

Section 35 Commission

Meeting Minutes

May 23, 2019

3:00-5:00 pm

Date of meeting: Thursday, May 23, 2019

Start time: 3:05 pm

End time: 5:05 pm

Location: McCormack Building, One Ashburton Place, 21st floor, Boston, MA 02108

Members present		Vote 1*	Vote 2
1	Marylou Sudders – EOHHS (Chair)	X	X
2	Ruth Balser – MA House of Representatives	X	X
3	Leo Beletsky, JD, MPH – Northeastern University	-	X
4	Monica Bharel, MD, MPH – Department of Public Health	X	X
5	Nancy Connolly, PsyD – Department of Mental Health	X	X
6	Vic DiGravio – Association for Behavioral Healthcare	X	X
7	Michael J. Finn – MA House of Representatives	X	X
8	Marcia Fowler – Bournewood Health Systems	X	X
9	Maryanne Frangules – MOAR	X	X
10	Richard G. Frank, PhD – Harvard Medical School	-	X
11	Mark Green, MD – Psych Garden	-	X
12	Carrie Jochelson PMHCNS-BC – MAAPPN	X	X
13	Todd Kerensky, MD – Spectrum Health	X	X
14	Mark Larsen – Committee for Public Counsel Services	X	X
15	Hon. Rosemary Minehan – Trial Court (<i>designee of Chief Justice Carey</i>)	X	X
16	Sabrina Selk, ScM, ScD – Office of Health Equity, DPH	X	X
17	Leigh Simons Youmans – Massachusetts Health and Hospital Association	X	X
18	Scott Weiner, MD, MPH – Massachusetts College of Emergency Physicians	A	X
Members calling in			
19	Neal S. Hovey – Topsfield Police	X	-
20	David Munson, MD – Boston Health Care for the Homeless Program	X	X
21	Jessie Rossman – ACLU of Massachusetts	X	X
22	David G. Stewart, PhD, ABPP – Cambridge Health Alliance	X	X
Members not in attendance			
23	Kristin Beville – McLean Hospital	-	-
24	William Brownsberger – MA Senate	-	-
25	Alain Chaoui, MD – Massachusetts Medical Society	-	-
26	Cindy Friedman – MA Senate	-	-
27	Carol Mallia, RN, MSN – Massachusetts Nurses Association	-	-
28	David Podell, PhD – MassBay Community College	-	-
29	John Rosenthal – PAARI	-	-

* (X) Voted in favor; (O) Opposed; (A) Abstained from vote; (-) Absent from meeting or during vote

Proceedings

Secretary Sudders called the meeting to order at 3:05 pm. She noted that a number of Commission members were participating remotely and all votes taken during the meeting would be conducted via roll call.

Vote 1 to approve the minutes: Secretary Sudders requested a motion to approve the minutes from the Commission's previous meeting on April 25, 2019. Mr. Larsen introduced the motion, which was seconded by Mr. DiGravio and approved by roll-call vote; Sergeant Hovey, Dr. Munson, Ms. Rossman, and Dr. Stewart indicated their votes in the affirmative over the phone (see detailed record of vote above).

At 3:10 pm, Dr. Frank joined the meeting.

Secretary Sudders reviewed the meeting's agenda and noted that resources sent in by members the day of the meeting that were not shared yet with the Commission would be circulated to the Commission in advance of its final meeting on June 27.

Anuj Goel, representing the Massachusetts Health and Hospital Association (MHA), and Nancy Connolly, Assistant Commissioner of Forensic Services for the Department of Mental Health (DMH), presented a set of guidelines and clinical materials that were developed in consultation with providers and court clinicians to help standardize the submission of medical information to the Courts for use during Section 35 commitment hearings. Mr. Goel noted that the materials – a standardized affidavit and checklist of supporting clinical information – outline the minimum information and supporting documentation from hospitals that should be submitted to the Courts for a Section 35 commitment determination to be made. Mr. Goel also noted that MHA and DMH will coordinate with hospitals to roll out the materials' utilization during the month of June as part of an initial pilot program. Mr. Goel added that in July, MHA will convene a meeting with the Trial Courts and DMH to discuss best practices and address any issues that were identified during the pilot program. He noted that the discussion may be recorded for the benefit of new hospital staff to ensure continuous understanding of the new standardized process and materials. Ms. Frangules requested that individuals with lived experience with the Section 35 process be represented at the July meeting. For additional details, refer to the [PowerPoint presentation](#) and [materials](#) posted online to the [Section 35 Commission's Meeting Materials webpage](#).

At 3:20 pm, Dr. Green joined the meeting.

In response to questions from the Commission, Dr. Connolly confirmed that advanced practice psychiatric nurses were not authorized under Section 35 to petition for civil commitments and that the medical information provided to the Courts is available for review by respondents' attorneys.

Secretary Sudders provided an overview of the development of a legal memorandum that was prepared for the Commission to review its specific charge related to reviewing the legal implications of holding a non-court involved individual who is diagnosed with a substance use disorder but is no longer under the influence of substances. Secretary Sudders explained that the memorandum was drafted by the Office of DMH General Counsel in March and April 2019 and that feedback on the draft memorandum was requested from a sub-group of Commission members on May 7, 2019. She noted that as no written comments were provided by members of the sub-group, the memorandum was then circulated to the broader Commission for their review on May 17, 2019.

At 3:35 pm, Professor Beletsky joined the meeting.

Ms. Rossman opined that a process for emergency, extra-judicial detainment of individuals due to their substance use disorder and perceived likelihood of harm would raise constitutionality issues if the process

were to mirror the existing process for emergency psychiatric detainments under MGL CH. 123 Section 12. She cited the lack of an appeals process as a principle concern. Ms. Rossman added that individuals with substance use disorders may be disincentivized from voluntarily seeking out addiction support in hospitals if they felt at risk of being detained by hospital staff.

Mr. Larsen provided background information on the history of emergency psychiatric detainments in the Commonwealth and noted that the Massachusetts Supreme Judicial Court has not ruled on their constitutionality. He stated that the current process for emergency psychiatric detainments under Section 12 does not include a statutorily mandated limit for the amount of time an individual may be kept in an emergency department awaiting an inpatient psychiatric hospital admission without judicial review, as is offered in Idaho and California.

In reference to emergency department boarding, Commission members discussed the difficulties the current Section 12 practice can place on patients' families and the challenges that could arise if a similar process for detainment of individuals with substance use disorders was initiated.

In response to a request from Representative Balser for additional information about the willingness of providers in western Massachusetts to provide treatment for civilly committed individuals, Secretary Sudders offered to have her staff issue a request for information (RFI) on behalf of the Commission.

Professor Beletsky proposed replacing the term "capacity" instead of "beds" in describing substance use treatment, citing that many patients require treatment services and not necessarily institutionalization. He stated that voluntary treatment capacity in the Boston area is significantly higher than in central or western Massachusetts based on data presented previously to the Commission and noted that for many Massachusetts families living outside of Boston, the Section 35 process may appear less challenging to navigate than enrollment for family members in voluntary treatment.

Ms. Fowler stated that the Section 35 process could be modified to replace involuntary treatment with voluntary, low-threshold, community-based services. She noted that the cost of treatment remains a principle concern for families, particularly for residential treatment services.

Judge Minehan stated that the elimination of existing Section 35 treatment capacity in correctional settings would result in patients with co-occurring criminal cases receiving treatment for their substance use in jails, which may not be equipped to provide comprehensive treatment for substance use disorders.

Mr. Larsen stated that while Department of Public Health (DPH) data related to involuntary commitment was presented to the Commission, similar data from Department of Corrections (DOC) managed programs has not been presented. He offered to share with the Commission a survey that the Committee for Public Counsel Services (CPCS) conducted of approximately 270 attorneys. He highlighted that 25 percent of the attorneys who responded indicated that a third of their clients did not object to their involuntary commitment, which indicated that there is a need for increased voluntary treatment options.

Dr. Munson and Ms. Rossman requested that the Commission members' discussions and deliberations be included in the Commission's deliverable. Ms. Rossman added that additional attention should be placed on improving data collection related to involuntary commitment treatment and outcomes.

Mr. DiGravio stated that increasing evidence-based treatment is critical to addressing the opioid epidemic and recommended that the Commonwealth convene provider organizations, clinicians, legal experts, family groups, and other stakeholders to explore alternative pathways in addition to the current court-based system for providing addiction treatment.

Dr. Green stated that a positive reinforcement approach is needed for families, along with increased education about addiction treatments options.

Ms. Jochelson stated that the existing research on involuntary commitment is limited and recommended that additional studies be conducted to expand the evidence base. Dr. Frank added that research on the effectiveness of involuntary commitment in criminal justice settings is limited and noted that information on patients' treatment and discharge plans was not presented to the Commission. Professor Beletsky noted that there was a lack of information presented to the Commission related to the DOC managed Section 35 programs, particularly content and data regarding patients' treatment and discharge plans.

Representative Finn expressed his support for continuing to provide involuntary treatment options in Massachusetts, particularly in central and western parts of the state that lack adequate voluntary treatment capacity.

Secretary Sudders proposed that for the Commission's next meeting, the Commission focus on its specific charge and the deliverable. She noted that her staff will recirculate relevant resources to the Commission and release a RFI related to the provision of treatment services in western and central Massachusetts in the coming weeks. She requested that members send additional resources that would be helpful for the Commission to consider for its review of the Commission's charges to her staff by the following week, and confirmed that a draft version of the Commission's deliverable would be circulated in advance of the Commission's final meeting in June.

Ms. Simons Youmans noted that data related to medication-assisted treatment (MAT) providers, opioid treatment programs (OTP), and office-based opioid treatment (OBOT) programs from DPH, MassHealth, and the Health Policy Commission that was presented during a recent MAT Commission meeting might be useful for Commission members to review.

Vote 2 to adjourn the meeting: Secretary Sudders requested a motion to adjourn the meeting. Rep. Balser introduced the motion, which was seconded and approved unanimously by roll-call vote; Dr. Munson, Ms. Rossman, and Dr. Stewart indicated their votes in the affirmative over the phone (see detailed record of vote above).

The meeting was adjourned at 5:05 pm.