MINUTES

Leverage Telehealth and Telemedicine Task Force

Senator Deb Soholt, Chair
Representative Herman Otten, Vice Chair

Fourth Meeting, 2019 Interim
Wednesday, October 23, 2019

Room 362 – State Capitol
Pierre, South Dakota

The fourth meeting of the Leverage Telehealth and Telemedicine Task Force was called to order by Senator Deb Soholt (Chair) at 10:00 a.m. CDT, on October 23, 2019, in Room 362 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Deb Soholt (Chair) and Jim Stalzer; Representatives Linda Duba and Herman Otten (Vice Chair); and Public Members Brian Erickson, Amy Hartman, Rebecca Kiesow-Knudsen, Susan Kornder, Dr. Melita Rank, Kelly Serr, and Tiffany Wolfgang. Representative Tamara St. John was excused.

Staff members present were Clare Charlson, Principal Research Analyst, and Kelly Thompson, Senior Legislative Secretary.

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

Approval of Minutes

Representative Otten moved, seconded by Senator Stalzer, that the September 24, 2019, meeting minutes be approved. Motion prevailed on a unanimous roll call vote.

Recap of the September 24, 2019 Meeting

Senator Soholt reviewed what the task force has accomplished to date and what still needs to be completed. The group will be focusing on statutory recommendations that will leverage telehealth options throughout the state. Those recommendations will cover crisis intervention, the use of assessments in detention facilities and healthcare centers, where on the life continuum telehealth accesses could be leveraged, and physical locations where people will need these services. The task force will meet via conference call November 6 to finalize the recommendations.

Senator Soholt also provided an update on the status of the other four 2019 Interim mental health task forces. The Redefine Acute Mental Health Hospitalization Task Force (TF1) is considering expanding the 24 hour hold period to 48 to 72 hours and is concerned with case management and treatment costs. The Reduce Acute Mental Health Hospitalizations Task Force (TF2) is reviewing South Dakota's commitment laws and discussed a possible rewrite of that chapter. The Redefine Nursing Home Criteria and Build

Capacity Task Force (TF4) is looking at the admission criteria to the Human Services Center (HSC) and how capacity will be managed if the criteria is changed. The Increase Community Services and Caregiver Supports Task Force (TF5) is focused on transitional housing.

Senator Soholt said one final report will be submitted to the Executive Board for all five task forces with each group having its own section for recommendations. Not every task force is submitting proposed legislation, but the expectation is that legislators from all five task forces will serve as bill sponsors to support passage of the legislation.

Discussion of Telehealth and Telemedicine Recommendations for Mental Health Access

Representative Duba presented information on Lifecycle Health Interactions that highlight health needs based on the different phases of life (Document 1). Needs were identified from newborn/baby to senior citizens. The purpose is to better understand what steps can be taken earlier in life to impact treatment. She said gaps exist in services and more staffing is needed to address those shortages. Senator Soholt noted that a virtual strategy can exist in all of the lifecycle areas.

Statutory Support for Effort

Ms. Clare Charlson, Principal Research Analyst, Legislative Research Council (LRC), provided members with three pieces of proposed legislation. Senate Bill Draft 74 originated in TF2 and adds 24/7 access to telehealth services to the appropriate regional facility requirements. Senate Bill Draft 197 clarifies that the definition of telehealth does not apply to South Dakota's involuntary commitment laws, and that a prior provider-patient relationship is not necessary for a health care professional to prescribe drugs to a patient. House Bill Draft 198 brings the telehealth component into the state's involuntary commitment laws and addresses immunity from liability for certain persons and entities involved in the involuntary commitment process.

Senator Soholt asked if definitions were needed in code for de-escalation and crisis intervention. Ms. Kornder and Ms. Wolfgang said de-escalation falls under engagement with a person so a specific definition is not necessary.

Mr. Serr said law enforcement in general should have immunity and he believes general immunity is already covered in statute. Representative Otten replied that civil immunity for law enforcement is found in SDCL 27A-10-9.7.

Senator Soholt asked if the group was comfortable with the immunity language in House Bill Draft 198. Ms. Wolfgang said people in the behavioral health field understand what de-escalation means but it may be safer to be more distinct in the bill. Mr. Erickson said the interpretation was clear in a clinical sense. Senator Soholt noted the committee could endorse the overall concept and further research could be done to determine if de-escalation is inherently understood or needs to be defined in statute.

Regarding Senate Bill Draft 197, Ms. Charlson clarified that Section 2 means a provider could prescribe drugs to a patient at their first meeting, if a provider-patient relationship is established at that time.

SDCL 34-52-3 covers provider-patient relationships and was enacted to ensure patients receive telehealth services from a qualified provider.

Mr. Serr asked if the language would prohibit a Qualified Mental Health Professional (QMHP) from using telehealth services to conduct assessments for involuntary commitments. Ms. Wolfgang shared his concern. Mr. Erickson and Representative Otten said Chapter 27A-10 was not prohibitive in that regard. Senator Soholt requested that the Code Counsel be brought in to discuss the matter.

Mr. Wenzel Cummings, Code Counsel, LRC, told members that during TF2's discussion on QMHP examinations, the question was raised over whether language should be added saying examinations could be conducted electronically. That task force did not take any action since electronic examinations fall under this task force's purview.

Mr. Erickson asked if state law already considers QMHPs as mental health care professionals under SDCL 34-52-1. Senator Soholt said she believed that was correct. Ms. Wolfgang and Ms. Kiesow-Knudsen said the language is medically-driven and does not include therapists. Senator Soholt advised the issue should be revisited at the group's final meeting so definitions could be clarified and included where appropriate to ensure that professionals can work virtually, no matter what their level.

Ms. Wolfgang stated that the usual response when her agency is asked whether QMHPs can do telehealth examinations is that, because the statutes are silent on that issue, the practice is allowed. Mr. Cummings suggested putting it in statute for the sake of clarity.

Mr. Serr wondered if the language in SDCL 34-52-1(5) precluded the use of electronic means for an examination by a QMHP for involuntary commitment and whether a QMHP can only provide that service in a crisis situation. Mr. Cummings replied that since telehealth is not defined in Chapter 27A-10, it should not impact the use of mobile devices by mobile crisis teams but the way the law is currently written, such use is not an available option for QMHPs in a non-crisis situation.

Regarding the task force's questions on de-escalation for House Bill Draft 198, Mr. Cummings suggested being more clear on the definition of engagement. Senator Soholt said the group will review the matter at its next meeting and develop an operational definition if it is determined one is needed.

Funding Considerations

Ms. Amanda Doherty-Karber, Senior Fiscal and Program Analyst, LRC, reviewed possible funding options for the expansion of telehealth services in South Dakota. Options include partnerships between state agencies and county governments; grant programs; and private-public partnerships in which donations raised privately are matched by the state up to a specified amount.

Senator Soholt told members that Avera eCARE recently announced they had received a $4.3 million grant from the Helmsley Charitable Trust to launch a national telehealth certificate program. The Telebehavioral Certificate for Residents program is the first of its kind in the nation and will allow health care providers to earn a certificate in telehealth as a delivery model for health care as well as a specialty certificate for

telebehavioral health. Avera eCARE will be developing a curriculum and a 5,000 sq. ft. telehealth education center to support the program. She noted it is a good example of telehealth being funded by philanthropy.

Senator Soholt also referenced Avera eCARE's pilot program in Brookings County that provides mobile crisis resources for emergency providers and inquired what the costs would be to expand it to other counties. Mr. Erickson said the cost to equip a vehicle with the necessary technology and equipment is about $1,600. While many counties lack the data to drive a business plan to fund telehealth, they are working to capture incidence rates. Due to the costs involved, if the program were expanded, it would likely include counties outside of large metropolitan areas with the services offered to county sheriffs.

Another area being considered for expansion is crisis debriefing. Multiple entities are researching how to move into those services over the next five years and are assessing each county to see what resources already exist and how they can be better utilized.

Senator Soholt said the executive and judicial branches of government are also interested in expanding telehealth services in South Dakota, and there is potential for outside funding. She said the recommendations from this task force will be the launchpad for that expansion, and while this group does not have to design the specific structure for how that will happen, the group needs to provide strong recommendations for what it should entail.

Recommendations

Task force members offered possible goals and action items for inclusion in the group's recommendations to the Executive Board. They included:

- Allowing electronic signatures under statute for telehealth purposes;
- Multi-state licensure for all behavioral health professionals;
- Expansion of broadband access in South Dakota;
- Raising awareness about the availability of telehealth services to increase utilization;
- Developing telehealth training and certification opportunities;
- Recognizing the shortages of mental health professionals in certain geographic areas;
- Making virtual behavioral health services available in physical locations that can be easily accessed by those who need them;
- Determining how emergency services get paid and ways they can be funded;
- Developing standardized metrics with the purpose of producing measurable data; and
- Implementing and expanding behavioral health services in correctional facilities beyond those used for crisis intervention.

LRC staff will work with the task force to draft specific goals and action statements from the issues raised. Members will finalize their recommendations from the draft language at their final meeting on November 6 and endorse them for submission to the Executive Board.

At Senator Soholt's request, Senator Stalzer provided a brief background on efforts to expand 211 services statewide. The Access to Mental Health Services Interim Study Committee brought Senate Bill 8 before

the 2019 Legislature to allow the Department of Social Services (DSS) to support all South Dakota counties in developing and maintaining a statewide centralized resource information system. The bill in its final approved form authorized DSS to pay half of the costs for any county that agreed to participate in 211 services.

Five new counties came on board in 2019 with three more joining in January of 2020, bringing the total number of counties participating to 24 out of a possible 66. The average cost for a county to participate is $2,000 to $3,000. Concerns were raised that counties that were already participating and paying the costs on their own prior to the passage of Senate Bill 8 would pull out of the system if the state paid part of the expenses for the new counties.

Statewide participation in 211 would allow for promotion of the system as a single number people can dial for accessing resources anywhere in South Dakota.

Senator Soholt said a stronger legislative strategy in 2019 would have helped garner support for the legislation in its original form. If the bill for statewide funding for 211 services were brought again in 2020, the task force needs to make a stronger statement to ensure better, more informed support from the legislature as a whole.

Final Comments and Next Steps

Senator Soholt thanked members for their service and dedication, saying the right people were around the table to provide good input and recommendations.

Mr. Serr said the South Dakota Sheriffs' Association appreciated the opportunity to be heard as a group and serving on the task force has given him another perspective on behavioral health services.

The group's next meeting will be held via video conference on November 6, 2019. Discussion materials will be provided to members for review prior to the meeting so final recommendations can be endorsed.

Adjournment

Representative Duba moved, seconded by Senator Stalzer, that the meeting be adjourned. Motion prevailed on a unanimous voice vote.

Chair Soholt adjourned the meeting at 2:22 p.m.