

MEETING NOTES

Statewide Substance Use Response Working Group Response Subcommittee Meeting

Thursday, October 27, 2022
9:00 a.m.

Zoom Meeting ID: 868 3331 1069
Call in audio: 312-626-6799
No Public Location

Members Present via Zoom or Telephone

Assemblywoman Jill Tolles, Dr. Terry Kerns, Gina Flores-O'Toole, Shayla Holmes, Dr. Stephanie Woodard

Members Absent

Christine Payson

Attorney General's Office Staff

Ashley Tackett and Rosalie Bordelove

Social Entrepreneurs, Inc. Support Team

Crystal Duarte and Madalyn Larson

Members of the Public via Zoom

Jeanette Belz, Christopher Ries, Sarah Adler (Belz & Case), Lea Tauchen, Vanessa Dunn (Belz & Case)

1. Call to Order and Roll Call to Establish Quorum

Chair Kerns called the meeting to order at 9:02am.

Ms. Duarte called the roll and established a quorum, with one member absent.

2. Public Comment (9:05am) *(Discussion Only)*

Chair Kerns asked for public comment.

No public comment was provided.

3. Review and Approve Minutes from September 13, 2022 Response Subcommittee Meeting (9:06am) *(For Possible Action)*

Chair Kerns asked for a motion to approve the September 13, 2022 Response Subcommittee meeting minutes.

- Assemblywoman Tolles made the motion;
- Dr. Woodard seconded the motion;
- The motion passed unanimously.

4. Finalize Subcommittee Recommendations (9:07am) *(For Possible Action)*

Proposed Guiding principle (see slide 8):

Harmonize criminal justice and public health responses to promote access to treatment and medical care to reduce criminalization and punitive practices toward individuals with substance use disorder.

Ms. Duarte mentioned at the overall SURG meeting, it was stated that our guiding principle doesn't match up with all of our recommendations. She opened this up for discussion to revise if needed.

Assemblywoman Tolles stated we could add "***while holding traffickers of illegal substance accountable***" to the end of the guiding principle.

Chair Kerns likes this suggestion because one of the overriding issues we need to look at is the supply of drugs.

Dr. Woodard stated we are the only subcommittee who put forth a guiding principle and like the comments from the larger SURG mentioned this may not be applicable to all of the recommendations our Subcommittee may be making. Context matters in this case and while we can account for some of the context with adding language, ensuring that it is purposely connected to the subcommittee recommendations will amplify the intent of the guiding principle.

Chair Kerns wanted to clarify if Dr. Woodard would still like to have the guiding principle?

Dr. Woodard says the guiding principle is the overarching theme and we may or may not need to augment this to the recommendations this subcommittee is making. Her concern is that adding specific language may lose some of the guiding principle nuance when it is too specific.

Ms. Holmes agrees with Dr. Woodard, in that the guiding principle does not capture all of the recommendations and I agree that it came out of very specific recommendations and it makes our subcommittee too narrow. It needs more word-smithing to capture all of the recommendations that have been put forth by our recommendations.

Assemblywoman Tolles stated she agrees with Dr. Woodard and Ms. Holmes that the guiding principle is limiting. Going through the recommendations and then coming back to this is a good idea. She talked about the language of the legislative process and how adding language can get tricky. Idea: Ultimately, we want to harmonize criminal justice and public health responses and then the recommendations and justification per each recommendation speak for themselves. So we can keep the guiding principle simple and not get too specific with each recommendation language in the guiding principle.

Ms. Flores-O'Toole agrees with simplifying the guiding principle.

The simplified version states: ***Harmonize criminal justice and public health responses***

Ms. Duarte said we may not need a formal vote, but we do need to agree on what we are putting forward for the next large SURG meeting.

Ms. Duarte then described how information on the PowerPoint slides is organized to structure discussion:

1. Revisions from the SURG
2. Revisions from other subcommittees
3. Action steps and justification for the recommendation

Recommendation #1 (see slides 9-10):

Support legislation to establish a statewide and regional Overdose Fatality Review (OFR) committees and recommend an allocation of funding to support the OFR to effectively identify system gaps and innovative community-specific overdose prevention and intervention strategies in accordance with established best practices such as the Bureau of Justice Assistance's Overdose Fatality Review: A Practitioner's Guide to Implementation.

Dr. Woodard wanted to clarify that the Prevention Subcommittee is planning on retaining the full language of their recommendation, but they wanted to add specificity to our recommendation of the OD fatality review committees to add information and data sharing between law enforcement and public health?

Ms. Duarte responded with confirmation to Dr. Woodard that her understanding is correct.

Chair Kerns added that data sharing between law enforcement and public health is one of the best practices of the Practitioners Guide to Implementation. If we are adding just this one, why aren't we adding the other best practices because she doesn't see why we would highlight only this best practice in relation to all of the others or lumping them into the general category of best practices.

Dr. Woodard agrees with Chair Kerns. She noted that once we start listing out best practices and ones at higher specificity than others, we run the risk of having to put all of the best practices in there. Why would we put one best practice at greater detail and not the others?

Chair Kerns noted the Prevention Subcommittee supporting the backbone agency for data collection should stay because she sees them as separate and perhaps some of the information from the Overdose Fatality Review would support the dashboard or backbone agency information.

Assemblywoman Tolles agrees with Dr. Woodard's statement about the inclusion of one best practice begs the question of having to include all of them. She suggested that the recommendation could be broken out into three parts:

Support legislation to establish a statewide and regional Overdose Fatality Review (OFR) committees and recommend an allocation of funding to support the OFR to effectively identify:

- a) system gaps and innovative community-specific overdose prevention;
- b) intervention strategies; and

- c) data sharing agreements between public safety and public health in accordance with established best practices such as the Bureau of Justice Assistance's Overdose Fatality Review: A Practitioner's Guide to Implementation.

Chair Kerns mentioned that data sharing between law enforcement and public health should be a practice beyond the OFR. When we are trying to set up the frameworks and models of this, we should have public health and law enforcement data sharing agreements in other areas. For example, if there is a big drug seizure or if public health is seeing a large number of people coming into the hospitals with overdoses from a certain type of drug, then we should be able to share beyond the OFR. When we call out the ORF it is limiting when we need to have it in other areas as well.

Ms. Flores-O'Toole agreed with taking it out due to data sharing being in the Practitioners Guide to Implementation.

Ms. Holmes had similar thoughts and agreed with leaving this recommendation broader.

Chair Kerns stated the Prevention Subcommittee recommendation talks about creating a comprehensive data sharing system so the public health and law enforcement data sharing agreements should be in the Prevention Subcommittee because the Response Subcommittee is looking at more than the OFR, we are looking at it for response, for a bad batch message, we need this more than just for the Overdose Fatality Review. This could be included in the Prevention Subcommittee comprehensive data sharing system.

Dr. Woodard agreed with Chair Kerns. It would make a nice addition to the Prevention Subcommittee recommendation.

Ms. Duarte will type this up and share this with the other SEI staff for them to decide if they would like to share our recommendations with the other Subcommittees, so they can be prepared for the larger SURG meeting coming up.

Chair Kerns agrees the justification and action step are appropriate.

Dr. Woodard confirmed we would need a legislative sponsor for our action step on this item, a bill draft request (BDR).

Assemblywoman Tolles noted the AGs office is holding some of the BDRs for the work for this subcommittees but this one specifically might be out of their scope. This might be different enough it would need its own BDR. I would submit on December 14th to the legislators on this committee.

Chair Kerns agrees this recommendations looks good as is and to make the recommendation to the Prevention Subcommittee to add in the data sharing agreements between law enforcement and public health to their recommendation. We should keep the justification, action steps and research links as is.

Chair Kerns asked for a motion to keep Recommendation #1 as it is and make the recommendation to the Prevention Subcommittee.

- Dr. Woodard moved the motion;
- Ms. Flores-O'Toole seconded the motion;
- The motion passed unanimously.

Recommendation #2 (see slides 11-13)

Revise penalties based on the quantity of Fentanyl, analogs, or other synthetic drugs of high potency that are trafficked. (NRS 453.3385, NRS 453.336, 453.339, 453.3395). .

Ms. Duarte noted the subcommittee members and the public have access to an informational email from the Board of Pharmacy. She also noted the justification language was from Christine Payson, one of our Subcommittee members. Finally, there were no suggested revisions to this recommendation.

Chair Kerns stated there are other states that have done this (we can add this to our research), but she wasn't sure if there are any model legislation to this, but would look. In a Fentanyl training she completed recently, national law enforcement noted that Fentanyl is not going away any time soon. They believe Fentanyl is going to increase over the next few years, which would mean an increase in overdose deaths as well.

Dr. Woodard asked if the intention of this subcommittee is to leave our recommendation as is and then leave the potential quantities to the legislation? She mentioned that some of the analogs that are coming out may have higher potency at smaller doses. A concern is that if we are overly specific in potential legislation we may miss the opportunity to have flexible statutory language that would allow us to update at a regulatory level to modernize quicker than having to go into statute.

Chair Kerns agreed with this as a valid comment from Dr. Woodard, that maybe making a recommendation but not naming specific amounts is the best course of action.

Assemblywoman Tolles notes the subcommittee should keep the recommendation broad. Then, the legislative bodies make the final decision with the input of experts and legal counsel to decide on the best and more appropriate exact language.

Chair Kerns confirmed the subcommittee members want to keep this recommendation as is and also keep the justification with the weights, penalties and potential deaths and that requesting a BDR is the appropriate action step. The research links will also be included. Christine Payson may have additional research links.

Assemblywoman Tolles noted Senator Seevers-Gansert has a BDR set aside for this as well.

Chair Kerns asked for a motion to keep Recommendation #2 as it is including the action step as a BDR.

- Assemblywoman Tolles moved the motion;
- Ms. Holmes seconded the motion;

- The motion passed unanimously.

Recommendation #3 (see slides 14-15)

Leverage existing programs and funding to develop outreach provider(s) and/or personnel that can respond to any suspected overdose and offer follow-up support, referrals, and services to the individual (and loved ones) following an overdose. Provider(s) and/or personnel to be deployed to anyone being released from an institutional setting who is being discharged post overdose or suspected overdose.

Ms. Duarte noted SURG, Prevention and Treatment and Recovery subcommittee recommended revisions to recommendation #3. One item not noted on the slide is the larger SURG recommended we include the language of “persons with lived experience” somewhere in our recommendation. However, the Treatment and Recovery subcommittee would like to keep their recommendation related to “persons with lived experience” as its own recommendation to give it the weight it deserves.

Chair Kerns recommended we suggest a revision to the Treatment and Recovery Subcommittee recommendation to include “people with substance use disorder”, not just opioid use disorder. This needs to be comprehensive of all substances. We know from HIDTA that stimulants, like methamphetamine are of concern in our state. That recommendation would read:

*“Implement follow ups and referrals to support and care; linkage of care for justice involved individuals, including individuals leaving the justice system, and pregnant or birthing persons with **substance use disorders.**”*

Secondly, Chair Kerns noted the recommended addition from the larger SURG to add long term support for the families will not be included in our recommendation but the intention is to get individuals and their families involved with wraparound services, rather than providing them specifically and following up with them.

Ms. Flores-O’Toole added that if we are leveraging our existing programs to provide the immediate need once an overdose occurs, then supplying long term care is an entirely different idea. She recommends we keep the recommendation as it is. Although, she added, she would like to include people coming out of the justice system as well.

Dr. Woodard agrees with Chair Kerns’s recommendation to offer the change in language to the Treatment and Recovery recommendation of being more expansive and changing “opioid use disorder” to “substance use disorder”. She is also in support of keeping the language as is in recommendation #3. In addition, for clarity of intent we may want to define what “institutional settings” are in this recommendation, as this includes settings of incarceration, as well as hospitals and inpatient treatment.

Chair Kerns agreed and mentioned we may consider giving examples of the “institutional settings” in parentheses (e.g. hospitals, incarcerated facilities, and other institutional settings). We want to be sure we include people who may overdose in a non-institutional setting as well, so they can receive care and outreach.

Ms. Holmes agreed with all of the discussion thus far. She also agreed with Ms. Flores-O'Toole in that we don't want to add long term support within this recommendation but rather long-term support as a referral and follow up piece.

Dr. Woodard made a comment we may want to add community settings to the institutional settings in recommendation #3.

*Leveraging existing programs and funding to develop outreach response provider(s) and/or personnel that can respond to any suspected overdose and offer follow-up support, referrals, and services to the individual (and loved ones) following an overdose. Provider(s) and/or personnel to be deployed to anyone being release from an institutional and **community settings (e.g. hospitals, carceral facilities, and other institutional settings)** who is being discharged post overdose and suspected overdose.*

Dr. Woodard recommended we be more expansive with the action step for this recommendation. If we are overly limited with opioid settlement funds, those dollars are really specific to opioids and they won't be the correct funds to fund the activities included in this recommendation. To be broader, she recommended the action step should be through state funding and federal funding. This will allow for more latitude for this specific recommendation.

Chair Kerns asked for a motion to keep recommendation #3 with the revisions that were made, to make a recommendations to the Treatment and Recovery Subcommittee to revise their recommendation, not add the long-term support to families from the larger SURG recommendation, and to the revisions of the action step to be more expansive with state and federal dollars.

- Ms. Holmes moved the motion:
- Dr. Woodard seconded the motion:
- The motion passed unanimously.

Ms. Duarte added a note about the final report – the recommendations will be coming from the larger SURG, rather than the three subcommittees. We will try and create categories of the recommendations to come from the committee as a whole. These recommendations will not be revised but they will be re-categorized.

Chair Kerns asked if the categories will align with the ACRN Needs Assessment report headings.

Ms. Duarte stated it is a good idea to look at the headings of the ACRN Needs Assessment report when drafting the SURG report.

Recommendation #4 (see slides 16-17)

Fund personnel and resources to investigate and prosecute drug-related crimes, including an independent medical examiner for reports that specify the cause of death in overdose cases where the source of the drug supply has been identified and can be prosecuted.

Ms. Duarte brought up that there was discussion on how rural counties will benefit from having a medical examiner and how we might need more than one medical examiner across the state.

Assemblywoman Tolles noted there were some concerns with this recommendation. There are conflicts between the Good Samaritan Law and the Drug Induced Homicide law. The concern is the language of the source of the drug supply may capture people who are not the traffickers we are talking about here (i.e. family members). We want to make sure we can resolve this conflict and not exacerbate it with the language of this recommendation.

Chair Kerns would like clarity of who we mean when we say “fund personnel and resources” other than the medical examiner included in this language. When Chair Kerns talked to Christine Payson, she mentioned there have been no family members targeted in this language because that was not the intent of those laws. She asked if we should call out the trafficking source in this recommendation to ensure we are not capturing those who may have given someone something with Fentanyl unknowingly.

Dr. Woodard confirmed what Chair Kerns noted about Christine Payson’s remarks. She did emphasize that we have to be careful in the language that we choose, so we can be clearer in what our intent is.

Ms. Holmes recommended we may need to differentiate between a drug sale and if someone is using with a friend. This means that we can differentiate between someone who is selling drugs with potential Fentanyl, compared to individuals who may be using together in a social setting.

Dr. Woodard recommended we get subject matter expert input for the best choice of language before moving forward with this recommendation This will help us avoid running the risk of unintended consequences. She also recommended we consult with the Board of Pharmacy.

Chair Kerns added we may want to consult with District Attorneys who prosecute these types of cases to see if they have recommendations on the best language to use.

Ms. Bordelove noted if the subcommittee tables this recommendation for now, it would need another meeting to finalize the recommendation(s).

Assemblywoman Tolles noted the best way to keep this recommendation now is to take the prosecution language out and know that this subcommittee can look into the appropriate prosecution language in a future recommendation. Right now, we can all agree there is a gap in an independent medical examiner and this would be helpful to have for prevention, intervention, treatment, and prosecution. She recommended the new language as:

“Fund personnel and resources to investigate including, an independent medical examiner for reports that specify the cause of death in overdose cases.”

Dr. Woodard noted we may not need language related to source in this case because it might get us away from what the initial intent was. We could also lose the word “including” if our intent is

to be broader than a medical examiner, because if not, we could lose the word “including” and just say fund personnel and resources for independent medical examiners.

Chair Kerns noted Christine Payson’s original intention was to fund more investigative positions at the medical examiners and coroner’s office. There are two separate issues here: one with the independent medical examiner and then, the funding for the investigative personnel and resources to investigate these cases.

Ms. Flores-O’Toole stated she would like to revise as “Fund an independent medical examiner for reports that specify the cause of death in overdose cases” to leave out the investigating part.

Dr. Woodard recommend new language as, “Fund personnel and resources for independent medical examiner(s) for investigators and reports to specify the cause of death in overdose cases.”

Dr. Woodard noted that she added “investigation” back in because she believes these reports are specifically for those investigations, so we don’t lose the “investigation” terminology, but we properly place it under the oversight of the medical examiners because that is their intent and purpose in this case.

Assemblywoman Tolles agreed with Dr. Woodard’s language. She would recommend we keep that language in there but simplify the overall statement with Dr. Woodard’s recommended revision. If we were to take out “investigations” overall, we could come back and decide later because our recommending member is not on the call.

Dr. Woodard recommended a revision to the action step to be local, state and federal funds including opioid settlement funds because the settlement funds is too limiting. The broader the opportunity the better.

Chair Kerns agreed with that. This recommendation goes beyond the opioid settlement funds, with mention of poly-drugs in the justification of this recommendation.

The revised recommendation was put forth as follows:

Fund personnel and resources for independent medical examiner(s) for investigations and reports to specify the cause of death in overdose cases.

Chair Kerns asked if this subcommittee would like to table this recommendation until we get more subject matter expertise or move the recommendation forward as it has been revised.

- Ms. Flores-O’Toole made the motion to approve the revised recommendation;
- Ms. Holmes seconded the motion;
- The motion passed unanimously.

Response Subcommittee Preliminary Recommendations (see slide 18)

At the subcommittee’s last meeting the following were determined to need additional review and discussion before a recommendation could be made. This included:

- *Resolve the conflict between the Good Samaritan Drug Overdose Act and Drug Induced Homicide Law; immediate actions may include recommending community-level education using best practices guidelines, as well as education for law enforcement personnel.*
- *Policy change to cover non-pharmacological or complementary treatments for pain, also to increase coverage of preventative and non-pharm/CAM modalities.*

Note Support For:

- Reform fund criminal justice services to offer all three FDA approved medications for the treatment of opioid use disorder. *There is a BDR that will be put forth in the coming legislative session that will address this.*

Dr. Woodard provided the BDR language from the Interim Health and Human Services committee in the chat:

Require all jails and state prisons to take reasonable measures offering medication-assisted treatment for inmates diagnosed with opioid use disorder in the same manner and to the same extent as other forms of health care. Prohibit jails and prisons from discriminating against medication-assisted treatment in favor of other forms of treatment or abstinence without treatment. If a person is incarcerated in a jail or transferred from a jail to a prison and has already received medication-assisted treatment, the jail or prison must facilitate the continuation of this treatment. The jail or prison must also take reasonable measures to facilitate continuation of medication-assisted treatment upon release. (BDR –332)

Chair Kerns asked for a motion to approve the reform and fund criminal justice services to offer all three FDA approved medications for the treatment of opioid use disorder.

- Ms. Holmes made the motion;
- Assemblywoman Tolles seconded the motion;
- The motion passed unanimously.

Guiding Principle Discussion Continuation

Ms. Duarte asked for subcommittee members thoughts on the current revised guiding principle and if they would like to submit this to the larger SURG for their review.

Chair Kerns mentioned the other subcommittees know about our guiding principle, but none of them suggested creating one for their own subcommittees. She noted she did like the phrasing of, “Harmonize criminal justice and public health responses.” But, she added, that this might be beyond criminal justice, so is it public safety and public health response? Because we often look at EMS and law enforcement response. Will we include our specialty courts in this? She feels like it is bigger than criminal justice and should be public safety at large.

Dr. Woodard agreed with Chair Kerns.

Ms. Holmes noted the separate in public and behavioral health responses, and she believes it is both. She added, “*Harmonize public safety and public **and behavioral health** responses*”

Assemblywoman Tolles added “*Harmonize public safety and public and behavioral health responses **to substance use in our communities and state***”

Chair Kerns agrees with these revisions.

Chair Kerns asked the subcommittee if they would like to entertain a motion to include the revised guiding principle for the Response Subcommittee.

- Assemblywoman Tolles made the motion;
- Dr. Woodard seconded the motion;
- The motion passed unanimously.

5. Subcommittee Appointments and Process (10:41am) (Discussion Only)

Chair Kerns stated according to Section 7E of the SURG bylaws, subcommittee members will serve for one year on the subcommittee and after one year the Working Group chair will determine if the subcommittee needs to continue for another year. If the committee is needed for another year, the Working Group Chair will appoint the subcommittee chair and members from the Working Group.

Chair Kerns asked for the subcommittee members’ intentions on whether they would like to stay on this subcommittee or move to other subcommittees. The Response Subcommittee will need someone to Chair and Co-Chair, because Assemblywoman Tolles will no longer be a member.

Ms. Holmes stated she would be willing to serve as the co-chair.

Chair Kerns asked the subcommittee members to please let Ms. Duarte know what their intentions are, so she can relay them to AG Ford to make the decisions on appointments. We will note that Ms. Holmes has offered to be Co-chair.

7. Public Comment (10:44am) (Discussion Only)

There was no public comment

8. Adjournment

Chair Kerns thanked the subcommittee members and legal counsel for their hard work. She also thanked Assemblywoman Tolles for all her work and her great guidance and leadership.

Assemblywoman Tolles also thanked everyone for their hard work.

The meeting was adjourned at 10:46 a.m.

Chat Record

Crystal Duarte (she/her): Please note that we cannot receive public comment via the chat. Chat should only be used to communicate technical issues to the host.

Stephanie Woodard, Psy.D. DHHS-NV: Based on Dr. Kern's comments, we may want to add community settings in addition to institutional settings.

Stephanie Woodard, Psy.D. DHHS-NV: Fund personnel and resources for independent medical examiner(s) for investigations and reports to specify the cause of death in overdose cases.

Stephanie Woodard, Psy.D. DHHS-NV: Require all jails and state prisons to take reasonable measures offering medication-assisted treatment for inmates diagnosed with opioid use disorder in the same manner and to the same extent as other forms of health care. Prohibit jails and prisons from discriminating against medication-assisted treatment in favor of other forms of treatment or abstinence without treatment. If a person is incarcerated in a jail or transferred from a jail to a prison and has already received medication-assisted treatment, the jail or prison must facilitate the continuation of this treatment. The jail or prison must also take reasonable measures to facilitate continuation of medication-assisted treatment upon release. (BDR –332)