MINUTES
Reduce the Overall Use of Acute Mental Health Hospitalizations Task Force

Senator Alan Solano, Chair
Representative Erin Healy, Vice Chair

Second Meeting, 2019 Interim **Room 362 – State Capitol**
Thursday, August 22, 2019 **Pierre, South Dakota**

The second meeting of the SCR 2 Task Force 2, Reduce the Overall Use of Acute Mental Health Hospitalizations, was called to order by Senator Alan Solano at 10:00 AM (CDT) in room 362 of the State Capitol in Pierre. A quorum was determined with the following members answering roll call: Senator Margaret Sutton, Representative Steven Haugaard, Teri Corrigan, Jill Franken, Amy Iversen-Pollreisz, Jim Kinyon, Dianna Marshall, Tom Stanage, Representative Erin Healy, Vice Chair, and Senator Alan Solano, Chair. Excused: Steve Lindquist.

Staff members present included Wenzel Cummings, Code Counsel; and Cindy Tryon, Senior Legislative Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Welcome and Introductions

Senator Solano welcomed the task force members, audience members, and those listening on the website. The task force members introduced themselves.

Approval of Minutes

A motion was made by Representative Haugaard, seconded by Representative Healy, to approve the minutes of the Tuesday, July 9, 2019, Reduce the Overall Use of Acute Mental Health Hospitalizations Task Force meeting. Motion prevailed on a voice vote.

Statute Analysis: SDCL Chapter 27A-10
(Emergency Commitment)

Senator Solano said historically interim studies and task forces have several meetings and then propose legislation. By proposing the legislation so late in the meeting schedule there is not much time to actually discuss it. This task force is going to change the process by going through each section of SDCL 27A-10 and marking areas needing legislation drafted. Mr. Cummings will be able to start incorporating the task force ideas into draft bill form during the meeting.

SDCL 27A-10-1. Petition asserting need for immediate intervention of mentally ill person. This section clarifies what needs to be included in the petition for intervention. Dr. Stanage explained the process for petitioning for intervention. A law enforcement officer or a hospital can initiate a hold and then request a petition for a person who is severely mentally ill and in need of intervention. Anyone aged 18 or older can complete a petition alleging someone is a danger to themselves or others. The Chair of the County Board of Mental Illness determines if the person shall be committed.

Senator Solano asked how a person is determined to be severely mentally ill. Representative Haugaard said the Qualified Mental Health Professional (QMHP) does the actual analysis. If there is no diagnosis of mental illness then the person is released from the mental illness hold. There is a need to be more attentive to early warning signs

while staying mindful of civil liberties. Some states have an open door policy where people with mental illness can come for help without actually being committed. South Dakota may want to consider some type of open door program.

Dr. Stanage said mental illness is defined in SDCL 27A-1-1(24). Ms. Corrigan said it is important to remember the symptoms that support the mental illness assessment. A person may have other reasons or issues that create an imminent danger, but to fall under SDCL 27A-10 the actions need to be driven by a mental illness. Mr. Kinyon said determining a mental illness can be complicated, as the situation could be drug or alcohol induced, and a judgment must be made.

Ms. Franken said it would be helpful in better understanding the needs of the community if there was a way to know the number of petitions that are completed for someone who has never been diagnosed with a mental illness compared to those who have had a previous mental illness diagnosis. Representative Haugaard said in Minnehaha County the law enforcement and QMHPs are very familiar with people who are seen frequently for mental illness. Representative Haugaard estimated a third to half of the petitions in Minnehaha County are for people newly diagnosed with a mental illness.

Senator Solano said the definition of severe mental illness from a policy side looks at whether the person is a danger to themselves or others. Mr. Kinyon said the definition means imminent danger. Senator Solano pointed out the statute does not say imminent. Mr. Tice said the broad way the definition is written does not give variables to be considered to determine if the person is in danger.

Representative Haugaard said the least restrictive service available is referenced in code. Dr. Stanage said determining least restrictive service often becomes least restrictive service available at that time.

Senator Solano said it is important to take a look at the definition of severe mental illness.

SDCL 27A-10-1.1. Center as appropriate regional facility in certain circumstances. Dr. Stanage asked if a crisis center would be considered an appropriate regional facility. Mr. Kinyon said the regional facility is included as a way to keep people close to where they would best be served. Senator Solano said the mental health task forces are working towards using the Human Services Center (HSC) for mostly long term stays.

Representative Haugaard said this section was modified 20 years ago and it may be appropriate to make modifications now. One improvement to this section would be to not have one long run-on sentence.

SDCL 27A-10-2. Order for apprehension of subject—Transportation to appropriate facility—Payment of expenses. Senator Solano said there is a lot of territory in South Dakota resulting in long transports to an appropriate facility. Senator Solano then asked if it would even be possible to remove the option of holding the person in jail. Mr. Kinyon said there is a public safety factor to consider as there are situations where someone with a severe mental illness does pose imminent danger to the citizens and jail is the safest facility. Also, not every community has a hospital or other option available.

Dr. Stanage said it would be difficult not to have the ability to use the jail when needed. Mr. Tice said Pennington County tries not to use the jail as an option. Ms. Franken said Minnehaha County does not put someone with a mental illness in jail unless a crime has been committed. Ms. Marshall said South Dakota is one of just a handful of states that allow jail to be used in a pre-hearing restraint. Dr. Stanage said people should not be put in jail for a mental illness hold, but the person is not there for the entire pre-hearing time but rather for the 24-hour hold. If there were other alternatives no one would use jails for this purpose.

Representative Healy suggested finding out the number of people who are put in jail for a hold and determine if this is a problem that needs to be addressed.

Senator Solano said if the state builds more facilities it may be necessary to better define appropriate facility. It would be possible to say a jail cannot be used if there is another facility within a certain distance. Representative Haugaard said in Minnehaha County a person is held in jail if he or she cannot be controlled in another setting. At times someone may need jail as a secure facility. A person may be at the hospital for a day or two and end up in jail if he or she is not cooperative with the hospital staff.

Senator Solano appointed a subgroup to meet at another time and draft some suggestions for a definition of regional facility. The subgroup members are Amy Iversen-Pollreisz, Tom Stanage, Teri Corrigan, and Representative Haugaard. (After the meeting Steve Lindquist volunteered to be a member of the subgroup.) Mr. Kinyon said including a distance for transportation in the definition could be helpful.

SDCL 27A-10-3. Apprehension by peace officer of person believed to require emergency intervention—Transportation to appropriate regional facility. Senator Solano asked if peace officer is defined in code. Mr. Cummings said peace officer is defined in another chapter as a law enforcement officer. The task force may want to also define peace officer in this chapter.

Mr. Tice asked if this is an area that could include hospital security being allowed to transport in addition to law enforcement. Representative Haugaard said in recent years no one other than law enforcement has been allowed to transport. It could save sheriff deputies a lot of time if reserve officers could do the transporting. Dr. Stanage said perhaps members of the mobile crisis team could also be allowed to transport. Mr. Tice suggested requiring Crisis Intervention Training (CIT) for those transporting the person in order to be sure the driver is able to understand the warning signs.

Dr. Stanage said it is during this time the hold is most likely to be dropped. It is in statute that the hold can be dropped if the person does not meet the necessary requirements.

SDCL 27A-10-4. Petition on person apprehended. Dr. Stanage said this section sets up the normal order for the emergency petition.

Representative Haugaard said there is some propensity for the ER staff to complete the petition because the ER staff person thinks that is what is supposed to be done. The QMHPs do a good job screening to be sure a hold is needed. Ms. Franken said it needs to be clear who can complete the petition.

Dr. Stanage said there is concern about people not able to pay for the care. Representative Haugaard asked if the funding should become the responsibility of the state rather than the counties as the patients' county of residence cannot always be determined.

SDCL 27A-10-5. Notification of rights upon custody, detention, or filing of petition—Notice to county board where person apprehended. No discussion on this section.

SDCL 27A-10-6. Professional examination of person apprehended—Report to chair—Person released if not dangerous. Ms. Iversen-Pollreisz asked if 24 hours is enough time or should it be longer. After the 24-hour hold, the person is sent to HSC for the 5-day hold. 20% of those placed in the 5-day hold are released before the time limit. Perhaps extra time in the first hold would reduce the number of people placed in HSC. Dr. Stanage said going to a 72-hour hold should only be allowed if the person is in a crisis center and not if the person is being held in jail.

Senator Solano suggested the person not automatically be sent to HSC after the 24 hours if there is room at a crisis center. Perhaps HSC could recommend where the person be held until the hearing. Mr. Tice asked if the person would be held in a locked facility. Ms. Iversen-Pollreisz said it is not mandated that the person be held in a locked facility. Representative Haugaard said if the person is a danger to themselves or to others they should be held in a locked facility.

Senator Solano said the task force might consider changing the statute to allow the chair of the county board to decide if the patient can be detained at the crisis center until the hearing rather than having to send him or her to HSC after the 24-hour hold.

SDCL 27A-10-7. Results of Examination—Person released upon failure of examination to meet criteria—Continued detention of criteria met. Senator Solano asked if the second part of this statute needs to be more specific. Should the statute state what an appropriate regional facility is, and that the chair may utilize an outpatient facility/program? Representative Haugaard said it may be appropriate to expand on appropriate regional facility.

Representative Haugaard said it would be good to have walk-in centers without any stigma. The walk-in centers could offer the peer support. Dr. Stanage said the state needs walk-in facilities and places where someone can receive more support. There needs to be centers that offer a little of everything.

SDCL 27A-10-7.1. Chairman to make final determination where person voluntarily admits himself. No discussion on this section.

SDCL 27A-10-7.2. Refusal of prehearing admission. Dr. Stanage said this statute refers to the fact the HSC reviews the QMHP report before admission. HSC will not take anyone until the proper paperwork is completed. Ms. Iversen-Pollreisz said once the QMHP completes the assessment and determines the person needs care the person can be placed in one of the contracting facilities if HSC is not able to take the person; this is during the prehearing time.

SDCL 27A-10-8. Time limit for involuntary commitment hearing—Payment of expenses. No discussion on this section.

SDCL 27A-10-9. Testimony of independent qualified mental health professional on availability and appropriateness of alternatives. Dr. Stanage said there is an issue when one of the staff completes the petition and then the QMHP cannot testify. The language should be changed from “independent of the petitioner” to “other than the petitioner.” Mr. Kinyon agreed that some clarification would be helpful.

SDCL 27A-10-9.1. Ninety-day initial commitment to facility or outpatient treatment program—Release—Transportation—Notice of right to appeal. Senator Solano said this section seems to limit where the person can be committed and may inhibit the development of other facilities. Ms. Iversen-Pollreisz said outpatient treatment is a great tool and is underused in South Dakota.

Mr. Kinyon said institutions cannot create something if there are no funding options. In order to decentralize the system, the funding also needs to be decentralized. Dr. Stanage suggested adding language to say the cost cannot exceed the fee at HSC. Senator Solano said the cost structures need to be reviewed. Ms. Iversen-Pollreisz said the average daily cost for a client at HSC is about $620 a day and the counties pay $600 a month.

National Council for Behavioral Health

Ms. Joan King and Mr. Jeff Capobianco, National Council for Behavioral Health, and Mr. Jim Castleberry, Pennington County, talked to the task force via telephone. Ms. King said they are working with Pennington County and examining what is working and what the challenges are regarding behavioral health care in the area. There may

be a need for a “Yankton-west” or a Human Services Center in western South Dakota. The number of mental illness commitments in Rapid City is unusually high. There will always be a need for higher quality care for people. One goal for people with a mental illness is to have them voluntarily sign themselves in for help. In Pennsylvania there is a 72-hour hold rather than the 24-hour hold.

Ms. King said another area of interest right now is a crisis stabilization unit which would be one level below inpatient care. Another opportunity is engaging people who have experiences in assisting in developing systems of care and providing care. These people can help build a system of peer support.

Senator Solano asked for more information on the 72-hour hold. Ms. King said the 72-hour hold is used as an opportunity to help people get stabilized and step down to a lower level of care. There are different options as to where the person could be held such as a crisis center, hospital, or jail. Pennsylvania is a Medicaid expansion state so there are not a lot of uninsured people, allowing for a lot of different levels of care.

Ms. King said Montana has a lot of the same issues as in South Dakota regarding mental illness. Montana has only one state hospital with a long waiting list, and there is one children’s psychiatric hospital. Montana has had a collapse of mental health systems because the legislature pulled back much of the funding. Communities in Montana are trying to figure out how to create their own crisis centers.

Senator Solano asked about the violence happening in the United States and how it relates to mental illness. Mr. Capobianco said the National Council for Behavioral Health recently published a paper on that issue. The public automatically thinks the person committing the act of violence must be mentally ill. The people being treated around the country for mental illness are more likely to have acts of violence perpetrated against them rather than acting violently themselves. People with a mental illness are not likely to be homicidal but are more apt to harm themselves.

Ms. Corrigan asked about the importance of keeping people within the local communities for treatment. Mr. Capobianco said one end of the continuum is the promotion of care and the other end is placement in the hospital. The goal is to keep people from ending up being hospitalized. The least restrictive environment speaks to good treatment done closer to home allowing the involvement of family, if there is family. When developing the continuum, a filter should be created that catches people early in a treatment center so the issues can be addressed, also reducing the level of cost. People who go to HSC have a long ride in an uncomfortable bus leading to the person not receiving the care needed. Keeping someone in the local community may not be an option because there is no crisis center available; but people can be moved regionally closer to a crisis center rather than going all the way to Yankton. Also, a lot of work can be done outside of a hospital. Intermediate level of services can begin rather than hospitalization.

Ms. King said when there are limited resources, telemeds and telehealth could be considered. Services could be provided as easily as through iPads. Different communities are going to have different solutions, but technology options should be considered.

Mr. Kinyon asked about tribal health and how Montana is working with the tribes. Ms. King said geography determines so much. Rapid City is surrounded by reservations but in Montana the tribes are not close to the cities. The Montana Healthcare Foundation has a strong Native American initiative focusing on building tribal capacity around healthcare delivery. All major cities in Montana have an Urban Indian Health Clinic.

Ms. Marshall asked about hold times in other states; is funding available from states to crisis centers; and who certifies and trains peer support specialists. Ms. King said most states have a 72-hour hold and she had not encountered a 24-hour hold until coming to South Dakota. Ms. King said as far as funding crisis centers some are funded by the counties, some by rates paid by clients or Medicaid. Ms. King added that she is a fan of partnerships

when funding crisis centers. Mr. Capobianco said funding depends on the level of care needed. Typically, crisis centers are run by mental health centers.

Ms. King said Montana is in the process of rolling out a peer support program. Every state thinks it has to figure the program out on their own but that is not true. When establishing a peer support program, it is important to look at programs in other states and adapt those procedures to what is needed in South Dakota.

Ms. King and Mr. Capobianco said they will try to get additional data on the length of time for different holds in other states and will report that back to Mr. Tice.

Senator Solano thanked Ms. King, Mr. Capobianco, and Mr. Castleberry for taking the time to talk to the task force.

Public Testimony

Mr. Dan Cross, Community Support Providers (CSP) of South Dakota, Spearfish, said his organization serves about 4,500 people and provides residential, vocational, and medical care for adults and children with developmental disabilities. Mr. Cross said several of the people they work with also have severe mental illness diagnoses. Communication limitations for clients can be very challenging. As complex as the issues are the solutions will be equally as complex. Crisis Intervention Training (CIT) should be an important part of proposed legislation, and it would be good to add a component of developmental disabilities to that training. Perhaps student loan forgiveness for people working in the mental health field could be considered. CSP providers agree having regional centers is a great idea, as they prefer not to send people to Redfield. It is an arduous process to have someone placed in Redfield. Regional centers could help with short term stays. People need a secure, safe place to go for proper evaluation.

Mr. Kinyon asked for the number of people with developmental disabilities who are placed on mental health holds. Mr. Cross said he will try to get that information, but the number will be pretty low. People with developmental disabilities are often denied services for severe mental health illness as the mental health professional will say it is more a developmental disability than a mental health issue. The person is left in crisis mode with nowhere to go.

Dr. Stanage said he would like to hear more about any models that are available both nationally and regionally regarding this issue.

Ms. Staci Ackerman, SD Sheriffs Association, Eureka, said the Sheriffs Association is working on this issue and believe jail should be a last option for a mental illness hold. Ms. Ackerman said it is very difficult to provide mental health services within a jail setting. Regional expansion should be a public/private partnership. All law enforcement should receive training to assure consistency between law enforcement, EMTs, firefighters, etc. Ms. Ackerman said the CIT does include a component on developmental disabilities.

Representative Haugaard asked about reaching the smaller police departments across the state. Ms. Ackerman said the Sheriffs Association does networking with the Police Officers Association and the Sheriffs have been asked to take the lead on this type of training within their circuits.

Mr. Terrance Dosch, Executive Director, SD Council of Community Behavioral Health, Pierre, said SDCL 27A-10 is an intricate statute and commended the task force for taking the section-by-section approach to making revisions. The Council supports the idea of the regional facilities and considering the 72-hour hold.

Committee Discussion

Senator Solano said the task force will continue reviewing the sections of SDCL 27A-10 at the next meeting. Mr. Cummings said he will rewrite the chapter and reorganize it to make it more comprehensible but will not make any substantive changes until the task force takes action.

Senator Solano set the next meeting date for September 30, 2019, in Pierre starting at 10 AM in room 362 of the State Capitol.

Adjourn

A motion was made by Senator Sutton, seconded by Representative Healy, that the Reduce the Overall Use of Acute Mental Health Hospitalizations Task Force be adjourned. The motion prevailed on a voice vote.

The Task Force adjourned at 4:10 pm.