

MINUTES

Reduce the Overall Use of Acute Mental Health Hospitalizations Task Force



Senator Alan Solano, Chair
Representative Erin Healy, Vice Chair

**Fourth Meeting, 2019 Interim
Monday, October 21, 2019**

**Room 414 – State Capitol
Pierre, South Dakota**

The fourth 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 414 of the State Capitol in Pierre. A quorum was determined with the following members answering roll call: Senator Margaret Sutton, Representative Steven Haugaard, Terri Corrigan, Jill Franken, Amy Iversen-Pollreisz, Steve Lindquist (via phone), Dianna Marshall, Tom Stange, Barry Tice, Representative Erin Healy, Vice Chair, and Senator Alan Solano, Chair. Excused: Jim Kinyon.

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 internet.

Approval of Minutes

A motion was made by Dr. Stange, seconded by Senator Sutton, to approve the minutes of the Monday, September 30, 2019, Reduce the Overall Use of Acute Mental Health Hospitalizations Task Force meeting. Motion prevailed on a voice vote.

Pennington County Behavioral Health Continuum of Care

Mr. Barry Tice, Director, Pennington County Health and Human Services, gave a PowerPoint presentation summarizing the 53-page report from the National Council for Behavioral Health ([Document #1](#)). The National Council visited with 83 people in the community and across the state when preparing the report. The report includes 13 recommendations and lays out a solid template of the goals for mental health services ([Full Report](#)).

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

Mr. Wenzel Cummings presented draft changes to Chapter 27A-10 for the task force members' consideration.

The task force considered a new section to the Chapter regarding appropriate regional facilities. The proposed additional section was given a chapter number for purposes of discussion.

27A-10-27. Admission – Appropriate Regional Facility.

- 1. For purposes of admitting an individual who is apprehended under previous statute, the Department of Social Services shall designate any facility as an appropriate regional facility if the facility is approved by the department in accordance with subsection 2.**

2. **Any facility may apply to the department for designation as an appropriate regional facility at the time and in the manner established by the department under rule promulgated in accordance with chapter 1-26.**
3. **To be designated as an appropriate regional facility, a facility must:**
 - a. **Have the capacity for overnight residential services necessary to stabilize acute psychiatric or behavioral symptoms and evaluate treatment needs;**
 - b. **Have the capacity to admit individuals twenty-four hours per day and seven day per week;**
 - c. **Have the capacity to develop a crisis stabilization plan for each individual admitted;**
 - d. **Have on-site personnel twenty-four hours per day, seven days per week, and have medical personnel available twenty-four hours per day, seven days per week;**
 - e. **Have the capacity to document daily interactions or observations of the individual by treatment staff of the facility; and**
 - f. **Comply with any other requirements determined by the department by rule promulgated in accordance with chapter 1-26.**

The task force members agreed to adding “by remote telecommunications” to the appropriate section of the draft.

A motion was made by Representative Healy, seconded by Representative Haugaard, to approve legislation making the above stated addition to statute. The motion prevailed on a roll call vote with 11 members voting AYE; 1 member EXCUSED. Voting AYE: Sutton, Haugaard, Corrigan, Franken, Iversen-Pollreisz, Lindquist, Marshall, Stanage, Tice, Healy, and Solano. EXCUSED: Kinyon.

The task force members discussed SDCL 27A-10-6. *Professional examination of person apprehended—Report to chair—Person released if not dangerous.* Senator Solano said it is important to make sure a person is not in a mental illness hold longer than necessary. Dr. Stanage said there should be some type of certification that the person in hold meet the hold criteria for each prehearing day required.

A motion was made by Dr. Stanage, seconded by Ms. Corrigan, to approve legislation adding the language “Certification that the individual continues to meet criteria required for each prehearing day” to SDCL 27A-10-6. The motion prevailed on a roll call vote with 10 members voting AYE; 2 members EXCUSED. Voting AYE: Sutton, Corrigan, Franken, Iversen-Pollreisz, Lindquist, Marshall, Stanage, Tice, Healy, and Solano. EXCUSED: Haugaard and Kinyon.

Dr. Stanage suggested changing language in 27A-10-9 to better clarify who can give testimony to the board of mental illness.

A motion was made by Dr. Stanage, seconded by Representative Healy, to approve legislation changing the first sentence in SDCL 27A-10-9 to read “The board of mental illness conducting the involuntary commitment hearing as provided in 27A-10-8 shall order testimony by a qualified mental health professional OTHER THAN THE NAMED PETITIONER who shall assess the availability...” The motion prevailed on a roll call vote with 11 members voting AYE; 1 member EXCUSED. Voting AYE: Sutton, Haugaard, Corrigan, Franken, Iversen-Pollreisz, Lindquist, Marshall, Stanage, Tice, Healy, and Solano. EXCUSED: Kinyon.

The task force members discussed the need for some changes in the mental health statutes regarding immunity from liability. Senator Solano said it is important to take care not to excuse people from liability where liability should be held. Representative Haugaard suggested working with attorneys specializing in Med-Mal to best craft language in this Chapter regarding immunity from liability, but the task force could address immunity regarding appropriate regional facilities.

A motion was made by Representative Haugaard, seconded by Dr. Stange, to approve legislation adding language to SDCL 27A-10-23 so the first sentence reads "...or qualified mental health professional in a clinic, APPROPRIATE REGIONAL FACILITY, or hospital,..." The motion prevailed on a roll call vote with 11 members voting AYE; 1 member EXCUSED. Voting AYE: Sutton, Haugaard, Corrigan, Franken, Iversen-Pollreisz, Lindquist, Marshall, Stange, Tice, Healy, and Solano. EXCUSED: Kinyon.

The task force members discussed SDCL 27A-10-9.6 regarding failure to comply with the treatment order. Several changes to the current statute were suggested and Mr. Cummings rewrote this section as follows:

27A-10-9.6. Failure to comply with outpatient commitment or treatment order—Supplemental hearing or alternative disposition upon failure to comply with requirements of outpatient commitment or treatment order—Alternative disposition.

If a person fails to comply with the requirement of the outpatient commitment or treatment order, and the person's treating physician or the staff of the outpatient treatment program believes that there is a significant risk of deterioration in the person's condition, the program director or the treating physician may notify the original petitioner for inpatient or chair of the county board of mental illness that issued the outpatient commitment or treatment order and, the chair of the board where the person is located, the office of the state's attorney's office attorney of the county where the patient person is found located, and the office of the state's attorney of the county where the person is subject to the outpatient commitment or treatment order, and recommend an appropriate alternate disposition under 27A-11A-21 or 27A-11A-22.

Within seventy-two hours of receiving the notice transmitted pursuant to notification under this section that a person has failed to comply with the requirements of the outpatient commitment or treatment order, the original petitioner for inpatient or outpatient commitment or, the state's attorney of the county where the patient is found or resides may file a petition with the board or the court for, or the chair of the board or the court may order a supplemental hearing, or the chair of the board or the court may proceed under any other section of this title. If a petition for supplemental hearing is filed the The board or the court shall hold a supplemental hearing in accordance with the procedures specified in this title. The chair of the board or the court may order the apprehension and transportation of the person to attend the hearing.

A motion was made by Senator Sutton, seconded by Representative Haugaard, to approve legislation amending SDCL 27A-10-9.6 as stated above. The motion prevailed on a roll call vote with 11 members voting AYE; 1 member EXCUSED. Voting AYE: Sutton, Haugaard, Corrigan, Franken, Iversen-Pollreisz, Lindquist, Marshall, Stange, Tice, Healy, and Solano. EXCUSED: Kinyon.

The task force members discussed competency restoration. Historically people have gone to HSC for competency restoration. Ms. Iversen-Pollreisz said DSS is looking at other facilities being able to provide competency restoration and DSS is conducting a pilot program exploring out-patient competency restoration.

A motion was made by Dr. Stange, seconded by Ms. Franken, requesting DSS work with LRC to draft legislation allowing the competency restoration process to be conducted at HSC or other approved facilities. The motion prevailed on a roll call vote with 11 members voting AYE; 1 member EXCUSED. Voting AYE: Sutton, Haugaard, Corrigan, Franken, Iversen-Pollreisz, Lindquist, Marshall, Stange, Tice, Healy, and Solano. EXCUSED: Kinyon.

Public Testimony

Mr. Terrance Dosch, Executive Director, SD Council of Community Behavioral Health, Pierre, sent a letter to the task force regarding identifying barriers related to implementation of the outpatient commitment process ([Document #2](#)).

Committee Discussion

Senator Solano said the draft legislation as approved by the task force will be compiled and sent to the task force members for final approval or comment.

Senator Solano thanked the task force members for the work done during the 2019 interim, adding this work could make a real impact in South Dakota communities.

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.