VIRGINIA'S SUPREME COURT

COMMISSION ON MENTAL HEALTH LAW REFORM

REPORT OF THE ALTERNATIVE TRANSPORTATION WORKGROUP

December 2009

PREFACE

The Commonwealth of Virginia Commission on Mental Health Law Reform ("Commission") was appointed by the Chief Justice of the Supreme Court of Virginia, the Honorable Leroy Rountree Hassell, Sr., in October 2006. Commission members include officials from all three branches of state government as well as representatives of many private stakeholder groups. The Commission was directed by the Chief Justice to conduct a comprehensive examination of Virginia's mental health laws and services and to study ways to use the law more effectively to serve the needs and protect the rights of people with mental illness, while respecting the interests of their families and communities. Goals of reform include reducing the need for commitment by improving access to mental health services, avoiding the criminalization of people with mental illness, making the process of involuntary treatment more fair and effective, enabling consumers of mental health services to have greater choice regarding the services they receive, and helping young people with mental health problems and their families before these problems spiral out of control.

During the first phase of its work, the Commission was assisted by five Task Forces charged, respectively, with addressing gaps in access to services, involuntary civil commitment, empowerment and self-determination, special needs of children and adolescents, and intersections between the mental health and criminal justice systems. In addition, the Commission established a Working Group on Health Privacy and the Commitment Process ("Working Group"). Information regarding the Commission and Reports of the Commission and its various Task Forces are all available at http://www.courts.state.va.us/programs/cmh/home.html

Based on its research and the reports of its Task Forces and Working Groups, the Commission issued its *Preliminary Report and Recommendations of the Commonwealth of Virginia Commission on Mental Health Law Reform* ("Preliminary Report") in December, 2007. The Preliminary Report, which is available on-line at http://www.courts.state.va.us/cmh/2007_0221_preliminary_report.pdf, outlined a blueprint for comprehensive reform ("Blueprint") and identified specific recommendations for the 2008 session of Virginia's General Assembly that focused primarily on the commitment process.

After the General Assembly enacted a major overhaul of the commitment process in 2008, the Commission moved into the second phase of its work. Three new Task Forces were established – one on Implementation of the 2008 Reforms, another on Future Commitment Reforms and one on Advance Directives. In addition, the Commission created a separate Working Group on Transportation. Each of these Task Forces and Working Groups presented reports to the Commission, together with recommendations for the Commission's consideration.

In December, 2008, the Commission issued a Progress Report reviewing its work in 2008 and providing a status report on the progress of mental health law reform in Virginia during 2008. It summarized the changes adopted by the General Assembly in 2008, reviewed the steps taken to implement them, summarized the available data on the operation of the

commitment system during the first quarter of FY2009, presented the Commission's recommendations for consideration by the General Assembly in 2009, and identified some of the important issues that the Commission will be addressing in the coming year. The 2008 Progress Report can be found at http://www.courts.state.va.us/programs/cmh/2008_1222_progress_report.pdf

During 2009, the Commission focused on implementation and refinement of the reforms adopted during 2008 and 2009 and on several key issues that had been deferred, including the length of the emergency hospitalization period (the "TDO" period) and the possible expansion of mandatory outpatient treatment. The Commission also continued to study ways of enhancing access to services in an integrated services system. The Commission plans to complete its work in 2010.

The accompanying Report represents the views and recommendations of the members of the Alternative Transportation Workgroup, and should not be construed as reflecting the opinions or positions of the Commission on Mental Health Law Reform, the Chief Justice, the individual Justices of the Supreme Court of Virginia, or of the Executive Secretary of the Supreme Court. Any recommendations or proposals embraced by the Court itself will lie exclusively within the judicial sphere.

Richard J. Bonnie, Chair
Commission on Mental Health Law Reform
December 2009

TRANSPORTATION WORKGROUP MEMBERS

Berg, Michael
Department of Health
Office of Emergency Medical Services

Breton, Randolph (Randy)
Chief Operating Officer
Medical Transportation Services LLC
Physicians Transport Service

Burch, Stephanie R.
Captain
Suffolk Police Department
Suffolk, VA

Byrd, Mason
Magistrate Advisor
Office of Executive Secretary
Supreme Court of Virginia

Carlini, David
Director of Behavioral Medicine
Prince William Health System

Curran, Derek
Emergency Services Director
Hampton-Newport News Community Services Board

Decker, Chip
Executive Director
Richmond Ambulance Authority

Grimes, Terry, Ed. D
President
Empowerment for Healthy Minds

Farr, M. Jay
Deputy Chief
Arlington Co. Police Department

Hancock, Catherine
Mental Health Policy Analyst
Department of Medical Assistance Services

Hickey, Jane (Chairman)
Senior Assistant Attorney General/Chief
Health Services Section
Office of the Attorney General

Hickman, Richard (Dick)
Deputy Staff Director
Senate Finance Committee

Hines, Judith (Judy)
President
Friends of Loudoun Mental Health

Holt, Gerald S. (Honorable)
Sheriff
Roanoke County

Jones, John W.
Executive Director
Virginia Sheriffs' Association

Jones, Thomas D. (Honorable)
Sheriff
Charlotte County

Knox, III Robert (Bob)
Department of Medical Assistance Services

Koehler, Sharon
Department of Mental Health Mental Retardation and Substance Abuse Services

Morgan, Gabe (Honorable)
Sheriff
City of Newport News

Sanders, Sherry
Coordinator of Crisis Services
Cumberland Mountain Community Services Board

Shrad, Dana
Executive Director
Virginia Association of Chiefs of Police

Staff:

Rome, Joanne
Commission staff and
Staff Attorney, Office of
Chief Staff Attorney
Supreme Court of Virginia

COMMISSION ON MENTAL HEALTH LAW REFORM

REPORT OF THE ALTERNATIVE TRANSPORTATION WORKGROUP

During its 2009 Session, the Virginia General Assembly passed landmark legislation, proposed by the Commission on Mental Health Law Reform and its Alternative Transportation Workgroup, authorizing for the first time transportation of persons under emergency custody and temporary detention orders to be provided by someone other than a law-enforcement officer.

The mission of the Alternative Transportation Workgroup for 2009 was to:

1. Review implementation of the 2009 amendments to the Code of Virginia permitting the use of transportation providers other than law-enforcement as part of the emergency custody, temporary detention, and civil commitment process, and make recommendations for any legislative or administrative changes that may be helpful to implement the legislation.

2. Monitor the status of the Department of Medical Assistance Services' provisions for payment of psychiatric transports.

3. Develop strategies to encourage the use of alternative transportation.

I. Implementation of Alternative Transportation Legislation

Data on Use

Between July 1 and November 30, 2009, magistrates issued 50[1] alternative transportation orders.[2] Of the 50 magistrate-issued orders, 41 were temporary detention orders (TDOs) issued for adults; five were TDOs issued for minors; and four were emergency custody orders (ECOs) issued for adults. Transportation was provided by ambulance, medical transport or emergency medical technicians in 14 cases; 23 transports were provided by family members; one by a friend; four by community services boards; two by a private residential provider; two by social workers; and four by campus, regional jail or other police. Thirteen alternative transportation orders were issued for adults over age 65[3] and five orders were issued for minors.

[1] One alternative transportation order was issued to authorize a law-enforcement agency other than the one identified in the statute to provide transportation; one order permitted a regional jail to provide transportation; and two orders permitted university campus police to provide the transportation.
[2] The Executive Secretary's Office of the Virginia Supreme Court does not collect data on the numbers of alternative transportation orders issued by judges or special justices following a commitment hearing. The data provided to the Transportation Workgroup is therefore limited to magistrate-issued orders.
[3] The Transportation Workgroup began receiving dates of birth in mid-August to make this determination.

Alternative transportation orders have also been issued throughout the state and are not concentrated in one or several jurisdictions or community service board (CSB) catchment areas. Magistrates in Southwest Virginia have issued the most alternative transportation orders with 13. The Workgroup speculated that in rural areas people tend to know each other and what behaviors to anticipate from particular individuals when they are in crisis and may, therefore, have a greater comfort level in transporting people without the use of law enforcement. The breakdown of alternative transportation orders for the rest of the state is as follows: five in Tidewater; four on the Peninsula; ten in Central Virginia; four in Northern Virginia; six in Southside Virginia; three in the Valley; three in the Roanoke area; and one on the Northern Neck/Middle Peninsula.

Training and Feedback

Following enactment of the alternative transportation legislation and other legislation during the 2009 General Assembly Session, the Department of Behavioral Health and Developmental Services, the Virginia Association of Community Services Boards, and the Office of the Attorney General developed a training package on this and other legislation passed in 2009. Training was presented in five locations throughout Virginia. The training programs were well-attended, especially by magistrates and representatives from local police departments and sheriffs' offices. A number of concerns were raised concerning implementation of the legislation, as well as fears on the part of magistrates, providers and law-enforcement officers of an adverse event endangering the safety of the public or the person transported.

The Alternative Transportation Workgroup discussed the reluctance on the part of many people to provide transportation based upon fear of a bad outcome or event and liability concerns. It also recognized that shifting views on how individuals might be transported will take time. Everyone agreed, however, that the routine transportation of persons with mental illness in shackles and marked law enforcement units is not where Virginia should be and developing an alternative medical transportation system is needed. All agreed that the greater use of alternative providers will take time, additional training and greater awareness of when and which alternative transportation options are appropriate. Further, there was agreement that implementing the use of alternative providers must be accomplished incrementally in those circumstances where it is abundantly clear that the alternative provider is appropriate and safe.

Because the number of alternative transportation orders is still low and can be tracked individually, but is distributed throughout the state so it is possible to obtain diverse feedback, the Alternative Transportation Workgroup recommends collecting information on the use of alternative transports. Such data could be collected by one of two options. Option one would be to broadly survey individuals and/or their families, CSBs, magistrates and others who have used alternative transportation throughout the state. A simple questionnaire could be developed to collect the pertinent information. Alternatively, profiles, or case studies, of successful alternatives could be developed, with the individual's consent, through conversations with those involved in arranging and providing the alternative transports. In both cases, questions would include: what were

the motivating factors or reasoning for the use of alternative transportation? If you have been transported under an ECO, TDO or commitment order in the past, was this a more positive experience? Would alternative transportation have been provided in the past if there had been an opportunity to do so? Would alternative transportation be used again? Did you get the support you needed from the mental health and medical system?

Information about transports and profiles of actual situations where an alternative transportation provider was used would be useful for training purposes. Presentation of these examples at training events and in professional newsletters may encourage the use of alternative transportation where it has not yet been used. The Alternative Transportation Workgroup also recommends that when this information is developed the media should be informed that a policy shift has occurred in Virginia enabling people with mental illness to be treated more humanely, but safely, without the stigma that the use of law enforcement entails.

Forms

The Alternative Transportation Workgroup also reviewed the ECO, TDO and Alternative Transportation Form Orders developed by the Executive Secretary's Office of the Virginia Supreme Court effective July 1, 2009 and found them to be straightforward. One concern was whether it is clear in the full paragraph following the check boxes that family members can be designated as alternative providers. The paragraph lists those from whom the magistrate may obtain information upon which to base his decision, but does not list who may be considered to provide transportation. The lines below that paragraph do clearly require that the alternative provider be named.

One frequent question raised by law-enforcement officers during the June training programs was whether the ECO or TDO form order could be amended to permit a law-enforcement officer to continue the transportation if he determined, upon execution of the ECO or TDO, that the designated alternative provider could not safely transport the person. Currently the officer must either take emergency custody upon his own motion or obtain a revised ECO or TDO from the magistrate. The Alternative Transportation Workgroup has asked whether the Executive Secretary's Office of the Supreme Court could consider this option.

II. Medicaid Payment for Psychiatric Transports

The Department of Medical Assistance Services (DMAS) will provide reimbursement for psychiatric transports in two phases. The first phase will be to enroll local law-enforcement agencies and CSBs as Medicaid psychiatric transportation providers. When the system is implemented, DMAS will reimburse law-enforcement and community services boards retroactive to July 1, 2009, when individuals who are Medicaid recipients or are Medicaid-eligible are transported on an emergency basis as part of the commitment process. However, DMAS is going through a computer conversion process and that, coupled with the severe state budget crisis, is delaying implementation. Prior to full implementation of this first phase of reimbursement, DMAS

will provide training on the enrollment and claim submission process. Law-enforcement agencies and CSBs should save copies of the ECOs, TDOs and commitment orders as documentation of the transport, or some other type of documentation if the person is transported voluntarily, in order to be reimbursed retroactive to July 1, 2009.

Once law-enforcement and CSB providers are enrolled, DMAS will begin its phase two of reimbursing psychiatric transportation providers by enrolling private providers with training provided prior to the effective date. Transportation for routine appointments for psychiatric care should continue to be arranged through Logisticare, DMAS' transportation broker. The managed care organizations serving Medicaid recipients will also provide reimbursement for emergency psychiatric transportation.

DMAS will also develop a training and certification program for psychiatric transportation providers. A stretcher van type vehicle could be developed and used for these transports. DMAS is optimistic that public providers, such as CSBs, and private provider networks will be able to be developed to provide alternative psychiatric transportation.

III. Future Activities

Through June 30, 2010, the Alternative Transportation Workgroup will monitor implementation of the alternative transportation legislation through review of the monthly TDO reports provided by the Supreme Court referenced in Section I above and collecting anecdotal information. Based on this information, it will identify any legislative or administrative changes that might be helpful to more effectively implement the legislation. Because the use of alternative transportation is relatively new, it is too early to make recommendations for legislative changes for consideration during the 2010 General Assembly Session.

The Alternative Transportation Workgroup will also continue to monitor whether and to what extent DMAS' efforts to provide reimbursement for emergency psychiatric transportation is successful in stimulating alternative public and private transportation providers. In addition, the Alternative Transportation Workgroup will gather information and develop profiles of successful situations in which alternative transportation has been used to provide best-practice examples as part of training programs and include in organizational newsletters to encourage its use.