

Section 35 Commission

Meeting Minutes

June 27, 2019

3:00-5:00 pm

Date of meeting: Thursday, June 27, 2019

Start time: 3:00 pm

End time: 5:45 pm

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

Members present:

- Marylou Sudders – EOHHS (Chair)
- Ruth Balser – MA House of Representatives
- Kristin Beville – McLean Hospital
- Monica Bharel, MD, MPH – Department of Public Health
- William Brownsberger – MA Senate
- Hon. Paula Carey – Trial Court
- Alain Chaoui, MD – Massachusetts Medical Society
- Vic DiGravio – Association for Behavioral Healthcare
- Michael J. Finn – MA House of Representatives
- Maryanne Frangules – MOAR
- Cindy Friedman – MA Senate
- Mark Green, MD – Psych Garden
- Neal S. Hovey – Topsfield Police
- Carrie Jochelson PMHCNS-BC – MAAPPN
- Todd Kerensky, MD – Spectrum Health
- Mark Larsen – Committee for Public Counsel Services
- Carol Mallia, RN, MSN – Massachusetts Nurses Association
- David Munson, MD – Boston Health Care for the Homeless Program
- David Podell, PhD – MassBay Community College
- John Rosenthal – PAARI
- Jessie Rossman – ACLU of Massachusetts
- David G. Stewart, PhD, ABPP – Cambridge Health Alliance
- Scott Weiner, MD, MPH – Massachusetts College of Emergency Physicians
- Leigh Simons Youmans – Massachusetts Health and Hospital Association

Members absent:

- Leo Beletsky, JD, MPH – Northeastern University
- Nancy Connolly, PsyD – Department of Mental Health
- Marcia Fowler – Bournemouth Health Systems
- Richard G. Frank, PhD – Harvard Medical School
- Sabrina Selk, ScM, ScD – Office of Health Equity, DPH

Proceedings

Secretary Sudders called the meeting to order at 3:00 pm.

Vote to approve the minutes: Secretary Sudders requested a motion to approve the minutes from the Commission's previous meeting on May 23, 2019. Chief Justice Carey introduced the motion, which was seconded by Representative Balser and approved by all members present.

At 3:05 pm, Ms. Johnson Landry joined the meeting.

Secretary Sudders provided background information on the request for information (RFI) that was issued on May 31, 2019 on behalf of the Commission to identify entities with potential interest in operating a secure Section 35 treatment center in Western or Central Massachusetts. She noted that seven responses were received by the June 20, 2019 submission deadline, all of which were posted to the Commission's website and were included in the draft report as a separate appendix. In response to comments from Representatives Balser and Finn, Secretary Sudders clarified that a request for response (RFR) was previously issued by the Department of Public Health/Bureau of Substance Abuse Services (DPH/BSAS) in December 2016 to collect bids from programs capable of providing acute treatment services (ATS) for individuals in acute withdrawal from opiates, alcohol, or other drugs. Secretary Sudders noted that her staff would include a summary of the dates and releases of the RFI and RFR in the Commission's report.

At 3:12 pm, Dr. Green and Ms. Jochelson joined the meeting.

Secretary Sudders explained that the meeting would be a working meeting to review the Commission's draft report, which had been developed based on the presentations, resources, and discussions from the Commission's six previous meetings. She noted that an initial draft of the report was shared with Commission members on June 12, 2019, along with proposed recommendations that had been submitted by Mr. DiGravio and Ms. Jochelson. The following week, 11 of the Commission's 29 members submitted written feedback. A second draft of the report was shared with the Commission on June 20, 2019. She explained that her staff would update the draft report based on members' feedback during the meeting and share an updated version with the Commission on June 28, 2019 for their final review. She added that comments from members on the June 28 draft would be accepted until 5:00 pm on Sunday, July 30, 2019 to allow her staff sufficient time to finalize the report for submission to the Legislature on Monday, July 1, 2019.

Secretary Sudders proposed that the Commission review the sections of the draft report on which members had submitted written feedback, followed by a discussion of the proposed recommendations submitted by individual members.

Mr. Larsen requested that references to placing Section 35 respondents in handcuffs and shackles during courtroom proceedings be removed from the draft report. In response, Chief Justice Carey explained that under the current law, judges are authorized to have respondents placed in restraints to ensure order in the courtroom and added that sheriff's departments may raise objections to transporting patients committed to Section 35 treatment facilities unless they were authorized to utilize restraints.

In response to a comment from Ms. Jochelson, Secretary Sudders clarified that under current law, nurse practitioners were not authorized to file Section 35 petitions nor conduct court evaluations.

Ms. Rossman requested that additional text from the conclusion of the Werb et al. research article be included in the body of the report. Secretary Sudders noted that her staff would review the information and update the text in the updated version of the report.

In response to requests from Representative Balser and Ms. Rossman, Secretary Sudders noted that her staff will review the minutes from the Commission's previous meetings for references to members' requests for information from the Department of Corrections.

Secretary Sudders explained that proposed recommendations received from individual members of the Commission had been reviewed by her staff and grouped by common themes. In response to requests from members of the Commission, the Commission decided to review and vote on each of the proposed recommendations. Secretary Sudders noted that she would be abstaining from all votes. (A record of the vote tallies for each of the proposed recommendations appears at the end of this document, as well as a list

of proposed recommendations submitted by members but considered out of the Commission's scope and not voted on by members during the June 27 meeting.)

Secretary Sudders read aloud proposed recommendations that were jointly submitted by Senators Brownsberger and Freidman the day of the meeting and not yet shared with the Commission. Chief Justice Carey objected to the inclusion of the survey conducted by the Committee for Public Counsel Services, particularly the term "voluntary" commitment, as petitioners are not able to self-nominate.

At 4:00 pm, Judge Minehan joined the meeting, replacing Chief Justice Carey.

In response to comments from members, Mr. DiGravio clarified the recommendation he had proposed related to the identification of alternative pathways, in addition to the current court-based process, to civilly-commit individuals for addiction treatment.

At 4:15 pm, Dr. Chaoui joined the meeting.

In response to a recommendation proposed by Representative Finn related to the use of "on-call" judges to provide judicial reviews of Section 35 petitions during non-business hours and weekends, Mr. Larsen and Judge Minehan raised logistical concerns for the implementation of the proposal, citing the lack of clear statutory authority for detaining individuals, the lack of provision of acute medical treatment, the potential lack of public defenders available to represent Section 35 clients during non-business and weekend hours, and the lack of forensic psychologists statutorily required to conduct courtroom evaluations.

Sergeant Hovey clarified his proposal that the Legislature amend Section 12 to include "a person who represents a likelihood of serious harm by reason of a substance use disorder." In response, Dr. Weiner and Mr. Larsen raised practical concerns with the proposal.

Secretary Sudders read aloud the proposal received from Senator Friedman related to conducting a multi-year study of the effectiveness of the current Section 35 process as it relates to relapse, ongoing treatment and recovery. In response to a proposal from Representative Balser, Ms. Rossman and Ms. Youmans agreed to combine their proposed recommendations related to research on the effectiveness of the Section 35 process and the utilization of emergency room data with the recommendation put forth by Senator Friedman.

In response to a recommendation proposed by Mr. DiGravio related to the prohibition of restraints and holding cells during courtroom proceedings, Judge Minehan noted that under the current law, judges are authorized to have respondents placed in restraints to ensure order in the courtroom. In response, Mr. DiGravio withdrew his proposed recommendation and the Commission voted on the recommendation that should restraints be needed, they should be humane and training should be provided to staff on proper usage.

In response to the proposed recommendation related to the prohibition of civilly-committed men from receiving treatment for addictions at any criminal justice facility, Representative Balser noted that the proposed legislation she put forth related to this matter would be amended to explicitly state that bed capacity would be offset on a one-to-one basis so as not to reduce treatment capacity resulting from the prohibition of placing individuals in criminal justice settings.

In response to the proposed recommendation from Ms. Jochelson related to the authorization of nurse practitioners to file Section 35 petitions, Ms. Beville recommended other practitioners such as social workers be authorized to file Section 35 petitions as well. Judge Minehan noted that the current statute authorizes six categories of petitioners and noted that the filing of petitions by individuals not explicitly named in the statute may cause confusion and be rejected by judges.

In response to comments from Representative Balser and Mr. Rosenthal, Dr. Munson clarified his proposed recommendation that the Commonwealth establish standards of medical care that follow evidence-based practice.

Ms. Mallia proposed that the recommendation related to requiring a “warm handoff” be amended to include the term “continuity of care” and Representative Balser proposed combining the recommendations related to expanding development of low-threshold, treatment on demand models including harm reduction interventions in community-based settings.

At 5:20 pm, Senator Brownsberger joined the meeting, replacing Ms. Johnson Landry.

Mr. Larsen clarified the recommendation related to the amendment of the Section 35 process to provide adequate time for medical testimony, noting that a statutory amendment would be required.

Senator Brownsberger clarified his proposal. He added that the standards for commitment under Section 35 should be refined to limit the process’s use to those most at risk of causing immediate harm to themselves or others as a result of their substance use.

Secretary Sudders thanked members for their participation in the Commission and reiterated that her staff would incorporate members’ feedback and share an updated version of the report with Commission members the following day. She reminded members that written comments on the updated draft of the report should be submitted by 5:00 pm on June 30, 2019.

Vote to adjourn the meeting: Secretary Sudders requested a motion to adjourn the meeting. Mr. DiGravio introduced the motion, which was seconded and approved unanimously by all members present.

The meeting was adjourned at 5:45 pm.

Proposed recommendations voted on by the Commission	In favor	Opposed	Abstained
The Commonwealth should expand development of low-threshold, treatment on demand models, including harm reduction interventions in community-based settings, immediate access to medication-assisted treatment (MAT) and expansion of bridge clinics, addiction consult services, outreach and engagement programs, post-overdose intervention programs, syringe services programs, and family intervention programs.	18	0	4
The Commonwealth should establish standards of medical care for patients who are committed under Section 35.	18	0	4
The Commonwealth should ensure continuity of care post-discharge between Section 35 facilities and community-based facilities.	18	0	4
The Commonwealth, in conjunction with the research community and other relevant stakeholders, should define and collect the necessary data to determine the effectiveness of the current Section 35 process as it relates to relapse, ongoing treatment and recovery within the next two years. EOHHS should seek appropriations, grants and other financing tools to conduct an in-depth multi-year study using best research practices. As part of the study, EOHHS should identify any successful initiatives or practices that support the recovery of people with a substance use disorder.	18	0	4
The Commonwealth, in consultation with provider organizations, peer and family groups, legal advocates, other stakeholders, and academic experts in the field of evaluation of care of people with substance use disorder, should create a consistent set of required quality metrics that will be regularly, publicly reported on by every provider of care to a person civilly committed through the Section 35 process.	16	0	6
The Commonwealth, in consultation with provider organizations, peer and family groups, legal advocates and other stakeholders, should identify alternative pathways in addition to the current court-based process, to civilly-commit individuals for addiction treatment.	14	4	4
The Commonwealth should prohibit civilly-committed men from receiving treatment for addictions at any criminal justice facility, provided that the Commonwealth fund and/or procure vendor or state-operated beds in Western Massachusetts and other parts of the Commonwealth to offset on a one-to-one basis diminished bed capacity resulting from the prohibition on placing individuals in criminal justice settings.	13	1	8
If restraints are needed, they should be humane, and training should be provided to staff on proper usage.	12	0	10

The Legislature, in conjunction with EOHHS and in consultation with stakeholders, should (1) conduct an analysis of the benefits of, and any barriers to, creating a Section 35 process that models the Section 12 process found in MGL Chapter 123, and (2) develop and file legislation to implement this change.	12	5	5
The Commission should oppose a 72-hour involuntary civil commitment for substance use disorder without judicial involvement.	11	2	9
The use of Section 35 should be statutorily narrowed in two ways: (1) Section 35 should not be used for voluntary commitments; (2) Even for involuntary commitments Section 35 should be rewritten so that it is available only in cases in which it is clear that the subject individual is in danger of causing severe immediate harm to self or others or loss of life above and beyond the harms that are routinely attendant upon the abuse of substances, such as death by overdose.	9	1	12
The Section 35 process should be amended to provide adequate time for the presentation of independent medical testimony by the respondent.	8	1	13
The Commonwealth should “commence a process with the goal to reduce and/or eliminate the use of Section 35,” as there is insufficient evidence of its efficacy to justify deprivation of individuals’ civil liberties. Demographic data suggests significant racial and ethnic disparities in the use of Section 35.	6	3	13
Nurse practitioners should be allowed to file Section 35 petitions.	4	7	11
The Legislature should amend the law to allow for correctional facilities to become licensed by DPH and/or DMH to provide addiction treatment services. In the case of dual status individuals, it would make sense to be able to provide services for addiction simultaneously to the path and time of ongoing criminal cases. While the current system may need improvement a complete ban on Section 35 commitment in correctional settings is not ideal either.	2	10	10
The Commonwealth should create a process where the Trial Court "On Call Judge" be incorporated into the current process of civil commitment to address the expiring nature of apprehension warrants and the limited ability of law enforcement in locating individuals during the courts regular business hours. Additionally, a preliminary request for commitment could be approved that could bridge the gap until a full hearing could be conducted.	1	11	10

The Legislature should authorize the short-term hospitalization of patients with a substance use disorder under Chapter 123 S. 12. The legislative change would amend Chapter 123 S. 12 to include “a person who represents a likelihood of serious harm by reason of a substance use disorder.”	I	15	6
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Proposed recommendations considered out-of-scope and not voted on by the Commission	
A review should be conducted on use of gabapentin, Klonopin, and Adderall combined with Suboxone post treatment.	
The Commonwealth should implement “Know Your Rights Campaigns” that would ideally be supported by EOHHS, AGO, and DOI with family and recovery community organizations on how to use the continuum of care and get immediate access to care.	
Actions should be taken by the Commonwealth to strengthen parity laws for equal access to care.	
The Commonwealth should explore whether the Hampden County model could be scaled up for general population.	
The Commonwealth should address the lack of adequate insurance coverage, including inadequate networks, low and wildly disparate rates among plans, insufficient treatment duration as well as workforce that pose barriers to treatment.	