INFORMATIONAL HEARING

State Hospital Safety in the Balance: Changes and Challenges for the 21st Century

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Napa Valley College

ISSUE PAPER

Napa State Hospital (NSH) has been in operation for nearly 140 years. Originally opened in 1875, the patient population peaked in the 1960's with over 5000 residents. NSH is one of the nation's largest mental health facilities and one of eight in the California state hospital system. The facility rests within Napa County, internationally known as a world-class destination, as well as for its fine wines and award-winning restaurants. Recent media, particularly following the tragic death of a NSH employee in 2010, has focused attention on a range of safety issues. Additionally, facing external oversight, internal reforms, the expansion of forensic populations, and budget tightening caused by the economic troubles of the past five years, the Department of State Hospitals (DSH), NSH, and the region have struggled to balance, meet, and overcome the changes and challenges of the 21st century.

NSH is classified as a low-to-moderate (for purpose of escape, not risk of violence) security treatment facility, although over the last 20 years, the NSH population has required progressively greater supervision. The treatment area encompasses 138 acres on an open campus, and serves individuals with a wide spectrum of mental illnesses, though the most frequent diagnoses include schizophrenia disorders, mood disorders, and personality disorders. NSH has a licensed capacity of 1362 beds, staffed by about 2300 workers offering and supporting a range of services based upon a bio-psychosocial rehabilitation philosophy. The facility currently serves just over 1200 patients today. The hospital is committed to providing appropriate treatment for patients in a safe environment and in a fiscally responsible manner. Napa State Hospital admits individuals from throughout

California who have been referred from their home county under a civil commitment (appx. 10%), or through the courts on a forensic commitment (appx. 90%).

Although the hospital admits both civilly and forensically committed individuals, in recent years the population has shifted to overwhelmingly forensic. "Civil commitment" is a legal process through which an individual with severe mental illness who is judged at risk to harm themselves or others is ordered into treatment in a hospital, or in the community. Civil commitments typically follow a period of emergency hospitalization and a subsequent determination that further commitment is necessary. "Forensic commitments" are for people who are charged with a crime and, due to their mental condition, are found to be unable to assist in their defense and therefore are incompetent to stand trial (IST) or are found guilty by reason of insanity (NGI).

According to a 2011 security report of the (then) Department of Mental Health[i], during the mid-1990s Napa State Hospital's forensic population hovered around 20 percent. However, by 2010 the forensic population reached 93 percent. The growth in forensic commitments is attributed to a 1997-98 state budget which implemented a Governor-initiated effort to accommodate a larger criminal population. Before an imbalance between civil and forensic referrals occurred, the population was not as aggressive, or as dangerous to staff and other patients. Today's forensic population consists of those who are incompetent to stand trial, those who disclaim guilt by reason of insanity, those who are mentally ill or mentally disordered offenders (including those whose parole has expired and are still in need of inpatient mental health treatment), and sexually violent predators. As the forensic population increased so did workers' compensation claims and job-related related injuries.

Data provided by the Department of State Hospitals shows that system wide, **aggressive acts toward another patient** were documented 2085 times in 2011, resulting in treatment for 570 incidents, medical treatment in an emergency room or as an outpatient for another 31 incidents, and one hospitalization. Not included in that count are 436 **aggressive acts toward a staff person**, 89 of which required emergency or outpatient medical treatment. In 2012, the number of aggressive acts toward another patient reached 2152, of which 552 required first aid or emergency or outpatient medical treatment and two required hospitalization. That same year, aggressive act toward a staff person grew to 2452, including 406 which required first aid or emergency/outpatient medical treatment, and one hospitalization.

Worker safety:

According to Service Employees International Union (SEIU) Local 1000, the patient population has changed since the first state hospital was founded. Hospital workers are at high risk for workplace violence. Facilities such as Napa State Hospital were built in park-like settings to care for mentally ill patients who were wards of the state; more than 90% of the patients today have been forensically committed and the staff is working with the state's most dangerous patients in facilities that were not designed to house them and that are ill equipped to provide necessary safety measures.

As a result of the increased violence at state hospitals, workers formed the 'Safety Now!' coalition. The coalition is comprised of the Union of American Physicians and Dentists (UAPD), AFSCME Local 2620, the California Association of Psychiatric Technicians (CAPT), the California Statewide Law Enforcement Association (CSLEA) and the Service Employees International Union (SEIU) Local 1000. The coalition is responsible for legislation currently pending in the state legislature, authored by Assemblymember Achadjian. AB 1340 is intended to provide an alternative mechanism for dealing with the type of violent and predatory offenders who threaten the safety of hospital staff and other patients and disrupt the state's efforts to provide the appropriate level of care and treatment needed by other patients. AB 1340 seeks to protect state hospital staff and patients, and decrease the level of violence by requiring the most violent and predatory patients to be placed in special enhanced treatment units (ETU) with higher staff ratios.

Local impact:

As mentioned previously, state hospitals treat patients under several forensic commitment classifications, including Not Guilty by Reason of Insanity (NGI), Incompetent to Stand Trial (IST), Sexually Violent Predators (SVP), and Mentally Disordered Offenders (MDO). State hospitals also treat mentally ill persons referred by the counties under civil commitments. Although confined to a state hospital, patients are still subject to laws regarding battery or assault, and are still subject to criminal charges when they are involved in a violent act. Depending on the severity of the crime, the hospital resident could be charged with a misdemeanor or felony.

Currently, when a crime occurs at a state hospital, the hospital police investigate the matter and determine whether to refer the matter to the local district attorney. While the patient is awaiting criminal charges, the patient is taken to the county jail. If the district attorney declines to prosecute, the aggressor is returned to the state hospital. If the district attorney decides to file criminal charges, the patient would be taken to court for arraignment. If the patient is a person who has been admitted to the state hospital by a court after a finding of not guilty by reason of insanity or incompetent to stand trial, the patient would likely be

found so in the new criminal proceedings with the result of returning the patient back to the state hospital. While the individual is residing in the county jail facility and being processed through the justice system, they are not receiving the range of mental health supports and services for which they were committed to the state hospital in the first place. Although Napa County can support up to six detainees requiring medical supervision, the related staffing requirements stretch the relatively small county's resources to its limit. Furthermore, this accumulation of process has resulted in two categories of concern that carry complex legal and ethical ramifications, which have been the focus of policy development: the assessment of the impact of inner-facility violence upon local county health and justice systems, and the increased risk to workers.

Napa County has weighed-in with a position paper adopted as a part of its 2013 legislative platform. In the document, the county describes the impact upon county systems, and states in emphatic terms that the DSHs has no basis for transferring those patients who perpetrate aggressive acts to the local county jail since the local jail has no resources—and it is unreasonable to expect them to acquire such resources -- to deal with the very specialized level of care that state hospitals attempt to offer and deliver. Napa County asserts that the destabilizing consequences of state hospital-to-jail transfers, coupled with the limitations of Napa's jail, have threatened a precarious balance between risk and safety. Since those determined incompetent to stand trial wait in county jail before being transferred to a state hospital, counties pay the cost of their care during that time. Particularly in instances where the offender has been committed to NSH due to diminished competency, then implicated in a crime causing them to be transferred to a county setting, placing them in a county jail only to be declared incompetent to stand trial again, and then re-admitting them back into the state hospital offers little confidence the individual's true needs are being addressed, while draining valuable county resources.

Federal, state and other external pressures:

A raging cycle: in August 2009, a federal three-judge panel ordered the state to reduce its prison population to 137.5 percent of its design capacity. This order was designed to remedy what the court found to be an unconstitutional level of inmate health care resulting from prison overcrowding. The court's ruling was upheld by the United States Supreme Court in May 2011. In 2011, the state enacted "realignment," which shifted responsibility for housing and supervising certain lower-level offenders from the state to counties. Realignment was projected to reduce the prison population by about 40,000 inmates upon full implementation. Underlying much of the process will be the disturbing, yet generally accepted fact that prisons and jails largely operate as de facto mental hospitals. Though well-intentioned, previous efforts to deinstitutionalize the mentally ill from state hospitals have had disastrous consequences, with the result being that many mentally ill individuals have ended up in the the criminal justice system.

The state hospital system is subject to significant state, federal, and other oversight. The state hospitals are in compliance with industry standards, and meet requirements of the California Department of Public Health (DPH), Licensing and Certification Division. Additionally, NSH is subject to biannual inspections by a court monitor who was appointed pursuant to a settlement between the State of California and the US Department of Justice in a civil action under the Civil Rights of Institutionalized Persons Act (CRIPA). The settlement requires enhanced treatment and oversight by a court appointed monitor. Incident management, incident investigation, risk management and environmental safety are the focus of the oversight.

All state hospitals are subject to scrutiny by the Joint Commission which certifies hospitals based upon a range of health and safety factors. The Joint Commission reviews NSH every three years on clinical and environmental aspects of the hospitals operations, including safety of the patients, environmental safety, and management of safety issues. NSH also falls under the purview of the state's facility oversight functions. DPH enforces state and federal rules and regulations within NSH due to the licensure of the skilled nursing facility within the hospital.

The division of occupational Safety and Health, also known as Cal-OSHA, has raised a range of concerns related to DSH's illness and injury prevention program (IIPP). The IIPP describes the safety policies and procedures for managers, supervisors, and rank-and-file employees within DSH. It is established according to the IIPP regulations established in the California Code of Regulations Title 8, the Welfare and Institutions Code, and the Labor Code. The IIPP may also be referred to as 'Safety Program.' The primary purpose for IIPP is to determine the cause and contributory factors of injury or illness so that appropriate prevention measures can be taken to reduce the frequency and severity of work related violence, accidents, injuries, illnesses, and exposures in the future. Cal-OSHA cited the DSH for incomplete IIPP, and hearing on the matter is scheduled for Monday, October 14.

Today's hearing:

Today's hearing of the Assembly select Committee on State Hospital and Developmental Center Safety will focus on the ongoing efforts that staff, administration, local partners and overseers are undertaking to address violence. Since the untimely and tragic death of Donna Gross on October 23, 2010, a sense of urgency has added weight to the ongoing initiatives to improve safety and security at NSH. Today members will hear first-hand what strategies are working, and what progress has been made, along with an assessment of what still needs to be done. Hospital executives will update the committee on hospital performance while workers express their concerns about the ongoing dangers implicit in their roles. Local officials will also share their concerns about state hospital impact upon local systems.

Recent Relevant Legislation:

2011/2012:	AB 366	Allen	Incompetent to Stand Trial; Involuntary Administration of Drugs.
	AB 2399	Allen	Injury and Illness Prevention Plans; Annual Updates.
	AB 2397	Allen	Review and Analysis of Staffing Levels.
2013/2014	AB 1340	Achadjian	Enhanced Treatment Units.
	AB 610	Achadjian	County Obligations: Involuntary Treatment using psychotropic medications.
	AB 602	Yamada	Rapid reporting of abuse/event to external law enforcement; training of external law enforcement.

[i] The Department of Mental Health (DMH) was dis-integrated by the 2012 Budget Act -- SB 1470 (Leno), Chapter 24, Statutes of 2012 -- which transferred various duties of DMH to other agencies, and renamed the administrative authority for the state hospital system as the Department of State Hospitals.