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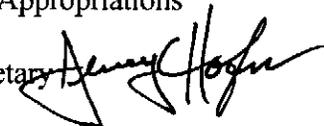
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MEMORANDUM

DATE: February 22, 2010

TO: Joint Committee on Appropriations

FROM: Jerry C. Hofer, Secretary 

SUBJECT: South Dakota Developmental Center

During our meeting with the Joint Committee on Appropriations to discuss the Department of Human Services' recommended budget for FY2011, there were several questions and discussion regarding the need for and viability of the South Dakota Developmental Center (SDDC). As I mentioned, we believe the SDDC plays a critical role in the overall developmental disabilities service delivery system in South Dakota. Since our budget hearing, we have been able to complete the attached white paper on the mission and role SDDC plays in this system and outline several, critical factors that must be considered carefully as discussions occur about downsizing and/or closure of SDDC, most notably that closure of SDDC will not generate a savings to the State of South Dakota but, in fact, will cost more to successfully support this population in community settings.

Please feel free to contact me if you have any questions about this report.

The South Dakota Developmental Center

A Critical Component of South Dakota's Developmental Disabilities System



February 19, 2010

There are numerous legal, ethical, community capacity, and financial issues we must continually consider and address in supporting South Dakotans with developmental disabilities. The South Dakota Developmental Center (SDDC) will and must continue to play a critical role in the continuum of support for people with developmental disabilities. The purpose of this paper is to outline the essential role SDDC plays in the developmental disabilities service delivery system in South Dakota and to clarify why SDDC needs to remain a viable option and significant contributor to this system for the foreseeable future.

The mission of the SDDC has evolved over the years and succinctly identifies its current role, as a treatment facility to prepare people for the successful transition to the community. This community transition has evolved as well. Some people previously served in institutions needed only minimal supports to live successfully in community based settings. People in need of this level of support no longer reside in institutional settings and have not for many years. Subsequently, the people admitted to and remaining at SDDC have very complex treatment needs and challenging behaviors that require intensive staffing and highly structured therapeutic and residential environments which are currently not available in community based settings. While time has seen a decrease in the census at SDDC, the remaining population has increased needs related to co-occurring mental health issues and exhibited challenging sexual behaviors as well as physically aggressive behaviors. Active and intensive treatment services are necessary in order to successfully support these people.

The Department of Human Services' mission is to promote the highest level of independence for all individuals regardless of disability or disorder. We promote and strive to attain this outcome for every South Dakotan while ensuring the health and safety of each person supported and those they come in contact with. Preparing people with these intensive needs to live successfully in the least restrictive environment entails many complexities to ensure the appropriate safeguards and supports are in place for successful transitions and outcomes. We present the most complex of these issues with supporting facts.

Legal Issues: In making decisions about closing or reducing the population supported in state operated facilities, states must consider the legal aspects of such decisions. People supported, families and guardians have rights that must be considered in any such decision.

The 1999 Olmstead Decision (US Supreme Court Case) has had a pervasive impact on services and service settings for people with developmental disabilities. While most of the focus and rhetoric is placed on access to community supports, the underlying issue is CHOICE of placement setting. States that have used Olmstead to help close their institutions have done so because they can demonstrate that they can appropriately support everyone in community settings with regard to health, safety, and inclusiveness. This has in almost all instances required a huge influx of dollars to adequately finance these community settings. Many states have not been successful in using Olmstead to close institutions because they have not been able to convince the courts that it is reasonable to deny access to institutional care for persons and their families/guardians who want to continue to exercise their choice for that option. Olmstead was primarily about denying choice to receive services in community settings and DHS works continuously with community support providers to enhance community placement opportunities.

In addition, the constitution of the State of South Dakota requires that the state must provide a facility for the developmentally disabled; therefore, closing SDDC would require a constitutional amendment.

Ethical Issues: As a society, we have an ethical obligation to support South Dakotans with developmental disabilities in the most inclusive, least restrictive environment possible while we help to ensure their health and safety and that of those around them. Our ultimate goal is to assist every person to live, work and recreate in the community of their choice.

Most of the remaining population at SDDC exhibit “zero incidence behaviors.” These are behavioral tendencies and responses to threatening situations where the resulting behavior presents an immediate threat to the security, health and safety of the person served and those to whom the person has access. It is not ethical to knowingly put a person in a situation he or she cannot handle within societal norms or to put members of the community at risk of physical or sexual assault.

There is increased liability that goes along with serving people with offending behaviors, particularly those with sexual offending histories. Many communities and community support providers are unwilling to accept this liability and the risk to their reputations. One South Dakota community support provider came under extreme public scrutiny when the community and press realized they were providing services to registered sex offenders even though the people supported were successfully living in the community without incident and thriving in their community placement. The provider was forced to close one of their residential settings resulting in a transfer of people back to SDDC because there were no other community support providers willing to accept placement of these individuals.

SDDC has developed the expertise to work with people with developmental disabilities and sexual offending issues. SDDC currently serves 46 people with these issues. Of this group, there are eight registered sex offenders. These people are at SDDC because they present an unacceptable risk to the community and require the highly structured supervision provided at SDDC.

The South Dakota Association of Community Based Services has gone on record as stating that their community support provider agencies are well aware that there are people residing at SDDC who have the need for intensive services which are not available in communities. They would not be able to support all of the people at SDDC if it were to be closed. People with developmental disabilities and challenging behaviors would then have no placement alternative when their community placement fails. In such cases people would end up in more costly, general funded placements such as out-of-state placements, the Human Services Center or prison.

It is important to note that the Turtle Creek Program at SDDC was originally implemented in order to return adolescents with extremely challenging behaviors who were in expensive out-of-state placements because these intensive services were not available in South Dakota. SDDC has developed a skilled cadre of professionals and a highly specialized school program that works extremely well for these adolescents. A similar program does not currently exist anywhere else in South Dakota.

In addition, SDDC provides intensive treatment services to people with developmental disabilities and co-occurring mental health issues. People with developmental disabilities and mental health issues have few options for acute crisis and long term mental health treatment services. SDDC meets this need for people who exhibit these challenging issues.

Community Capacity Issues: Understanding the complexities of the SDDC population, we must continue ongoing development of community support services necessary for successful transitions before we commit to more transitions, downsizing or closing SDDC.

The recidivism rate at SDDC is an indicator of the degree of success that community support providers have with providing supports and services to people who have been discharged from SDDC. The recidivism rate relative to FY09 discharges was 31.7%.

There are currently 11 people on the waiting list for admission to SDDC. Nine of these are referrals from community support providers. Two are referrals from other community agencies. There are another seven potential referrals to be admitted to SDDC. These are all people who, with their existing supports, are unable to live safely and successfully in their community setting and require the intensive and structured services provided at SDDC. See the attached personal profile of one particular individual who is reflective of the population supported at SDDC that has struggled in numerous community based placements.

Community support providers have partnered with SDDC and the Division of Developmental Disabilities to develop specialized programs in the community with higher reimbursement rates to serve people with challenging behaviors. Even with these programs there are still significant challenges placing people with community support providers. For example, there are currently four people at SDDC who have been denied admission by community support provider admission teams a total of 26 times.

SDDC's work force is specially trained to work with people with developmental disabilities and associated challenging behaviors, physical aggression and sexual behaviors. The SDDC workforce is maintained at higher staffing levels than is typically available in the community in order to address the intensive needs of this population.

There are certain efficiencies gained by having a group of trained professionals all located at one facility and available 24/7. Services provided by this group of behavioral and therapeutic professionals are very difficult to find anywhere in the state because of the specialties required. Indeed, many of these services could not be provided at all by some community support providers because of the lack of resources in their communities.

Workforce stability is another critical factor in successfully supporting the population served by SDDC. Recruitment and retention rates at SDDC tend to be stronger relative to community support providers. Lowering staff turnover levels in the community would require a significant influx of dollars to reproduce the stability that currently exists at SDDC. Community support provider directors stated publicly that even if dollars were not an obstacle, they do not possess the

expertise in terms of staff, programming, or residential settings to support all of the people currently residing at SDDC.

Financial Issues: If the discussion continues to occur about further downsizing or closing SDDC as a cost cutting or savings measure, it must be realized this simply will not be the case as it will cost more to support the remaining population in the community.

Many factors and complexities exist in the cost comparison between SDDC and community support providers such as room and board and other Medicaid state plan services which are provided directly at SDDC but are not included in the service based rates paid to community support providers. Services such as psychiatric support, mental health, medical, prescription drugs, etc. are included in SDDC's budget. However, these same services have to be purchased separately in the community using Medicaid and are not included in the service based rates paid to community support providers.

Community support providers are increasingly requiring much higher specialized rates to support those most ready for community placement opportunities from SDDC. For FY2009, excluding the institutional specific expenses such as the cost of maintaining the campus, room and board costs, specialized medical services and mental health services, the cost per day at SDDC was \$254. The most recent rates for the specialized programs established with community support providers to facilitate outplacements include rates of \$322, \$358, \$361, \$388 and \$542 per day. Specialized rates have been established for people with pica behavior, traumatic brain injury, autism, sexual offending histories, and crisis diversion services. These rates do not include costs for medical services, room and board, mental health, prescription drugs, etc.

The Association of Intellectual and Developmental Disabilities published an article in the *American Journal on Intellectual and Developmental Disabilities* (formerly *American Journal on Mental Retardation*) indicating research does not support the unqualified position that community settings are less expensive than are institutions.

For the remaining SDDC population, including new and anticipated admissions, the cost of institutional support is projected to be less than the cost of community support. The cost will increase in community settings because of increased staffing support and qualifications required of the staff in community settings to ensure health and safety of the person, support staff, and community members. Many people residing at SDDC derive important benefits from the safeguards and structural supports available in the facility and not typically available in community settings.

Using very conservative estimates based upon an average of the most recent specialized rates, we project it will cost a minimum of \$826,996 more (see table on page 6) to support the remaining SDDC population in the community. This does not include the cost of additional funding for increased wages for direct support professionals to address adequate recruitment and retention to support this population, additional crisis support services, or the cost of providing the intensive treatment services in the community. These additional costs will greatly increase this fiscal impact in supporting the SDDC population in community settings.

The closure of SDDC would require a “fail proof” plan in the community meaning there are no alternative placements when a community support provider can not support individuals in their community placement.

Summary

Rapid, unplanned downsizing or closure of SDDC will result in unacceptable risk and harm to the current residents and will require an influx of additional funding. There are also public safety risks to consider if the appropriate services and supports are not in place to successfully support this population. It is reasonable to conclude that significant litigation would ensue. We strongly recommend that the State of South Dakota continues to build additional community capacity as budget opportunities allow and move people into community settings as a matter of choice, individualized support availability, and good public policy.

COST ESTIMATE FOR SDDC CLOSURE – Current census 152

FY2010 SDDC Operating Budget			\$ 24,818,634
Projected Community-Based Costs			
Average Special Rates / Year	152 x \$394.25 x 365	\$ 21,872,990	
Ancillary Costs *	152 x \$68 x 365	\$ 3,772,640	
Total Project Costs		<u>\$ 25,645,630</u>	\$ 25,645,630
Projected Increase (Decrease)			<u><u>\$ 826,996</u></u>
Cost to add \$1 per hour wage increase for recruitment/retention			\$ 5,459,646
Estimate for crisis support services			\$ 2,400,000
Development of intensive treatment services			**

* Ancillary costs include Medicaid state plan services, prescription drugs, and lost ICF/MR revenue.

**Without further analysis, calculating an estimate of intensive, individualized treatment services is difficult.

PERSONAL PROFILE

This person is an example of the remaining population supported at SDDC who have extremely challenging behaviors associated with their developmental disabilities. His behaviors are severe, but can be managed in the right environment. However, when his behaviors manifest themselves, staff needs to have the ability to de-escalate situations and physically intervene if necessary. Although this person's behaviors are considered to be significant in the community, they are manageable at SDDC and reflective of the behaviors of others supported at the facility.

Gender: Male

Age: 43

Diagnoses: Autism, Moderate Mental Retardation, Psychotic Disorder NOS, Bipolar Disorder

Previous Placements:

1968-1972	Community Support Provider #1
1972-1976	Home
1976 (6 months)	Community Support Provider #1
1976-1986	Foster Family, Day Services at Community Support Provider #2 [services terminated due to behavior]
1986 (1 month)	McKenna Hospital, behavioral health unit
1986-1987	Human Services Center
1988 (3 months)	South Dakota Developmental Center
1988-1989	Community Support Provider #3 [services terminated due to behavior]
1989-1992	South Dakota Developmental Center
1992 (5 months)	Community Support Provider #4 [services terminated due to behavior]
1992-2008	South Dakota Developmental Center
2008-2009	Community Support Provider #2 [services terminated due to behavior]
2009 (40 days)	Avera Behavioral Health
2009	Human Services Center
2009	Referred to SDDC

Challenges:

- **Behavior.** This person has autism and requires a structured environment in order for his day to go well. Displays aggression and self-injurious behavior when situations are unpredictable or things do not go his way. When his day is not sufficiently structured, he will require prompting for self-help tasks he normally performs independently.
- **Medical.** Regular appointments with a psychiatrist are required to address mental health issues. The following psychoactive medications are prescribed: Venlafaxine, Risperdal, Seroquel, Lorazepam, Mirtazapine.
- **Vocational:** He enjoys working at jobs that are repetitious, such as paper shredding, and needs to be kept busy. A very structured work environment produces successful outcomes.
- **Community Placements:** SDDC placement has been successful because his day is very structured and predictable. However, even at SDDC, he has sporadic behavioral episodes. There are periods of time without inappropriate behaviors; however, his mental health status changes and dangerous behaviors begin to occur. SDDC employs NVC (non-violent crisis intervention) techniques that may require staff to physically restrain or physically redirect when behaviors become aggressive or self-injurious. Medical intervention is sometimes needed to interrupt a behavior cycle. These interventions are not as readily available in the community as they are at SDDC.