

**Disabilities Advisory Council
Virginia Office for Protection and Advocacy**

ANNUAL REPORT

FISCAL YEAR: 10/1/2005-9/30/2006

REPORT PREPARED BY: Dave Wilber, Advisory Council Chair

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DATE SUBMITTED:

[Advisory Council Chair Signature]

SECTION A. POSITION OF ADVISORY COUNCIL AS OF SEPTEMBER 30, OF THIS YEAR

1. Status: Total Number of Persons on Advisory Council.

[In column 1 (Primary ID)/ please indicate the one primary identification of each advisory council member. In column 2 (Total Number), please include all individuals in each category, even those who are listed also in other categories.]

	Total #
a. Number of Advisory Council Members Serving on 9/30	10
b. Recipients/Former Recipients (R/FR) of disability related services	3
c. Parents/Family Members of R/FR of disability related services	6
d. Disability related service providers	
e. Disability related professionals	2
f. Attorneys	
g. Individuals from the public who are knowledgeable about disabilities	
h. Others (please identify).	
i. Vacancies (please identify). (DAC bylaws note that the membership must be between 10-20 total)	0-10
j. **Total number of members on the Advisory Council	10-20

** This total represents all seats on the Advisory Council.

2. Ethnicity, Race and Gender Composition:

Ethnicity/Race	Number of Members
American Indian or Alaskan Native	
Asian	
Black or African American	2
Hispanic or Latino	
Native Hawaiian or Other Pacific Islander	
White	8
Information Not Available	
TOTAL	10
Gender	
Male: 6	Female: 4
TOTAL: 10	

B. ADVISORY COUNCIL MEETINGS: Provide the information requested in the table below.

	Advisory Council
Number of Advisory Council Members Serving on 9/30	10
Term of Appointment (Number of years)	4
Number of Terms a Member Can Serve	1
Frequency of Meetings	quarterly
Number of Meetings Held in the Fiscal Year	4
% (Average) of Members Present at Meetings	83%

1. Do VOPA staff usually attend Council meetings?
Yes. The Executive Director, Policy Director and an Administrative Staff routinely attend the DAC meetings. In addition, every meeting includes a training session that is provided by either Managing Attorneys, staff attorneys, or advocates.
2. Do any governing board members usually attend?
Yes, the Board Chair or a designee routinely attends.
3. Did the Council work jointly with the governing authority or board to develop the annual priorities?
Yes. Time on meeting agendas was dedicated to discussing and providing recommendations about the goals, focus areas and objectives. In addition, the Council was provided with information that summarized the public comment input VOPA received. The DAC Chair, as a member of the Governing Board, was involved in the Board's deliberations of the goals, focus areas and objectives.
4. Does the Council generally work jointly with the governing authority or board in developing VOPA policies?
Yes. The Governing Board of Directors has established a committee structure that includes representation from both of VOPA's Advisory Councils on each committee. The DAC has identified members to serve on the following Governing Board of Director's Committees: Goals and Public Awareness Internal Policies Public Policy Fiscal
5. Did Council members attend any in-state training or educational presentations related to VOPA activities?
Yes. The Virginia Office for Protection and Advocacy provides legal rights and disability related training at every Council meeting. In addition, Council members are very active in the disability communities and attend functions both in and out of state.

In addition to attending council meetings, council members may engage in other optional activities sponsored or endorsed by VOPA. Please describe any such activities under the

proper headings below:

1. Work on governing board or advisory council committees (please identify):

At every Governing Board meeting the Council Chair gives a verbal report of the Council's activities since the last Board meeting. This report is usually a review of the Council meeting and what impact it may have had on the members' other advocacy efforts in the disability community.

Council Members are given the opportunity to serve on the Governing Board committees. Geographic barriers, work schedules and Virginia Freedom of Information Act restrictions previously had limited their direct involvement. However, the 2005 General Assembly passed amendments that loosened some of the limitations on public meetings. Council members have volunteered to serve on several Governing Board committees as mentioned earlier.

The Council Members and VOPA staff routinely update the other council members on the Governing Board committee work.

2. Training or educational presentations to constituency groups or the general public (please identify): *Not applicable*

3. Systemic or legislative advocacy activities (please identify): *Not applicable*

4. Special projects (e.g., institutional monitoring): *Not applicable*

5. Other (e.g., fund raising, public relations, etc.): *Not applicable*

D. ADVISORY COUNCIL ASSESSMENT OF VOPA OPERATIONS

**Goals, Focus Areas, and Objectives
October 1, 2005 – September 30, 2006
Status as of August 31, 2006**

Goal: People with Disabilities are Free from Abuse and Neglect

Focus Area #1: Deaths Where There is Probable Cause to Believe Abuse or Neglect Occurred

VOPA reviews all Critical Incident Reports (CIRs) of deaths submitted to VOPA by state mental health and mental retardation institutions, all reports of deaths forwarded to VOPA by Adult Protective Services (APS), and all reports of "serious occurrences" that involve a death forwarded to VOPA by Psychiatric Residential Treatment Facilities (PRTFs).

Staff consistently prepare monthly summaries of CIRs, quarterly trend analyses of CIRs, and other analyses as needed, for use in institution monitoring. VOPA received and compiled initial and follow-up reports of critical incidents submitted to VOPA by state mental health institutions. These reports are analyzed for trends in type of injury, location, time of day, staffing and other factors. VOPA reviewed the adequacy of remedial action taken by the facility. In appropriate cases, VOPA obtained and reviewed reports of internal abuse/neglect investigations conducted by the facility. VOPA also obtained and reviewed long-term care facility survey reports for those state facilities that operate skilled nursing facility/nursing facility beds.

VOPA monitors infection control by reviewing all CIRs and ICF/MR surveys. VOPA is investigating two instances in which protective latex gloves were improperly stored or disposed

of. VOPA has been taking a close look at any reference to infections such as MRSA. VOPA studies the disaster preparedness plans at the facilities which includes response to epidemics/pandemics.

A significant portion of the reports of patient deaths did not rise to the level of probable cause that abuse or neglect occurred. Still, each report is reviewed in the Directors weekly meeting.

VOPA investigated a death at a state training center. It involved an individual who had an identified swallowing disorder, GERD, etc. He had numerous episodes of aspiration/pneumonia and eventually died. This was wrapped up into VOPA's review of CVTC policies/practices.

VOPA takes a close look at any reference to aspiration, dysphagia, or other related issues in all CIRs and survey reports. The CVTC investigation took a close look at the policies and procedures at CVTC with regard to addressing swallowing disorders – swallow studies, mealtime practices and procedures, adaptive equipment, staff training, etc. CVTC has provided information on revisions to policies and training regarding these issues. VOPA's continued, in-depth work will identify best practices and work toward implementation of those best practices at all state-operated ICFs.

VOPA collaborated with DMHMRSAS Central Office and MR institutions to ensure timely, complete CIR submissions. VOPA collaborated with State and local Department of Social Services Offices to discuss increasing the forwarding of reports of abuse and neglect of people with disabilities. VOPA received 180 APS reports/referrals during FY06. That constitutes a 44% increase in referrals over the previous FY. During FY06 we investigated 5 new cases and continued investigation on 3 carry-over cases that were initiated based upon APS reports. The increase in referrals is attributable to our efforts at developing a collaborative relationship with the Department of Social Services and the local DSS offices.

Focus Area #2: Abuse or Neglect in Community Settings

VOPA reviews all reports forwarded to VOPA by Adult Protective Services (APS) and the reports of surveys of community-based ICFs/MR conducted by the Center for Quality Health Care Services and Consumer Protection. Staff consistently prepare quarterly summaries of reports about facilities not covered by the Critical Incident Reporting statute, using licensing inspections, investigations, complaints of abuse or neglect, APS reports, and other relevant information to identify patterns of abuse or neglect.

VOPA has met with APS representatives in two regions, including the regional supervisor and all local workers, and has made significant progress on an information sharing protocol with APS.

VOPA has worked on several systemic investigations of alleged abuse or neglect in community based facilities that were initiated as a result of referrals from APS. VOPA received 180 APS reports/referrals during FY06. VOPA investigated 5 new case and continued investigation on 3 carry-over cases that appeared to reflect incidents of abuse or neglect. In one facility, we substantiated systemic problems involving medication administration and documentation. Working with the Department of Social Services, we reached an agreement to correct the problems.

VOPA initiated an investigation into the care and treatment provided for individuals with disabilities at a nursing home. The nursing home is in a rural area and is the only alternative

available in the entire county for individuals with disabilities who require nursing home level of care. Our investigation began following the death of a young woman with multiple disabilities who died after being transferred from the nursing home to a hospital. Our investigation uncovered inappropriate medication practices, including the theft of narcotics by nursing home staff. VOPA also documented many instances of inadequate care and treatment stemming from chronic understaffing, poor training, and lack of supervision. The investigation is ongoing.

An APS report to VOPA noted client received unexplained bruising during a seizure. VOPA's investigation revealed problems with supervision at the sheltered workshop and a transfer to another group home that could better meet her needs. Client is now in another residential setting and a day support setting that is more meaningful to her.

VOPA continues to conduct comprehensive, weekly monitoring of a court-approved settlement in VOPA v. Brice's Enterprises, et al.

Staff made monitoring visits to various assisted living facilities throughout the state to identify medication practices and staff training. However, the objective was not well written as VOPA did not have client authorization to review medication records. Even though VOPA developed a monitoring tool, most of the monitoring was from visual observation (i.e. were medications left out, was the medication cart locked, etc.) VOPA did ask a series of questions about who administered medications and the responses varied by the facility (i.e. some had certified med techs and others had LPNs/RNs and in some it appeared that the CNA did the medication administration). VOPA also asked questions about the type of training staff received, how often they received additional training, etc.

VOPA participated in working groups reviewing the DMHMRSAS Human Rights Regulations, the DSS licensing regulations for Assisted Living Facilities and monitored the work groups developing regulations for the certification of medication aides and licensing ALF administrators. In each activity, VOPA advocated for increased consumer direction, protection from abuse, neglect and exploitation, stronger reporting requirements for allegations of abuse, neglect and exploitation, and increased opportunities for meaningful community integration.

VOPA was very active at the 2006 General Assembly session related to guardianship issues as well as issues related to personal services provided by health care entities. VOPA staff attended the DMHMRSAS Restructuring Advisory Council meeting that reviewed the Department's plan for facility restructuring. In addition, VOPA and other collaborative partners participated in the Coalition for Virginians with Mental Disabilities activities.

We monitored HB 425 – Home Care Consumer and Worker Protection Act, which was drafted to provide protection for home health care services consumers and providers by ensuring both parties are well-informed regarding their status as employees, independent contractors and employers. The original version of this bill identified VOPA as being the entity to handle all complaints related to this. With negotiation, the bill was continued until 2007. VOPA has collaborated with the sponsors of the bill and participated in a joint meeting with Secretary Tavenner. VOPA's impression is that this meeting went well; all involved thus far are in accord with how and what to pursue for General Assembly 2007 in this area. This bill is directly related to consumer-directed services.

VOPA staff have informally collaborated with representatives of the Long-Term Care (LTC) Ombudsman Office over the course of the year. VOPA staff have received individual referrals and facility-related information in some cases.

The Guardianship Advisory Board meets quarterly and has established a committee structure. VOPA is a member of the Board and two of the committees. VOPA has attended as scheduling and workloads allow. The Guardianship Advisory Board is committed to advocating that the public guardianship program in Virginia be a consumer-focused, least restrictive effort to make decisions for indigent individuals who have been determined to lack competency to do so for themselves. They are also committed to ensuring that the integrity of the program be protected, that quality services be provided and that only those individuals who really need guardianship are served through the program.

Focus Area #3: Abuse or Neglect in Institutional Settings

By statute, VOPA receives CIRs submitted by the mental retardation institutions. Every CIR is read by VOPA staff and pertinent information is entered into a database. All CIRs that involve injuries within current program priorities and other alarming or unusual reports are identified and further reviewed. In addition, the VOPA Executive Director conducts a weekly meeting to address the reports, their implications, and remedial action. Staff consistently identify possible abuse and neglect by reviewing all Critical Incident Reports submitted by state mental health and mental retardation institutions. Staff consistently prepare monthly summaries of CIRs, quarterly trend analyses of CIRs, quarterly reports on use of administrative investigations, and other analyses as needed, for use in institution monitoring and to identify possible patterns of abuse or neglect.

VOPA compiled and analyzed substantial information, including critical incident reports, inspection reports, investigations, and complaints, and identified systemic issues at a state training center that caused or contributed to abuse or neglect. VOPA certified probable cause to believe abuse or neglect and a full investigation was conducted during the reported period. The investigation and consideration of appropriate remedial action is ongoing. The investigation potentially affects 560 residents and is ongoing. In this investigation, VOPA hired a nationally known DD expert and collaborated with DMHMRSAS before, during, and after her findings. In addition, VOPA investigated patterns of transportation-related injuries involving restraints and obtained system-wide relief.

In one matter, a CIR reported unexplained injuries to the head and neck of a training center resident. VOPA obtained authorization from the individual's guardian and reviewed care and treatment records and the facility's internal abuse/neglect investigation. Records indicate understaffing; failure of staff to provide appropriate supervision; and failure of staff to implement the individual's behavior treatment plan.

In another matter, our investigation of an allegation of staff abuse resulted in a substantially improved treatment plan for the consumer, so much so that the individual was able to begin transitioning into community-based programs.

In another investigation, we found that a resident was the victim of patient-on-patient abuse. Systemic changes put into place following our investigation include increased monitoring of patient behaviors and staff interventions, and increased use of database to track peer-on-peer assaults.

VOPA investigated the use of a "time out" room at a state training center. VOPA reviewed the facility's documentation for the use of "time out" rooms at an ICF/MR. In this case, the time-out room appeared to be used to compensate for a lack of staff and programming. The facility agreed to stop using the time out room with regard to our client.

VOPA investigated the use of multiple mechanical restraints as part of the behavior management plan of a state training center resident. The behavior management plan includes the use of a helmet, arms splints and a restraint chair. This investigation is ongoing.

VOPA is currently working on 17 investigations of alleged abuse or neglect in institutional settings. Fourteen additional investigations have been completed. We also continue to pursue litigation in the case of a nursing home that has multiple deficient practices that we believe have resulted in the abuse and neglect of numerous residents.

VOPA participated in working groups reviewing the DMHMRSAS Human Rights Regulations, the DSS licensing regulations for Assisted Living Facilities and monitored the work groups developing regulations for the certification of medication aides and licensing ALF administrators.

Focus Area #4: Physical Abuse in Juvenile Facilities

VOPA reviews and analyzes all Critical Incident Reports (CIRs) and seclusion/restraint data submitted by the two state-operated mental health facilities that provide care to children and adolescents, and reviews and analyzes all serious occurrence reports submitted by Psychiatric Residential Treatment Facilities (PRTFs).

VOPA continues to monitor three Psychiatric Residential Treatment Facilities. A large number of complaints of abuse and neglect have been received at once particular facility as a result of this monitoring. Under other funding, seven individual investigations and four preliminary inquiries have been conducted concerning current and former residents. The complaints involve high levels of violence, sexual activity between staff and residents, misuses of seclusion and restraint and inadequate staff qualifications, levels, and training. VOPA is seeking remedial action from licensing authorities and other enforcement agencies. Although this is primarily a mental health facility, it is reasonable to assume that some DD/PAIR/TBI eligible children and juveniles could be placed here.

VOPA developed a juvenile rights fact sheet (“Your Rights While Living at a Residential Facility for Children”) and it was mailed to 30 individuals; under multiple funding streams. It is posted on the VOPA website as well. VOPA trained five individuals at the Virginia Treatment Center for Children regarding these rights. VOPA sent 25 of these fact sheets to each of the 12 detention facilities across the state.

VOPA was contacted about a child who was being placed in a small ‘closet-like” seclusion room. VOPA reviewed the individual client records, restraint and seclusion training and policies for the school itself and the school district. Despite extensive negotiation, VOPA could not reach settlement with the School and filed due-process. On the eve of the hearing, the school agreed to these requests: remove the inappropriate time-out room from the child’s classroom and provide a 1:1 behavioral aide for the child.

VOPA also ensured that a child who was subjected to improper seclusion received an appropriate functional behavioral plan. VOPA also reviewed the seclusion and restraint plans of the child’s school and several others and advocated for schools to put appropriate plans in place. The parent received technical assistance in order for their child to receive an appropriate Functional Behavioral Assessment and Behavior Intervention Plan.

DAC Comments:

At each Council meeting, VOPA provides written and oral reports on the P&A's progress towards meeting objectives as well as the status of ongoing litigation. The Director and staff answer questions and seek the advice of the Council on issues as appropriate.

The DAC is very pleased with the VOPA's involvement with the review and public comment on the Human Rights regulations. The DAC is supportive of VOPA efforts to collaborate with other stakeholders before issues become too embroiled. The DAC recommends that VOPA continue its efforts in the area of combating abuse and neglect and urges VOPA to "keep doing what you are doing."

DAC urges VOPA to consider the "lessons learned" from the on-going nursing home case. DAC members encourage VOPA to not let the experience here stifle VOPA's efforts to combat abuse or neglect and encourages VOPA to not become overly cautious to take on difficult and complicated issues in any area.

Goal: Children with Disabilities Receive an Appropriate Education

Focus Area #1: Denial of Eligibility Due to Lack of or Inappropriate Evaluations and Assessments

VOPA represented 29 children who had been improperly found ineligible for special education or appropriate special education.

In one case, VOPA prevailed in a due process case for a student who was being improperly secluded. In another, VOPA successfully litigated at the due process, federal district court and federal appeals court levels on behalf of child who was denied an appropriate sign language interpreter. In another, VOPA prevailed in a due process case on behalf of a child who was denied appropriate transition services. VOPA also appeared in federal court on 2 separate occasions to argue that the Virginia Department of Education was not complying with IDEA and its own special education regulations. In one case, DOE reversed its position during trial to take the position espoused by VOPA. In the other case, the Court held that DOE could be sued under IDEA when it fails to comply with the special education regulations. VOPA also filed a complaint with the Office of Civil Rights on behalf of a student who was inappropriately segregated during fire drills.

The Eligibility brochure has been published and is on the web and is available in alternate format. The IEE brochure concerning "Independent Education Evaluations" (IEE) is in the process of being approved.

Focus Area #2: Children Who Have Been (or Are at Risk of Being) Suspended due to Inadequate Behavioral Intervention Plans (BIPs) or Functional Behavioral Assessments (FBAs)

VOPA appeared in federal court on two separate occasions to argue that the Virginia Department of education was not complying with IDEA and its own special education regulations. In one case, DOE reversed its position during the trial to take the position espoused by VOPA, In another case the Court held that DOE could be sued under IDEA when it fails to comply with the special education regulations.

VOPA appeared as an amicus curiae in a case this year in US District Court. In that case, VA DOE attempted to argue that its “stay put” regulation was not enforceable and was unconstitutional. They stated that it would not enforce the regulation or require schools to comply with it. VOPA argued that they could not “repeal” its regulation unless it followed the procedures set forth in the VA Administrative Process Act. VDOE then withdrew its argument and stated it would enforce its regulations.

VOPA represented 11 students at risk of suspension or who had been suspended. In several cases, VOPA helped children receive appropriate functional behavioral assessment and behavioral intervention plans. VOPA also opened a new case where a child disagreed with a functional behavioral assessment and was denied an independent evaluation.

VOPA developed a special education Eligibility fact sheet that has been published, posted on the VOPA website, and is available in alternate format. The IEE brochure concerning “Independent Education Evaluations” (IEE) is in the final stage of VOPA’s approval process. The Suspension/Expulsion brochure has been written and is being reviewed.

Focus Area #3: Assistive Technology in Schools

VOPA ensured that a child received an appropriate assistive listening device. The child had a hearing disability and needed a specific type of technology to receive a free appropriate public education. The school originally refused to provide the device, but, after VOPA advocated on behalf of the child, the matter was resolved.

VOPA also advocated for the Department of Education to allow students to use assistive technology on the Standards of Learning examination. (VOPA took one case to due process and prevailed on this issue in the last year.) This year, after VOPA advocated for all children to receive similar rights, the Department of Education agreed and has solicited bidders to provide screen reading technology for children who need it on the SOLs.

VOPA advocated for the Department of Education to allow students to use assistive technology on the Standards of Learning examination. (VOPA took one case to due process and prevailed on this issue in the last year.) This year, after VOPA advocated for all children to receive similar rights, the Department of Education agreed and has solicited bidders to provide screen reading technology for children who need it on the SOLs.

This is of significant benefit to children with disabilities who regularly use a specific type of assistive technology in school. These students will be able to participate in the testing process using the same accommodation that they have been using all school year that has been determined as the best accommodation for their need. This sets an important precedent for all student users of assistive technology. Prior to VOPA’s involvement, the use of assistive technology on SOL exams was very circumscribed; some technology was banned outright. Because of VOPA’s advocacy, a previously banned technology is now approved for use.

The Assistive Technology publication was published, posted to the web, made available in alternate format and is being sent to parent organizations. VOPA sent twenty copies of the new AT publication to a cross-section of the disability populations throughout Virginia. The groups receiving the publication are as follows: The Down Syndrome Association of Roanoke, the Prince William County Support Group for Parents of Children with Autism Spectrum Disorders, CHADD (Children and Adults with Attention Deficit/Hyperactivity Disorder) of Northern Virginia,

Tidewater Chapter of CHADD, Parents of Children with Cerebral Palsy in Stephens City, Celebrate ADHD in Ashburn, and the Virginia Department of Education's Ombudsman. The Assistive Technology publication was published, posted to the web, made available in alternate format and was sent to parent organizations.

Focus Area #4: Technical Assistance to Private Bar, Legal Services Agencies, and Parent Advocacy Groups Regarding Changes in the Individuals with Disabilities Education Act 2004 (IDEA 2004)

Because the P&A has limited funding resources, it cannot provide case level services for every service request that comes to the P&A. By providing these entities with technical assistance, VOPA is hoping that they each will be able to apply and share that information with other individuals in similar situations. VOPA collaborated with private attorneys, parents, advocates, and consumers. A parent asked VOPA for assistance in filing a complaint against her child's school. VOPA provided the parent with information on how to file a complaint, on the complaint process and on the law regarding the complaint process.

VOPA also gave four comprehensive trainings to parents and advocates on IDEA. VOPA collaborated with 5 private attorneys in IDEA cases. VOPA appeared in 3 cases, as amicus curiae, in federal court. In all three cases, the Judge concurred with the essential arguments made by VOPA.

The IDEA 2004 brochure was published, posted on the web, and is available in alternate format. The brochure was mailed out to parent organizations, along with other special education brochures.

Focus Area #5: Completion of Ongoing Work

VOPA has monitored DRS's compliance with the settlement agreement reached last year. In a few isolated incidents, individual DRS offices did not comply with the agreement. Each case was resolved after involving DRS central office. VOPA monitored the work done by the task force developing regulations on transitions between Juvenile Justice facilities and local schools. VOPA also sent 100 fact sheets on IDEA to interested groups and individuals.

The Ticket to Work publication was finally approved by the Social Security Administration (SSA) after several years.

VOPA's brochures on PABSS, benefits planning, and transition services have been published, posted on the web, and have been made available in alternate format. The brochures will be mailed to parents organizations along with the special education brochures.

The TBI fact sheet has been completed and has been published. This fact sheet is available in large print and has been posted on the web. Copies of this fact sheet were mailed out to various groups that provide services to soldiers and veterans who have suffered TBI in the line of duty.

DAC Comments:

At each Council meeting, VOPA provides written and oral reports on the P&A's progress towards meeting objectives as well as the status of ongoing litigation. The Director and staff answer questions and seek the advice of the Council on issues as appropriate.

The DAC is very pleased that VOPA is beginning to us the amicus opportunity to broaden VOPA's efforts; DAC recognizes that this affords VOPA the opportunity to foster systemic change without having to invest efforts in representing a single individual.

DAC appreciates the high amount of information that is being made available to people and entities involved in education for people with disabilities. DAC recognizes that this fosters a sense of self-advocacy and empowerment.

Goal: People with Disabilities Have Equal Access to Government Services

Focus Area #1: Geriatric Programs in Mental Health Facilities

This focus area does not apply to DAC.

Focus Area #2: Inaccessible Polling Places for People with Disabilities

VOPA mailed letters to 129 voting registrars alerting them that people with disabilities have the right to vote even if they do not have identification. This letter included the VOPA voting rights brochure and the interactive polling place survey.

VOPA conducted extensive monitoring of voting sites on Election Day 2005 to examine accessibility for persons with disabilities. Staff from all disciplines within the agency participated in the poll monitoring process. This enabled VOPA to provide education for both the poll workers and the public in general in several areas across the State, and to facilitate voting for individuals with disabilities. On October 5, 2005, VOPA staff members were asked to submit locations where they voted and areas they would be available to monitor. This was reviewed to ensure that underserved and culturally and economically diverse localities were monitored. Through research and coordination, staff participating in the poll monitoring process were given a list of sites in the county(ies) they had volunteered to cover. On October 14, 2005, VOPA sent letters to all registrars informing them that the Code of Virginia mandates that voters are not required to present identification if they sign an affirmation of identity. On October 17, 2005, VOPA sent letters to the registrars of the counties that staff planned to monitor. On November 8, 2005, VOPA staff monitored over 60 polling sites.

On Election Day 2005, VOPA monitored polling places within the Richmond, Northern Virginia, Southern Virginia, Hampton Roads, and Southwest Virginia areas. VOPA provided technical assistance and information at many voting locations. VOPA inspected voting sites to make sure they were accessible to voters with disabilities, identified any violations of federal law by the Commonwealth and localities. VOPA monitors answered questions that people with disabilities had about their voting rights. Monitors also observed how people with disabilities were treated at polling places. Problems were identified regarding physical accessibility, identification requirements and access to curb-side voting.

All the polling surveys that were submitted from Election Day 2005 were reviewed and analyzed. Fourteen reflecting a broad cross section of locations across the state with a variety of accessibility issues were selected for follow-up by VOPA.

VOPA wrote a letter to each of the polling sites with accessibility issues in March 2006. VOPA explained the Help America Vote Act and VOPA's responsibility to ensure accessibility to polling

sites across the state. VOPA then detailed the accessibility issues that were observed at the polling sites pertaining to the Americans with Disabilities Act (ADA) and attached copies of the relevant regulations from the ADA. VOPA requested that they respond within 30 days about how they planned to address the identified issues. The issues addressed were diverse—from the width of the accessible route being obstructed, to the route to the polling site being inaccessible due to the route consisting of gravel.

VOPA received positive responses from registrars for six of the polling sites within the 30 days allocated and one negative response. Four of the polling sites in question were going to be moved to more accessible locations, thus rendering the identified issues moot. The remaining two had solicited funding and agreed to make the repairs necessary to make their site ADA compliant. The negative response did not address the accessibility issues that we had brought to their attention, but instead suggested that we were unnecessarily trespassing at the site in question.

In April 2006 VOPA sent a follow up letter to the polling sites that had not yet responded to the initial letter. VOPA reiterated the issues that had been initially observed and attached the relevant ADA regulations. Again, VOPA requested that they respond within 30 days.

VOPA received positive responses from registrars regarding another six of the polling sites within the next 30 day period. Four agreed to fix the accessibility issues that we had brought to their attention, one agreed to update their voting equipment, and one agreed to move their accessible parking to a more accessible area. We also received a response debating our findings regarding a telephone pole being placed in the pathway of the accessible parking area.

VOPA followed up on the telephone pole issue by arranging for pictures to be taken of the parking area in question and a response letter in July 2006 had accompanying pictures to more specifically address the issue. After receiving the letter, the registrar agreed to move the parking space to a more accessible area.

VOPA was invited by Northampton County to survey all their polling sites in June 2006 to ensure their compliance with the ADA. They indicated that they wanted to rectify any accessibility issues that might be observed so that they could be in compliance by the November 2006 elections. Six polling sites in that county were observed. There were minor issues observed in four of the polling sites such as threshold height, signs posted and inaccessible entrances. VOPA alerted the county of those issues and Northampton County has since followed through and rectified all these issues based on VOPA's recommendations.

Ultimately all of the polling stations that VOPA initiated negotiations with agreed to either make the necessary accommodations to be ADA compliant or agreed to switch to a more accessible location.

In FY05, the Virginia State Board of Elections guaranteed that persons with “non physical” disabilities would have access to absentee ballots. Virginia’s absentee voting statute seemed to limit absentee ballots to people who are physically unable to access polling sites. VOPA advocated to ensure that people with developmental disabilities, mental illness or other “non-physical” disabilities would have equal access to absentee ballots. After VOPA demanded that the Virginia Board of Elections clarify its position on this matter, VOPA received a letter from the Secretary of the Board of Elections guaranteeing that people with “non-physical” disabilities will have equal right to vote via absentee ballot.

Unfortunately, in May 2006, VOPA was informed that the State Board of Elections had issued a memorandum to all localities and general registrars informing them that persons with mental illness residing in state mental institutions were not allowed to vote by absentee ballot. As this was an illegal position, VOPA attempted to work with the State Board of Elections and the Governor's counsel for several months in an effort for the memorandum to be retracted. The State Board of Elections refused to do so. VOPA then initiated legal action using another funding stream. VOPA filed a lawsuit against the State Board of Elections and several State officials on behalf of individuals and a class of people with mental illness in state institutions who had been refused absentee ballots. (Some of this work for this case was carried over and completed in FY07.)

As part of its objectives for FY 06, VOPA committed to monitoring voting sites throughout the Commonwealth of Virginia on Election Day. The registrar of the City of Richmond refused to allow VOPA access to the city's polling places. VOPA filed a lawsuit against the City and sought a preliminary injunction requiring the city to provide VOPA with access. A hearing on the preliminary injunction was held less than a week before Election Day. The court denied VOPA's motion for a preliminary injunction. VOPA then, because it could not secure access through Court intervention prior to Election Day, voluntarily dismissed its lawsuit. VOPA did successfully monitor several other voting sites throughout the State and, as set forth above, secured several settlement agreements ensuring that those sites would become accessible to people with disabilities.

Focus Area #3: Services and Supports to Enable Individuals to Move Into the Community

VOPA represented six people with disabilities, in new cases and cases carried over from last year, who were at risk of nursing home placement due to the Department of Medical Assistance Services' failure to provide them with services under the EPSDT program or the EDCD waiver. In one case, VOPA filed a Medicaid Appeal on behalf of a child who was denied EDCD waiver eligibility. The case was resolved when, on the eve of trial, DMAS agreed that the child should be eligible. In another case, VOPA represented a child in a Medicaid Appeal when the child was denied appropriate nursing services. The Hearing Officer ruled that the child should be given the services. In another case, VOPA represented a child who was not provided with a needed Consumer Directed Services Facilitator. The case was resolved when DMAS assisted the child in locating a facilitator. In another case, VOPA advocated for DMAS to create a specialized housing placement for a child with multiple disabilities.

VOPA also represented people with disabilities, in five new cases, who had been denied Medicaid services with reasonable promptness. In two cases, VOPA ensured that people with mental retardation would be provided with MR Waiver "slots" so they could be discharged from a training center. In another case, VOPA represented a person with disabilities who was denied appropriate DD Waiver services. VOPA filed a Medicaid Appeal in that case, which was resolved the day before trial when DMAS agreed to provide the service. VOPA also conducted a system-wide investigation to determine whether training center residents were denied access to MR Waiver "slots." VOPA found several persons who were eligible for the MR Waiver but not provided with "slots" even though slots were available. The people who consented to allow VOPA to advocate for them received slots.

Finally, VOPA monitored DMAS' compliance with the settlement agreement, reached last year, requiring DMAS to properly inform all eligible children about the EPSDT program. VOPA found DMAS to be complying with the agreement.

The informational brochure on community services and supports based on the Olmstead decision has been written and is being reviewed.

VOPA finalized negotiations with the Regional HUD representative in the spring, causing a late start for the grant award to provide education and outreach about the Federal Fair Housing Act. However, VOPA has completed many of the activities under that grant. VOPA identified policy-makers to target the education effort about increased accessible, affordable housing needs in Virginia. We engaged in planning Fair Housing month activities for both VOPA staff and jointly with HUD representatives. VOPA spoke at the Virginia Fair Housing Board meeting about the need for accessible affordable housing. VOPA has distributed more than 1,500 informational flyers and has responded to more than 100 callers on housing issues.

Neither the DMAS Systems Transformation Grant nor the DMHMRSAS Transformation State Incentive grants were funded. However, VOPA will continue to advocate for consumer choice, independence and community integration for people with disabilities in other settings.

VOPA attended the monthly meetings of the Coalition for Virginians with Mental Disabilities. Although not a member of the Coalition, VOPA staff participated in discussions to help the Coalition frame its legislative agenda in a consumer directed manner.

Focus Area #4: Appropriate TBI Supports in Education, Employment, and Public Service

VOPA represented 10 individuals with TBI. In one case, VOPA ensured that a child with TBI would receive appropriate educational services in the least restrictive environment. VOPA consulted with a nationally known TBI expert to help develop an appropriate program, which was implemented by his school.

VOPA received complaints regarding paratransit services in Richmond City/Henrico County. Because of the number of complaints being made from one of the brain injury Clubhouses in the area, VOPA felt compelled to look into it. VOPA went to the Clubhouse to discuss with consumers and staff the problems they were having with paratransit services. They began documenting the incidents. Documentation included the date of occurrence, if the van was late, or it didn't show at all. If the van was late, how late was it? This was a great collaboration effort. Because of the documentation provided by this clubhouse, VOPA entered into an arrangement with the paratransit service provider requiring it to meet or exceed the ADA standards for paratransit transportation by June 30, 2006. VOPA received no further complaints after June 30, 2006. Therefore this systemic case was successfully closed in September 2006. This systemic case not only helped individuals with brain injury, but it was a benefit to all individuals with disabilities who use this paratransit service

The Brain Injury Association of Virginia hosted a Brain Injury Medicaid Waiver Q&A session. The primary purpose of this meeting was to provide background information about this waiver and to generate some interest in assisting in legislative advocacy efforts that will be needed to obtain funding. A VOPA representative monitored this meeting. Information learned will be used for advocacy and collaboration efforts.

Focus Area #5: Inaccessibility of Commercial Locations Under Contract with the State

VDOT has a motorist service that is responsible for the big blue signs near exit ramps on selected interstate and other restricted access highways indicating where travelers can get a

meal, spend the night or fill their tanks. Currently, there are logo signs at over 300 Virginia interchanges on I-64, I-66, I-77, I-81, I-85, I-95 and I-295 and restricted bypass routes. Over 4,200 logo business panels are installed, and more than 2,300 businesses participate. Virginia piloted this “logo” program in 1965.

VOPA continues to advocate for commercial locations under contract with this program to be accessible. In 2005, VOPA submitted comments to proposed regulations governing the “logo” program, arguing that the Department of Transportation should require that all contracting companies be accessible. VOPA is monitoring whether the Department of Transportation accepts and implements the comments made by VOPA. The LOGO project was carried over to this fiscal year as the results of the Lottery case will affect the manner in which the LOGO case is pursued and litigated. VOPA has approved Centers for Independent Living about collaborating to develop a tester program. Litigate or advocate to obtain compliance by the Department of Transportation with the requirement that the State does not contract with private businesses that discriminate against people with disabilities in it Logo Program.

Last year, VOPA filed a lawsuit against the Virginia Lottery alleging that the lottery discriminated against people with disabilities by allowing and encouraging inaccessible locations to sell lottery products. VOPA represents four people with disabilities in the action. This year, the Lottery moved to dismiss the action, arguing that they are in compliance with the law and/or have sovereign immunity from the law. VOPA argued that the lawsuit should go forward. The court agreed with VOPA and the case was not dismissed. The case is currently in discovery, with VOPA reviewing approximately 50,000 pages of Lottery records regarding the accessibility of lottery retailers.

Focus Area #6: Completion of Ongoing Work

VOPA completed accessibility surveys of over 25 courthouses throughout Virginia. In one case, VOPA’s survey led to a settlement agreement requiring a County to make all of its public buildings accessible. In another, a Virginia city agreed to make modifications to three of its courthouses to ensure accessibility. VOPA served a demand letter upon a local government, informing it that its courthouses were inaccessible. This led to a settlement conference where VOPA advocated for the city to make all of its government buildings accessible. A formal settlement agreement was executed requiring all buildings to be fully ADA accessible within the year. The city allocated over one million dollars for the construction work. A contractor was engaged and the work has been completed. In another case, a city contacted VOPA to request its assistance in surveying its courthouses and recommending changes. VOPA surveyed the three courthouses run by the city and provide technical assistance. Most courthouses surveyed by VOPA were compliant with the ADA and did ensure physical access.

DAC Comments:

At each Council meeting, VOPA provides written and oral reports on the P&A’s progress towards meeting objectives as well as the status of ongoing litigation. The Director and staff answer questions and seek the advice of the Council on issues as appropriate.

The DAC recognizes the significance of the diverse approaches to ensure that people with disabilities have equal access to government services. In particular, the members fully support the “full press” accessible voting project. They felt like the tone was friendly and were pleased that VOPA used a multi-media approach. As this

is very similar to the approach used last year, DAC encourages VOPA to explore alternative voting methods, including curbside voting and accessible voting machines and their availability.

DAC is pleased to note that the efforts under the TBI grant seemed to have gained some momentum since last year. DAC encourages VOPA to not lose sight of this underserved population.

Goal: People with Disabilities Live in the Most Integrated Environment Possible

Focus Area #1: Service Animals in Public Accommodations

VOPA reached settlement agreements with the businesses that denied access to our clients. In each case, the businesses agreed to provide equal access to people with service animals, undergo training to ensure that their employees understood their responsibility to provide access, and place a sign on their door indicating that service animals were welcome at the establishment.

We implemented a testing program to determine whether taxi companies deny rides to people with service animals. VOPA had a tester, who uses a service animal, call various taxi companies in Richmond to request service. In most cases, the tester received a ride. In one case where the taxi company refused to provide a ride, VOPA represented the tester against the company. The case was resolved when the company agreed to require that all its drivers give rides to people who have service animals.

The service animal brochure has been published and is available in large print and has been posted to the web. Copies of this brochure were mailed to all listed taxi cab companies in the Richmond and Tidewater areas of Virginia.

Focus Area #2: Appropriate and Timely Discharge Plans at State Mental Health and Mental Retardation Facilities

VOPA assisted 11 individuals with discharge planning at state training centers. The primary barrier to discharge for all individuals seeking discharge is a lack of community placements. In some cases, our clients were institutionalized because the responsible community services board failed to provide necessary supports and services. Lack of housing and lack of behavioral supports are significant barriers for our clients. In a typical case, VOPA advocated for an individual to receive an MR Waiver slot, assisted and monitored during a trial period, and ensured that the individual transitioned into an appropriate community placement.

Focus Area #3: Alternative Decision-making Methods

VOPA represented 4 individuals that were considering substitute decision maker options.. One individual was identified by Virginia Department of Aging's Long Term Care Ombudsman program as not needing or wanting a full guardian. However, after several interviews with VOPA staff, the individual has declined to make any changes even though VOPA, the LTC Ombudsman and the housing provider has assured him he could handle the decisions and that his guardian would not be in any legal jeopardy if things changed. Respecting consumer direction, VOPA provided him with technical assistance and information about his rights and closed the case.

In another case the client contacted VOPA in a bit of a panic because his mother told him she would be talking to a lawyer about guardianship. VOPA was able to work with them to reach an agreement about decision making. VOPA wrote a Power-of-Attorney (POA) for the client that gives his mom the right to make decisions for him only if he is ever declared incompetent (a "springing" POA). The client is very proud of his POA, and more importantly, his independence. Guardianship as an option was taken off the table.

VOPA attended and participated in the quarterly Public Guardianship Advisory Board meetings. VOPA gave an overview of the alternatives to guardianship study progress. VOPA serves on 2 committees, Program Planning and Development and Healthcare Decision-making.

VOPA conducted a review of state and federal law and policy related to alternative decision making options. Increased knowledge gained through this review was instrumental in VOPA advocacy efforts with the DMHMRSAS Human Rights regulations revision. VOPA has advocated for the consideration of various alternative decision making tools in lieu of full guardianships based on individuals decision making needs.

VOPA developed a "flowchart" and decision tree reflecting the various considerations and options when seeking an alternative decision making method.

An article concerning alternatives to guardianship is in the final stages of being written. Potential publications have been identified.

Focus Area #4: Off-campus Activities for Training Center Residents

VOPA conducted a comprehensive review of the state's training centers' off campus activities. VOPA found very few opportunities for community integration at any training center.

In one matter, our consultant found that training center residents have inadequate community integration opportunities, that community experiences are not encouraged or tracked, that facility practices discourage community integration, and that integration has actually declined over the last ten years. The few integration experiences that exist seem to be bus rides to nowhere.

In another facility, VOPA successfully advocated that the client be involved in more activities in the community. For instance, he is able to go to his favorite restaurant in the community each week which he loves. He has more normalized community interaction this way and he also gets better quality food than what he normally receives.

Focus Area #5: Inaccessibility of Retail Settings

VOPA conducted accessibility surveys of the businesses in downtown Roanoke. VOPA's surveys focused on the accessibility of the entrances to the various businesses located in the "Circle in the Square" region. VOPA found that many businesses had entrances with steps or other barriers to accessibility. VOPA has sent technical assistance letters to 25 businesses to inform them of the requirements of the ADA. VOPA has made settlement offers to the business giving them the opportunity to comply voluntarily with the law. If the settlement offers are refused, VOPA will initiate appropriate legal action. Several businesses have contacted VOPA and agreed to make changes to ensure accessibility. Others have refused or not responded. VOPA is collaborating the CIL to arrange for "testing" of businesses that have refused.

DAC Comments:

The DAC is aware that this area, community integration, is a “hot topic.” Members are mindful that it is significant and sensitive to individuals with disabilities, to the State, and to the various VOPA entities (Board, Councils, staff, constituents, funding entities). The DAC is also aware that there may have to be an “agreement to disagree” so that the P&A can move a position forward and more focus its efforts.

DAC recognizes that VOPA must play a sensitive and legally strategic role in the area of DMHMRSAS’ systemic transformation. DAC recommends that VOPA continue to monitor it and to not lose sight of this significant opportunity in the history of public provision of services.

DAC anticipates positive results for people with disabilities when the Lottery and LOGO cases are completed.

Goal: People with Disabilities are Employed to their Maximum Potential

Focus Area #1: Vocational Training for Training Centers Residents

We have conducted extensive reviews of supported employment and vocational training in several training centers. In one, we found heavy reliance on off-campus sheltered work, and some residents employed on campus. In another, we found more involvement with community employers at competitive pay. In another facility, we found a general lack of understanding about the capacity for people with developmental disabilities to work. At that facility, work options appear to be very limited and only in the form of on-campus sheltered work.

We are working with a client who wants to work two days a week rather than one. He also wants to try doing some janitorial work. VOPA successfully advocated for increased choice for this resident.

Focus Area #2: Barriers to Work for Social Security Beneficiaries

VOPA has focused its work this year on overpayment issues for people with disabilities. This work is in addition to investigating complaints about service providers and providing, information and referral.

VOPA represented a client who received a letter from SSA stating he had made too much money since January 2002 and he would no longer receive payment. He had a minor daughter who was receiving a benefit from his disability. Not only did the letter state that his and his daughter’s benefits were going to cease, the letter further stated that he owed SSA over \$52,000 and his minor daughter owed over \$27,000. The client had kept records over the years of Impairment Related Work Expenses (IRWEs), i.e. adaptive software technology, as well as a personal assistant for driving and filing. The client paid his wife to drive and file for him, and since these tasks were both related to his disability and necessary for work, the personal assistant expense is an IRWE. VOPA filed an SSA appeal on behalf of the client. In preparation for the appeal hearing and to try to remedy the situation prior to the hearing, VOPA consulted with a benefits planner, compiled a notebook of IRWEs and submitted this evidence to SSA. Further, VOPA provided a written explanation stating how each month SSA stated the client exceeded the Substantial Gainful Activity (SGA) amount was incorrect. VOPA showed that in fact the client did not exceed SGA in any given month because of his IRWEs. SSA accepted VOPA’s position, determining that the overpayment of \$80,000 (the client’s

overpayment combined with that of his minor daughter), had been deleted and SSA owed the client over \$11,000. Further, the client was placed back in current pay status with SSA.

In another case, VOPA represented a man whose disability of record was a hearing impairment. Last year he had an automobile accident and he now has a Traumatic Brain Injury as well. The client had a \$12,000 overpayment when he came to VOPA. We advocated on his behalf with regard to this overpayment, and in April of 2006, received confirmation from SSA that the overpayment had successfully been reversed and he will go into current pay status. His claim is still tied up in the calculations of the payment center so he has not yet received his back payment. We are currently in negotiations with SSA to expedite this process. SSA is paying him from their critical needs fund until the payment center is able to complete the recalculations. This client is now in current pay status. He will also receive a check each month for his dependant child.

The Ticket to Work publication was approved by the Social Security Administration (SSA) and has been published.

The Benefits Planning brochures have been written and are being reviewed.

VOPA provides information and referral services to SSI/SSDI beneficiaries calling with questions regarding the Ticket to Work legislation and program implementation status in Virginia. Information has also been provided on issues relating to Medicaid 1619b status and employment discrimination.

VOPA continues to participate in the interagency Medicaid Buy-In Workgroup. Principal agencies are the Department of Medical Assistance Services (DMAS), the Department of Rehabilitative Services (DRS), and VOPA. Other agencies, including Social Security, the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS), and several local agencies are also participants. Medicaid Buy-In implementation was not progressing in the Commonwealth, due primarily to budgetary issues. The 2006 General Assembly did pass budget language for a Medicaid Buy-In. The workgroup is now working on the application process, the threshold amount as to who is eligible and what services it will cover. One of the strongest areas it wishes to cover is "Personal Assistance Service (PAS) for the Workplace." The workgroup has not convened as often as it did in prior years. VOPA has attended and contributed at each of the meetings that have occurred and reported developments to VOPA PABSS personnel.

Focus Area #3: Supported Employment

VOPA represented four people who had disputes with entities providing supported employment. Two of the cases were successfully resolved with VOPA reaching agreements ensuring that the clients would receive appropriate supported employment services. VOPA is also conducting systemic advocacy to ensure that people who are "ready for discharge" from state institutions receive appropriate employment training and services, including access to supported employment.

Focus Area #4: Maximized Employment for Vocational Rehabilitation Clients

VOPA represented 22 people in new cases and 23 people in carry-over cases who had disputes with the Department of Rehabilitative Services over the provision of vocational rehabilitation. In 10 cases, VOPA ensured that the clients received appropriate services by either advocating for

better communication between counselors and clients or by advocating that the client receive a new counselor. In two cases, VOPA advocated for people whose cases had been closed but had not receive notice of their right to appeal. In each of those cases, the clients' cases were reopened.

Focus Area #5: Employment Information Clinic

VOPA developed an Employment Clinic to inform people with disabilities and employers about their rights and obligations on issues relating to Title I of the Americans with Disabilities Act. The VOPA Employment Clinic created materials relating to the rights of people with disabilities regarding accommodations, privacy, the interview process, requesting accommodations, as well as other areas, and how to file a complaint if these rights are violated. The Clinic provided presentations in a variety of forums to reach people with disabilities who are working, preparing to work, or simply hoping to work in the future and explain these rights. Through presentations, written materials, self-advocacy guides, and other multi-media projects, The Clinic reached individuals throughout Virginia and created a database of material to allow additional self-education and self-advocacy for Title I of the Americans with Disabilities Act, as well as how to use formal complaint procedures when necessary.

The Clinic included presentations to agencies, employers, schools, and attorneys in order to create a better informed community regarding the rights of people with disabilities, and the obligations of employers. Networking made VOPA services and materials available to other agencies and advocacy groups who work with individuals with disabilities.

The presentation included a discussion of different types of discrimination employees or job applicants with disabilities may face, as well as accommodations that may be requested in the workforce, and how to seek relief if discrimination arises in the workplace, or during a job interview. VOPA estimates that we spoke to nearly 500 individuals with disabilities, teachers, administrators, employers, and advocates about employment rights for people with disabilities, and reached several hundred more through dissemination of training materials and fact sheets.

Through the Employment Clinic, VOPA prepared a fact sheet on employment rights under the ADA; VOPA has distributed over 500 copies. VOPA also produced a more comprehensive guide to rights under the ADA that was provided to CIL staffs and about 100 others at various trainings.

VOPA distributed a fact sheet for businesses on tax incentives to make them accessible for people with disabilities, although ultimately that fact sheet was developed via another funding stream.

DAC Comments:

The DAC is very appreciative of VOPA staff providing them a training on benefits planning and work incentives. Many of the DAC members reported that they can use this information in their employment, their advocacy and in their personal lives.

The DAC readily recognizes the significant relationship between employment and community integration. Members strongly valued VOPA's efforts to ensure full community integration through employment opportunities for people with disabilities. With that, DAC encourages VOPA to expand its efforts to include individuals with cognitive disabilities in its effort to assist individuals with disabilities to gain, re-gain

or maintain employment. Specifically, some DAC members hope that VOPA will consider workman's compensation claims in the next objective setting opportunity.

Goal: People with Disabilities have Equal Access to Appropriate and Necessary Health Care

Focus Area #1: Assistive Technology through Insurance

VOPA represented five people with disabilities to ensure that they received appropriate assistive technology services through Medicaid. In one case, VOPA represented a child in two Medicaid appeal hearings. VOPA argued that the child was entitled to assistive technology under the EPSDT program. The Hearing Officer ruled in the child's favor, holding that DMAS had used an improper standard to deny the assistive technology. As a result of this case, DMAS reviewed and reversed other denials of assistive technology under the EPSDT program.

VOPA also represented a child in a Medicaid Appeal who was denied assistive technology. That case was settled on the eve of trial when DMAS reversed its position. In that case, the child needed an adapted bed in order to correct or ameliorate her disability. The Medicaid agency originally refused to provide the bed, citing cost. VOPA intervened on behalf of the child and filed a Medicaid Appeal. Just before trial, DMAS agreed to provide the child with the bed.

These two cases had substantial systemic impact. It is believed that they are the first two cases where DMAS approved, under EPSDT, the respective assistive technologies. Also, the cases established that the "medical necessity" criteria DMAS (through its contractor) had applied was incorrect. Previously, DMAS applied rigorous "medical necessity" criteria to EPSDT requests for assistive technology instead of the "correct, ameliorate or maintain" standard required by federal law. In both cases, the hearing officer specifically found that DMAS (through the contractor) had applied the incorrect standard. After these cases, DMAS agreed to review several of its prior EPSDT decisions to determine if the incorrect standard had been applied at that time as well.

VOPA represented a child who was denied assistive technology through private insurance. The child needed an implant in his brain in order to control seizures. The child's primary private insurance refused to cover the implant, ruling that it was experimental. VOPA represented the child to advocate for DAMS to provide the implant under the EPSDT program. DMAS agreed to do so. The child had successful surgery.

Focus Area #2: Retention of Benefits through 1619(b) and Medicaid Buy-In

VOPA continued to represent the interests of people with disabilities by participating in the 1619(b) and Medicaid Buy-In work groups. VOPA also provided three trainings to 65 attendees on the subject of 1619(b) and Medicaid Buy-In programs.

Focus Area #3: Medical Care of Residents of Intermediate Care Facility for People with Mental Retardation (ICF/MRs) and Waiver Homes

VOPA routinely obtains and reviews ICF/MR survey reports for the five state-operated ICFs/MR and the 23 private or locally-operated facilities. The reports are screened with specific emphasis on medical care treatment related issues. Critical incident reports from the state-operated ICFs/MR are also screened for medical care issues. We are investigating six

allegations of inadequate medical care, including two that may be preventing the clients from moving to the community.

Focus Area #4: Medicaid Appeals for Waiver and EPSDT Issues

By representing Medicaid recipients in Medicaid appeals, VOPA discovered that DMAS apparently denies fair and impartial hearings to appellants. VOPA was involved in 3 cases where this happened. In each case, DMAS representatives engaged in unlawful ex parte communication with hearing officers, in 2 cases telling the hearing officers how to rule before the trial was even held.

Participation in the Medicaid Waiver Network and MR Waiver Advisory Group meetings has been through collaboration with other entities and not through attending the meetings. Both entities are collaborating with DMHMRSAS to build Medicaid waiver service capacities through a variety of strategies.

DAC Comments:

DAC is appreciative of the work VOPA has done in the Medicaid arena. This complicated federal/state system leaves some people with disabilities, family members and advocates at a loss. DAC questions whether VOPA might consider expanding this effort to include individuals who are waiting for Medicaid services.

Goal: People with Disabilities in the Commonwealth of Virginia are Aware of the Virginia Office for Protection and Advocacy's (VOPA) Services

Focus Area #1: Underserved Communities

VOPA's employment clinic has offered trainings to all historically black colleges and universities in the Commonwealth.

Outreach in the southwestern region of Virginia has included presentations to the following groups: Radford University on self-advocacy; Wytheville CSB on VOPA services and how we can work together in serving clientele; The Appalachian Independence Centers in Galax and Bristol on VOPA services; and On Our Own – Drop in Center in Charlottesville on VOPA services. VOPA participated in a mental health walk in Emory, which should include persons from Radford, Wytheville, Galax, Marion, Abington, Grundy, Tazewell, Richland, St. Paul, Big Stone Gap, and Clintwood as a part of the Southwest Virginia Consumer and Family Involvement Project. VOPA has also connected with the Valley Voice who has agreed to read a VOPA Public Service Announcement (PSA) on their radio station. In addition, VOPA had an article published in the Girl Scout newsletter regarding inclusion of those with disabilities that was mailed to members in the southwest area. All of these organizations were very appreciative of the outreach and VOPA has received several requests for information and referral from these organizations as a result of the outreach efforts in this area.

The Advisory Councils developed and implemented a membership recruitment plan that we hope will increase the diversity of the Councils. There are roles for both Council members and VOPA staff in the plan. In addition, through the web-based survey for annual public input for the priority planning, there was an opportunity to request more information about the Advisory Councils. Council members have taken a very active role in recruiting new applicants. VOPA staff are reviewing the applications received and responding to other Council related inquiries.

Focus Area #2: Client Assistance Program (CAP) at Centers for Independent Living (CILs)

VOPA continues to provide “office hours” at selected CILs.

The CAP brochure was sent to CILs and DRS offices.

VOPA conducted a review of the “Office Hours” program. A cross unit staff team interviewed representatives of the entities participating in the office hours programs as well as VOPA staff. A draft report has been submitted to the Director that includes observations and recommendations.

Focus Area #3: Outreach to Constituents of the Eastern Shore

VOPA has conducted outreach efforts on the Eastern Shore. Information about VOPA was provided for the following groups: the CIL, the CSB, the local newspaper (The Eastern Shore News), Shore Memorial Hospital, and the Eastern Shore Health Fair. Outreach has been provided to the Children’s Hospital of the King’s Daughters and Old Dominion University (both located in Tidewater, but serves the Eastern Shore). The local newspaper ran a public service announcement (PSA) for a week that provided information and contacts for VOPA. Also, WHRO TV and Radio which reaches the Eastern Shore read the PSA over the radio. These providers requested and received a large amount of VOPA publications that they are eager to share with consumers. In addition, VOPA had an article published in the Girl Scout newsletter regarding inclusion of those with disabilities that was mailed to members in this area. Outreach recipients have included both service providers and members.

The CSB and Children’s Hospital of the King’s Daughters requested and were greatly appreciative of receiving materials in Spanish. They also are eager to share these materials with local residents who speak Spanish.

VOPA participated in a Health Fair in Northampton County (Eastern Shore) and handed out VOPA materials to approximately 200 family members and service providers in the area. We also visited the CIL in Northampton County and passed out VOPA materials. VOPA also presented a self-advocacy presentation to mental health consumers in Southwest Virginia. VOPA is in the process of arranging several other presentations in both the Eastern Shore and Southwest areas. VOPA is also in the process of visiting 40 DRS offices and 6 DBVI offices, which will include both the Eastern Shore and Southwest areas.

Focus Area #4: Spanish-speaking Constituents

VOPA has formed alliances with the Refugee and Immigration Services and has participated in the Henrico Hispanic Coalition and the Richmond Coalition, which includes service providers and members from the Hispanic community. VOPA, through the Neighborhood Development Center, had 1,286 flyers delivered to families of Hispanic origin informing them of VOPA services.

VOPA has participated in the Henrico Hispanic Coalition and the City of Richmond Hispanic Coalition to strengthen our relationships with service providers to Spanish speakers. We attended a Neighborhood Watch meeting in the City of Richmond and handed out our VOPA flyer in Spanish to make the Spanish community aware of our presence. We have also

arranged for a volunteer to look over our publications once they are translated into Spanish to ensure that the correct meaning is being conveyed.

Focus Area #5: Law Enforcement Agencies Recognize the Rights of Persons with Disabilities

Due to staff shortages, VOPA was unable to meet identified objectives under this focus area.

Focus Area #6: Collaboration with Mental Health Consumer Groups

This Focus Area is not applicable to DAC

Focus Area #7: Special Education for Children in Foster Care

VOPA is developing a training program to inform parents and advocates of the rights of foster children to appropriate special education services. VOPA is contacting foster care providers to collaborate and participate in the program.

The Disabilities Advisory Council brainstormed with staff about this issue. Council members offered contact information on individuals they know who may be interested and available to talk with VOPA staff. The discussion revealed that this is a complicated and multi-faceted concern.

Focus Area #8: Employment for People with Mental Illness

This Focus Area is not applicable for DAC

Focus Area #9: Discharge Rights at Nursing Homes

Due to staff shortages, VOPA was unable to meet identified objectives under this focus area.

DAC Comments:

The DAC feels very positive about the outreach efforts VOPA has initiated to reach underserved and unserved populations. . DAC is in agreement with identified underserved populations and the more remote geographic locations.

Other DAC Comments

The DAC has a very favorable impression of the VOPA priority planning process being used. Members feel that they were very involved and that the interactive process gave them a greater opportunity to fully participate. They do not want to have this be an exercise done by e-mail. They also note that it is good to see that public comment is actually used by VOPA; this is not always the case with public bodies.

DAC Members report that they received excellent legal and disability rights trainings at their meetings. They are very pleased with the presentations and appreciate the opportunity to interact with various VOPA staff.

DAC members value the interaction with the VOPA Governing Board and believe that the Chair's liaison function fosters a greater connection between the Board and the Council. Members like the new committee structure and have been actively participating. This

additional involvement with staff and the Governing Board members allows DAC members to increase their knowledge of VOPA operations and hopefully assist them as they prepare them for other advocacy efforts.

The DAC is looking forward to a joint meeting with the PAIMI Council in the next year. They have similar concerns about membership recruitment and retention. The joint meeting in FY06 did not occur due to scheduling issues and staff workloads.

The DAC is appreciative of the meeting agendas and “packets”; they find them to be organized and timely.