COMMENT

Alger - None

Delta – None

Luce - None

Marquette – None

COMPLAINTS FILED AGAINST PATHWAYS EMPLOYEES
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Attorney Terry Burkhart advised since the original complaints and the investigation report was presented and acted upon at the September Board meeting, there have been additional appeals filed, two regarding FOIA responses (one of which has been withdrawn), and a demand made by complainant to have the Board Chair privately decide the remaining FOIA appeal. The FOIA statute language indicates that appeals must be directed to the head of the public body. However, she went out of her way to indicate that it was not to be directed to the head of the public body but instead directed to Cathy Pullen, privately. He and Shelly met to discuss her demand and it was determined that since this needed to be done in open session privacy could not be guaranteed based on the previous refusal of the parties involved to meet in closed session.

There is an argument that she has withdrawn both of her appeals. However, she would never confirm in writing that she had withdrawn the first appeal. In preparing the report for the Board, Terry said he reviewed all correspondence referring to her FOIA requests and explained the question is, should Pathways issue a formal response to the FOIA appeal? Therefore, he read a proposed letter to the Board for their consideration.

This would be the formal end to the FOIA process and it is Shelly and his recommendation the Board approve the response and that Cathy Pullen be emailed the letter for her signature and the letter be sent.

MOTION/SECOND/CARRIED

Botbyl/Margrif

TO APPROVE THE FORMAL RESPONSE AS PRESENTED.

Pathways Regular Board Meeting – November 4, 2020

Roll Call Vote:

Ayes: Botbyl, Brotherton, Bureau, Davie, Margrif, Moker, Morrison, Peterson, Wing

Nays:

Tatrow was connected to the meeting but this recorder was unable to hear his vote

MOTION CARRIED

Right to Appeal: Attorney Burkhart explained the he was asked by Cathy Pullen to complete an investigation on the appeal claims, the new charges, and the FOIA matters. The FOIA matters have already been discussed. Unfortunately a report could not be presented today to the rest of the investigation for the reason that there are some questions that have come up about complainant's disability as it relates to her ability to enunciate the charges against her with specific reference to his request that she submit herself for an interview. His proposal is that the decision regarding the appeal be stayed at this time for the reason that as he went through all the materials it became obvious that one of the implicit claims is that she had the right not to be subjected to an interview.

Further Charges: The second issue is specific charges that certain employees of Pathways interfered with the investigation. The only factual basis for that is the filing of the FOIA responses was evidence of interference. In light of her disability status it raises the question as to the Board's duty to accommodate a person with PTSD. Any limitations on her ability to submit her claims in writing and not be subject to an interview may be some type of breach of duty to accommodate. Therefore, he has been researching Title III. The other charges do not include a disability claim but allege discrimination and conflict of interest.

Terry requested he be authorized to contact the complainant and invite her to provide any information she has and how we can accommodate her relative to her PTSD and specifically suggest if she does not want to be interviewed face to face then he would submit written interrogatories that she would have to answer.

Botbyl asked if we have any documentation from a mental health professional that evaluated this person and provided a diagnosis as well as a statement advising the face to face interview would be detrimental to her psychological health.

Attorney Burkhart advised no but hypothetically if he got that response it is much easier to indicate to the Board that in the absence of any information from her here are his conclusions.

Wing asked if we could request a verification of disability.

Attorney Burkhart advised against that.

Morrison asked if we know what she wants. Does she want her job back? Does she want money?

Attorney Burkhart responded that she never worked for us. This was addressed in the original compliance complaint. She worked for ALS and they are a separate corporation and therefore we are not derivatively liable for anything ALS did.

MOTION/SECOND/CARRIED

Morrison/Brotherton

ATTORNEY BURKHART IS AUTHORIZED TO RE-CONTACT COMPLAINANT, KIMBERLY WAKEHAM TO ENGAGE IN INTERACTIVE DIALOGUE WITH HER ABOUT HOW WE CAN GET THE INFORMATION FROM HER IN ORDER TO RESPONDE TO HER CHARGES.

Roll Call Vote:

Ayes: Botbyl, Brotherton, Bureau, Davie, Margrif, Moker, Morrison, Peterson, Tatrow, Wing

Nayes:

MOTION CARRIED

As indicated previously, complainant also alleges various conflicts of interests. That he as a paid attorney for Pathways should be disqualified from the investigation, that Jeanne and Shelly should have nothing to do with the investigation, and the Board and Board members have the same conflict of interest which renders all of this impossible. He does intend, before the report becomes public, to contact Attorney Joe Lavey and verify there is nothing we can do about this and to provide the Board with advice.

CEO Swift stated that in terms of conflict of interest with Recipient Rights being within Pathways it is often something that people allege that Pathways should not be investigating their own rights investigations but she considers this is a poor argument. You have to have an internal investigative arm.

CHAIR REPORT

Vice Chairperson Wing advised the Governor was on the news this morning to give a heads up that she is meeting today to decide whether to move the Upper Peninsula to Phase 3 which would put all schools back to virtual leaning.

CEO REPORT

CEO Swift opened the floor to questions about her report.

She discussed the community spread of COVID-19 in our counties and reminded the Board that we have moved three of the four counties back to working from home as much as possible and utilizing telehealth for the ABA program rather than moving forward with face to face other than what is necessary. All is being done to protect staff and the people we serve.

Jeanne advised we do have some positive staff in our group homes along with some residents. Currently they are quarantining those homes rather than moving residents.

- ✓ IT Report (NorthCare DHHS Worker Data) – Darcy Bergerson, Data Analyst. Darcy introduced herself to the Board. She has worked for Pathways for 17 years as a Data Analyst. Prior to that she worked for LMAS Health Department for eleven years.

Last month the Board had questions regarding our use of the NorthCare DHHS worker. She provided the following narrative to go along with the graphs as presented:

The NorthCare DHHS worker is Jolene Passmore. Jolene is very good to work with effective and responsive. The way that NC has Jolene's work structured is that each CMH has a designated point person. For Pathways that person is Darcy. All of Pathways' Jolene questions either originate from or go through her or her designee. Each CMH has a day assigned when they can contact Jolene. Pathways has two days due to our CMH size and volume of questions. The plus for having Jolene available is that Darcy can contact Jolene regarding eligibility issues at an administrative level without having to tap clinical time to investigate reasons for eligibility loss. Darcy has created reports to find people who have lost Medicaid eligibility, had a change in their eligibility type, or have a re-determination date coming up. This data is also provided to our GF team in order to monitor our GF funding and use.

Another reason to get Jolene into this position was to maximize our capitation. The State pays retro capitation for those individuals who lose eligibility and regain. They will pay up to six months retro. Restoring eligibility quickly evens out the capitation peaks and valleys that are caused by the retro when someone loses eligibility. An additional reason in having issues addressed quickly and eligibility kept more current is that financials are based on a person's eligibility at the time the financials are run so even a temporary loss of eligibility can end up in temporary overstating of GF and understating of Medicaid or Healthy Michigan until eligibility is restored. In terms of service, prior to COVID, there are some supplemental Medicaid services that require Medicaid eligibility for the entitlement so loss of eligibility can result in a temporary loss of or temporary suspension of services.

When Darcy works with Jolene regarding it is on eligibility and other issues for the people we serve. Our penetration rate in terms of people served by the CMH versus Medicaid eligible is between two and fifteen percent depending on the type of Medicaid. Our region gets capitation dollars for 100% of the Medicaid eligible in our catchment area (entire UP) regardless of whether they get service at the CMH. Each individual needs to complete and return annual redetermination paperwork to retain their eligibility and failure to do so is a common reason for losing eligibility. Amid the COVID emergency the State has decided they are not dropping anyone off of Medicaid eligibility regardless of failure to submit redetermination paperwork. We are not sure when this will be reinstated. Another thing that is along the same lines is the State, during COVID, is not flipping spend down people. Because of what the State is doing, we are not utilizing Jolene as much because individuals are not losing their eligibility. Prior to COVID and changes at the State level we were utilizing Jolene a lot. However, the State is still requiring the food benefit redetermination paperwork and

Jolene continues to assist with that. So, in order to quantify the use of Jolene, NorthCare would be able to better answer that based on the capitation information they have available to them.

In general, Jolene's work has had a positive effect for Pathways and the people we serve. Having a mechanism to allow eligibility research to be done administratively reduces clinical time that would have been spent on eligibility issues. Retaining and quickly restoring eligibility for those we serve also makes our capitation revenue more timely, and the financial reporting more real time. Also, for persons served, having a mechanism for getting questions answered and paperwork submitted for supplemental programs is extremely helpful. While it does not show up in the revenue column it shows up in the quality of service.

No formal action was taken regarding the CEO or IT Report.

ACTION ITEM

Finance

- August 2020 Check Disbursement Report \$3,653,610.91

MOTION/SECOND/CARRIED

TO APPROVE THE CHECK DISBURSEMENT REPORT IN THE AMOUNT OF \$3,653,610.91.

Davie/Margrif

Roll Call Vote:

Ayes: Botbyl, Brotherton, Bureau, Davie, Margrif, Moker, Morrison, Peterson, Tatrow, Wing
Nayes:

MOTION CARRIED

- Contracts/Leases/Agreements – Contract Manager/Compliance Manager, Jeanne Lippens summarized the contracts as presented. Nick clarified the MDHHS Amendment was a change from the State defining where the funding is coming from.

MOTION/SECOND/CARRIED

Botbyl/Brotherton

TO APPROVE THE FOLLOWING CONTRACTS/LEASES/AGREEMENTS AS PRESENTED: National Office Products and Printing Inc., (Copier Maintenance Agreements), Dr. Lynn E. Miller (Psychiatric Services), Little Ones of the UP (Infant Mental Health Services, Prevention Services), MDHHS Amendment Revenue (Covid-19)

Roll Call Vote:

Ayes: Botbyl, Brotherton, Bureau, Davie, Margrif, Moker, Morrison, Peterson, Tatrow, Wing
Nayes:

MOTION CARRIED

- Service Unit & Consumer-Centered Cost Analysis & Rate Setting Policy – CFO Kolinsky. Nick highlighted the language change to the policy statement, as presented.

MOTION/SECOND/CARRIED

Davie/Margrif

TO ADOPT THE SERVICE UNIT AND CONSUMER-CENTERED COST ANALYSIS AND RATE SETTING POLICY, AS PRESENTED.

Roll Call Vote:

Ayes: Botbyl, Brotherton, Davie, Margrif, Moker, Morrison, Peterson, Tatrow, Wing

Nays:

Bureau was connected to the meeting but this recorder was unable to hear her vote

MOTION CARRIED

- September 2020 Preliminary Financial Report – CFO Nick Kolinsky. Nick updated the Board on the financials stating this is a snapshot as of today. Once complete, he will provide a written report to the Board memorializing what he stated today. Medicaid is showing a surplus of \$3M, Healthy Michigan is at a deficit of \$744K which calculates to a net excess of \$2.3M. GF has a surplus of \$178K and Local a surplus of \$250K. These do include the \$1.6M one time increase pension contribution and the performance incentives of \$765K for internal staff and \$827K for contract direct care staff totaling \$3.2M hitting September expenses with a remaining \$3.2M excess. Cash position is at \$6.2M which is slightly higher than normal due to receiving our Medicaid capitation during the current month. On the income statement side revenues are in excess of expenses. Revenues are at 98% and expenses are at 97.95% of the final budget. The proprietary funds are unchanged in financial position. We are ending the year in a very strong financial position.

Personnel – HR Director, Shelly Sundstrom

- Personnel Updates- Shelly highlighted the report as presented and answered questions.
- CEO Search Update - Shelly advised we have a committee working together which includes board members and a portion of the management group who are actively working on recruitment for the CEO position. The CEO retirement announcement and job posting are scheduled to be posted mid-November. The committee will meet again to review applications.
- Additional Designated Paid Day Off – Shelly explained this started with CEO conversations in the region. Due to normal staff recognition and appreciations that have not taken place during the pandemic it is the recommendation of the executive team to provide an additional one time paid day off for those employees who are eligible to have an additional day during the Christmas break to be determined by management. The unions have agreed.

MOTION/SECOND/CARRIED

Davie/Brotherton

TO ADOPT THE ADDITIONAL DESIGNATED PAID DAY OFF, AS PRESENTED.

Roll Call Vote:

Ayes: Botbyl, Brotherton, Davie, Margrif, Moker, Morrison, Peterson, Tatrow, Wing

Nayes:

Bureau was connected to the meeting but this recorder was unable to hear her vote

MOTION CARRIED

- MERS Temporary Modification to Benefit Provisions – Shelly explained the provision as presented. It is the recommendation of the Board Chair, HR, and the executive team to adopt a temporary modification to allow the additional amount we paid as an incentive to our employees be counted towards the final average compensation for the defined benefit program.

MOTION/SECOND/CARRIED

Botbyl/Davie

TO ADOPT THE MERS TEMPORARY MODIFICATION TO BENEFIT PROVISIONS, AS PRESENTED.

Roll Call Vote:

Ayes: Botbyl, Brotherton, Davie, Margrif, Moker, Morrison, Peterson, Tatrow, Wing

Nayes:

Bureau was connected to the meeting but this recorder was unable to hear her vote

MOTION CARRIED

Planning/Programming –

- Controlled Substances and Other Medications with High Risk for Misuse or Diversion – CEO Swift explained the changes to the policy statement, as presented.

MOTION/SECOND/CARRIED

Davie/Peterson

TO APPROVE THE CONTROLLED SUBSTANCES AND OTHER MEDICATIONS WITH HIGH RISK FOR MISUSE OR DIVERSION, AS PRESENTED.

Roll Call Vote:

Ayes: Botbyl, Brotherton, Davie, Margrif, Moker, Morrison, Peterson, Wing

Nayes:

Bureau and Tatrow were connected to the meeting but this recorder was unable to hear their vote

MOTION CARRIED

By-Laws – CEO Swift explained the language changes to the By-Laws, as presented.

- Recommendation to adopt the revisions proposed by the By-Laws committee.

MOTION/SECOND/CARRIED

TO ADOPT THE BY-LAWS REVISIONS, AS PRESENTED.

Davie/Bureau

Roll Call Vote:

Ayes: Botbyl, Brotherton, Bureau, Davie, Margrif, Moker, Morrison, Peterson, Tatrow, Wing

Nayes:

MOTION CARRIED

OTHER BUSINESS

None

CONSENT AGENDA

No Items

BOARD MEMBER COMMENT

Brotherton said it was good to review the By-Laws.

MEETING SCHEDULE – VIA “LIFESIZE”

Board Meeting	December 2, 2020	12:15 p.m.
Recipient Rights Advisory Committee	December 17, 2020	12:00 p.m.
Committee of the Whole	January 26, 2021	12:15 p.m.
Board Meeting	February 3, 2021	12:15 p.m.

ADJOURNMENT

Vice Chairperson Wing adjourned the meeting at 1:38 p.m.