

MINUTES
INTERAGENCY MIGRANT WORKER POLICY COMMITTEE MEETING

September 10, 2008

The Interagency Migrant Worker Policy Committee Meeting was held at the Virginia Employment Commission Administrative Office in Richmond, Virginia.

The following were in attendance:

Kenneth Annis, Chairman, Migrant & Seasonal Farmworkers Board
Dolores A. Esser, Commissioner, Virginia Employment Commission
Nicholas A. Kessler, Deputy Commissioner, Virginia Employment Commission
Jane Brown, Department of Social Services
Megan Moore, Department of Education
Diane Dusseau, Workers' Compensation Commission
Jeff Nelson, Department of Medical Assistance Services
Perida Giles, Department of Agriculture and Consumer Services
Ron Thompson, Department of Motor Vehicles
Jack Turner, Virginia Employment Commission
Michelle Abraham, Virginia Employment Commission
Mark Spatig, Virginia Employment Commission
Joyce Fogg, Virginia Employment Commission
Evelyn Lewis, Virginia Employment Commission

Call to Order

Commissioner Esser called the meeting to order at 9:40 a.m. She introduced herself and welcomed all in attendance. The attendees also introduced themselves and provided their agency affiliation.

Approval of Agenda

A motion was made by Commissioner Esser to approve the agenda. It was moved by Kenneth Annis, seconded by Ron Thompson, and approved by a unanimous vote.

Agency Roundtable Discussion – Future Items of Interests for the Board

Because this was the first meeting for some of the attendees, Commissioner Esser provided a synopsis of how this Committee began. She stated that according to Chapter 592 of the Code of Virginia, the Migrant and Seasonal Farmworkers Board was transferred from the Department of Labor to the Virginia Employment Commission, and that §60.2-113, item 8 states, *Establish the Interagency Migrant Worker Policy Committee, comprised of representatives from appropriate state agencies, including the Virginia Workers' Compensation Commission, whose services and jurisdictions involve migrant and seasonal farmworkers and their employees. The Committee*

shall coordinate its activities with the Migrant and Seasonal Farmworkers Board established in § 2.2-2407. All agencies of the Commonwealth shall be required to cooperate with the Committee upon request.

A Policy Committee meeting has not been held since 2005 because no major issues have occurred that has required a meeting to be held. The Migrant and Seasonal Farmworkers Board has stated that there have been issues arising which they feel the Policy Committee should be more involved, and also have more interrelationship. Some of the agencies were already involved with the Policy Committee; however, there are gaps because some of the agencies, such as the Department of State Police, are not being represented on the Policy Committee.

Over the last two years, proposed legislation shows that some of the issues that could relate to migrants or farmers were work verification; misdemeanors with very heavy fines on employers who would hire illegal immigrants; a bill to protect immigrants who are victims of a crime or are witnessing a crime but will not come forward because of their immigration status; a bill denying undocumented students to public colleges; healthcare for immigrants; English as a second language in the school systems; a bill to authorize Virginia's small businesses to discriminate against those who spoke a language other than English in the workplace; driver's license penalties; giving the localities and State Police more power.

The roundtable discussions were as follows:

A. Reciprocity – Jeff Nelson, Virginia Department of Medical Assistance Services (MEDICAID)

Reciprocity means there is an agreement between the Virginia Medicaid Program and a Medicaid Program in another state such as Florida. Someone who is enrolled in the Florida Medicaid Program that travels to Virginia, such as an immigrant, will be participating in the Virginia Medicaid Program, and vice-versa. They will have the benefits of the Virginia and/or Florida services. By being in that new state and enrolled in that program, they will have the use of the physicians, hospitals, and pharmacies, all because the medical providers are enrolled to provide services. Reciprocity has been discussed for last ten years.

Medicaid programs are comprised of two parts, Eligibility and Services. As it relates to the migrants, the Eligibility part is of more concern. Medicaid and Medicare were established in the mid-60's under President Lyndon Johnson's administration. Medicare has the advantage towards the elderly as far as having consistent eligibility across the country. Medicaid programs are federal and state shared programs. With Medicaid eligibility, the states have a lot of options for setting up eligibility within their states for the different programs. To add to that, some states develop their own eligibility categories and it becomes very complicated. Within Virginia, there are about 50 different eligibility categories for Medicaid. With Medicaid, there are basic category eligibilities: Aged, Blind, Disabled, Children and their families, and Pregnant Women. This creates an issue with for the migrants, who are mostly young men.

Virginia has stringent financial eligibility in particular. For the federal poverty level, 35% to 40% would be eligible for Medicaid. For those migrants interested in seeking Virginia

Medicaid, it is a straightforward process if you are a U. S. citizen or a legal alien. The residency requirement is also straightforward because you are in the state to seek employment or need employment because you are living here with the intent to remain in the state. Financial documentation may sometimes be a stumbling block, because pay stubs are not always available. There are also state run programs where migrant workers can participate, in particular, the state hospitalization program which has been around for years. It is administered by the Department of Medical Assistance Services, but draws upon funds allocated by city and county, particularly for hospitalization's emergency care. It is a mixed bag of coverage. The states have been reluctant to enter into the reciprocity agreements because Virginia's income thresholds have been set rather low, and other states that have higher income, if we enter into a reciprocal agreement with those states, then individuals would be coming into the state with a higher income level that has been set. There is a lot of administrative work with setting up a reciprocity agreement with a state that might be 1,000 miles away.

The state of Wisconsin is the only state to have individuals with Medicaid agreements in other states to come to their state to work, and Wisconsin will enroll them in their Medicaid program until the eligibility expires in the individual's home state. Wisconsin is very active towards outreach. They have their outreach staff to go out into the fields and the migrant camps to educate the migrants about Medicaid eligibility. From the Wisconsin perspective, they feel this is more productive than having a reciprocal agreement. Eligibility is determined through their Department of Social Services, which includes some outreach. Their Outreach Program is more viable.

B. Education – Megan Moore, Virginia Department of Education

Ms. Moore distributed some demographics for the 2007-2008 school year. She stated that there were 11 regional division migrant level education programs in Virginia. They were allocated \$787,500 worth of funds for migrant education. The statistics are 2007-2008 have not been compiled yet. For the 2006-2007 school year, there were 151 schools in Virginia that enrolled migrant students. There were 1,532 students eligible for migrant education services. Out of that number, about 1,246 migrant education students were served during the regular school year. There were 792 identified as Limited English Proficient (LEP), which means that about half of the migrant education students are identified as LEP. There were about 1,230 students identified as Hispanic, 9 migrant students identified as black, and 9 students identified as white. There were 721 male migrant students, and 527 female migrant students. For the 2008-2009 school year, migrant education allocations were about \$774,000. Three dropped from 11 regional division migrant education programs to 9 because the smaller programs joined the bigger programs to have a larger regional migrant education population program. On July 27, 2008, the Office of Migrant Education through the U. S. Department of Education issued a *Federal Register*, which changed some of the definitions that determined eligibility for migrant students. There are very specific guidelines you have to meet to qualify as migrant students, basically be under the age of 22, not graduated from high school and received a diploma, and have moved within 36 months. And as part of that definition, it included that the job you obtained was a principle means of

lively hood. The *Federal Register* removed the “principle means of lively hood” definition from the qualifications for the migrant student.

C. Agriculture and Consumer Services – Perida Giles, Virginia Department of Agriculture and Consumer Services

The Department of Agriculture’s involvement with the Policy Committee stems from the Cooperative Agreement with the Environmental Protection Agency to administer the federal worker protection standards. The Office of Pesticides Services carries out the responsibility for enforcement. At this time, there are no issues that need to be brought to the attention of the Policy Committee.

The Commissioner for the Department of Agriculture has been doing town hall meetings around the state to introduce himself and find out what are some of the issues with the growers. One of the issues that arose repeatedly is the need for more legal migrant workers. Some of the growers have expressed that when they sometimes get migrant workers, they are not legal.

In response to this, VEC staff stated that the growers could use the H-2A Program which allows growers to bring in workers legally, or visit their nearest VEC Office and inquire. There is also a lot of information on the VEC website that is related to the process for H-2A workers.

D. Workers’ Compensation – Diane Dusseau, Virginia Workers’ Compensation Commission

Effective July 1, 2008, there were some changes to workers’ compensation. The maximum workers’ compensation increased to \$841, and the minimum changed to \$210.25 per week. The Criminal Injury Compensation Act was amended to provide that victims of sexual assault may undergo forensic examinations without agreeing to prosecutor cooperation with law enforcements so that vulnerable populations are encourage to go through with those examinations which need to be done in a timely manner and then they can decide later whether or not to go ahead and prosecute. Any person regardless of their status can undergo forensic examinations. This Act just allows people to get the examination without any cost to them, which could have been a disincentive to people in the past. The bill that was under consideration, that did not pass, regarded asking someone about their immigration status.

The Workers’ Compensation Commission administers the Criminal Injury Compensation fund and a lot of information about the changes in the law can be found on the Criminal Injury Compensation website which can be obtained by going to the Workers’ Compensation Commission’s website.

The Workers’ Compensation Commission is undergoing a technology alignment program in which it is going to less paper. The partners in the community will have training available, beginning with the largest insurance companies. People are encouraged to look at their website if they have questions, and or call the toll-free number 1-877-664-2566, for information. They have employee pamphlets in Spanish, which are also located on their

website, and in paper copy. They do not have the employer pamphlets and posters in Spanish.

Interpreters are available in almost any language, upon request, before a hearing.

If anyone has any issues to bring to the Policy Committee, please contact the Commissioner's Office of the Workers' Compensation Commission and the information will be passed on to Ms. Dusseau.

E. Social Services – Jane Brown, Virginia Department of Social Services

The Department of Social Services has a state supervised locally social services administered system, which means they set policy at the state level and give direction and guidance. There are 120 local departments with autonomy; therefore, there could be differences across the state. There are certain mandated services, but there is also a wide range of services available in the locality.

For the migrant community, the most frequent interface with social services is with benefits, and the second would be with the Food Stamp Program. Another area in which migrants may need contact is with Child Welfare and Adult Protected Services Program. In the last two years, there has been a change with all the applications because they can now be accessed online.

For migrant workers that are citizens, one program that is being encouraged to participate in is the Earned Income Tax Credit because Virginia is leaving a lot of money on the table each year because people are eligible for refunds that they never claim and in the last four years, there has been a lot of outreach and emphasis on this. There are groups around the state as part of the social services system that include not only local departments of social services but through federal funding the agency gives a core funding to community action agencies of the state. They are non-profit organizations, but they are considered a part of the social services network. They touch a lot of people's lives who cannot be served by the more standard federal and state programs. Community action agencies along with the local departments and state offices are putting an emphasis on the Earned Income Tax Credit and they are training community organizations to do taxes for low-income families. These are IRS-trained tax preparers, which is a real opportunity for the migrant community.

F. Motor Vehicles – Ron Thompson, Virginia Department of Motor Vehicles

The point to include the Department of State Police on the Policy Committee is an important decision because there were a lot of bills related to enforcement during the 2008 General Assembly Session. There were about ten bills requiring law enforcement officers to impound a vehicle if a person does not have a driver's license, and a few bills that required the person to be arrested.

The VEC has dealt with the DMV for at least three combined years because of issues such as the documentation that was required for migrants; the reciprocity on licenses; and how the H-2A workers could get a license during the period of time they come to Virginia to work.

Sharon Brown, with D MV, previously did a presentation to the Migrant and Farm Workers Board at one of its meetings, and she would be glad to come to a future meeting of the Policy Committee to do a presentation with updated information.

G. H-2A Program (Foreign Workers) – Michelle Abraham, Virginia Employment Commission

The H-2A Program has some relationship with the crew leader registration process. Farm labor contractors bring a lot of crews into Virginia to harvest agricultural crops in a short time. Licenses had previously been issued by the VEC; however, this is no longer done as it has been transferred to the Division of Wage and Hour with the Department of Agriculture. The VEC still assists the crew leaders to have the proper documentation for transporting, hiring, paying, recruiting, and housing workers.

H-2A is the name of the visa that is issued to foreign workers that are brought from foreign countries to do agricultural work for a temporary period of time each year. Last year in Virginia, there were over 400 employers with about 80 H-2A job orders who brought in slightly under 3,000 H-2A workers to harvest crops, such as vegetables, tobacco, apples, nursery, Christmas trees, and even fish propagation. The employer prints the job order a week, tests the labor market to see if U. S. workers are interested in the job, and if eligible U. S. workers cannot be found, employers certify to bring in foreign workers from other countries. The VEC manages the recruitment process for U. S. workers and there are nine offices staffed with farm placement specialists who does outreach to migrant workers. In cooperation with the Department of Health who has to issue labor camp licenses, housing inspections are done that are related to migrant camps for the H-2A workers.

H. H-2A Program (U. S. Workers) – Jack Turner, Virginia Employment Commission

The VEC serves U. S. workers (people who are citizens, in the U. S. lawfully, or have documentation to show they can lawfully work). There are about 14,000 U. S. workers in Virginia. They are all eligible to go to any VEC office to find employment. Because this program is complex, we have in nine of the VEC offices geographic regions to cover the entire state. Located on the VEC website is a map that shows these geographic regions. Half of the staff in these nine offices are bilingual in English and Spanish.

Biennial Report

Jack Turner reported that every two years the VEC must report to the Secretary of the Commonwealth on the activities, issues, the various discussions that the Migrant and Seasonal Farm Workers Board has had, and also those from the Interagency Migrant Worker Policy Committee. The biennium ended on June 30, and the report is basically a recitation of what has occurred over the past two years. The draft has been completed and is available for review. It is due September 30.

Future Meeting Dates

For the future meeting dates, the aim is to meet prior to the Migrant and Seasonal Farmworkers Board meeting, which is scheduled for January 21, 2009. The next meeting date that would work for the Policy Committee would be Wednesday, January 14. Commissioner Esser encouraged the Committee to be aware of any legislation being proposed so that the MSFW Board members can be informed. Future Policy Committee meeting dates will be discussed after the MSFW Board has decided upon its meeting dates.

New Business

Kenneth Annis, Chairman of the MSFW Board, has concerns about E-verify and the verification process. It could have a major impact on agriculture in Virginia.

Commissioner Esser explained that E-verify is a system that was developed by Homeland Security and the U. S. Department of Social Security. When you input the social security number of someone who is offered a job and it kicks back the social security number as being legitimate or not, there is the problem. For example, if you are married and went back to your maiden name and forgot to change it with Social Security, it will knock you out as not correct. The burden is on the individual to correct the problem. There could be a number transposed, or any small issue; however, for the migrant and immigrant population, it has some far reaching effects. There is a lot of push federally to use E-verify.

Mr. Annis extended accolades to the VEC for being extremely helpful in getting out information on legislation.

Mr. Annis also stated that this year there have not been any visits on the Eastern Shore by the Division of Wage and Hour. No compliances were done. This is a critical issue.

Joyce Fogg asked to Policy Committee to review the updated member list and let her know, via e-mail, if there are changes to the information.

The Policy Committee was invited to attend the Migrant and Seasonal Farmworkers Board Meeting scheduled for September 11.

Adjournment

There being no further business to address, the meeting adjourned at 10:45 a.m.