MEMO

TO: Members of Task Force 2

FR: Jay Alderman, Pennington County State's Attorney's Office

DT: October 15, 2019

RE: Payment of expenses associated with Involuntary commitment proceedings.

A problem that needs a legislative fix:

It is not uncommon that residents from another county end up at Regional Hospital in Rapid City on an involuntary mental illness "hold" which triggers the initiation of statutorily required involuntary commitment proceedings in Pennington County. Under South Dakota law, Pennington County becomes the "referring county" and is required to incur the initial expense of providing involuntary commitment related services, subject to reimbursement by the county of residence of the patient. Such services may include: an evaluation by the county QMHP, legal counsel for the Petitioner and the patient, the cost of the mental illness board hearing (i.e., paying board members) and the costs of transportation of the patient. On the west end of the State, Pennington County is the mental health hub for providing mental health commitment services for many other counties in the region. Pennington County provides the service and bills the patient's county of residence (see attached example of billing for State's Attorney and Mental Illness Board). Most of those counties pay their bills (i.e., reimburse Pennington County for the services rendered). However, as the attached example illustrates, some counties ignore State law and refuse to reimburse Pennington County - claiming the county resident who received said services is a "Tribal member" and the "resident county" does not have jurisdiction nor responsibility to reimburse Pennington County - implying that Pennington County should look to other sources for reimbursement such as Medicaid, the United States Government and/or Tribal authorities.

To my knowledge, this refusal to reimburse the referring "service providing" county is not unique to the western end of the state. That is why a number of years ago the SD Attorney General considered pursuing litigation to settle this matter on behalf of the State (i.e., to ensure that service providing counties are reimbursed by the county of residence per state law). Unfortunately, litigation was not pursued and the matter was not resolved. This leaves Pennington County and other similarly situated counties in the unreasonable position of having to provide the service and then receive a denial letter from the county of residence claiming that some other government entity is responsible. This is an unreasonable burden to place on Pennington County or any other county providing these services. If a county believes a Tribal agency should cover the commitment expenses of one of their residents, then that county should be required to work out those details or MOU with the Tribal authority rather than simply pass the burden and responsibility along to the county providing the service simply because it is convenient to do so. That can't be the intent of the law.

As stated previously, most of the counties that benefit from the services provided by Pennington County recognizing that they are the "county of residence" under state law and pay their bills accordingly. This should be the case even with those counties whose residents may be Tribal members subject to involuntary commitment proceedings in Pennington County or any other county providing statutorily required services. The service providing counties should not have to pursue litigation to receive payment. The burden should be on the county of residence to reimburse the referring "service providing" county and then the county of residence can seek reimbursement from a Tribal authority or other payment source if they deem it appropriate.

In the vast majority of cases, the "county of residence" of an individual is determined early in the commitment process. That is why I would support legislation authorizing a "service providing county" to refuse such services unless the "county of residence" of the patient has entered into a service agreement with the service providing county to provide the involuntary commitment services and pay the expenses associated therewith. In other words, service providing counties would only handle commitment proceedings for residents of their own county and for other counties that have contracted for such services on behalf of their residents. This seems reasonable. Perhaps a county that refuses to pay should be reported and penalized by the State in some manner (e.g., loss of state aid or other funding) until it has paid its bills in full. The point is, it's time to reverse this trend of certain counties taking advantage of services provided by the taxpayers of another county and then boldly refusing to reimburse that county for those services – place the burden where it belongs.

Thank you for your consideration. Please let me know if you have any questions regarding the above.