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FOR MENTAL HEALTH AND
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Office of Ombudsman for Mental Health and Developmental Disabilities: Statement on the Use of Drug Detection Dogs in Substance Use Disorder Treatment Settings

The Minnesota Legislature has deemed the Office of Ombudsman for Mental Health and Developmental Disabilities (OMHDD) a health oversight agency as defined in Code of Federal Regulations, title 45, section 162.501. We are charged under MN. Stat. §245.92 with promoting the highest attainable standards of treatment, competency, efficiency, and justice for persons receiving services for mental illness, developmental disabilities, chemical dependency/substance use disorder, and emotional disturbance.

OMHDD was copied on an email to the Department of Human Services (DHS) regarding the use of drug detection dogs in Substance Use Disorder (SUD) treatment settings. As the inquiry was clearly directed to DHS, we wanted to give the Department an opportunity to respond directly. However, we appreciate the request to provide our agency's stance on the use of drug detection dogs in treatment settings. While we acknowledge this is a nuanced issue, for a variety of reasons, OMHDD does not support this practice. It is our position that, beyond the unsettled privacy and constitutional implications, it fundamentally changes the treatment milieu, has the potential to create any number of negative unintended consequences - including serious concerns involving racial equity and compounding trauma - and raises questions about the ramifications if drugs are discovered. To be clear, however, our comments are specific to the use of bringing in trained drug detection dog and handler teams, hereafter referenced as drug detection dogs, for the purposes of discovering drugs/contraband and would not be at all applicable to the use of dogs in animal-assisted therapy, which is an effective therapeutic tool supported by significant research.

Though OMHDD recognizes the need for SUD programs, particularly those providing residential treatment services, to have policies prohibiting the presence of drugs or certain contraband for the health and safety of all residents, the use of drug detection dogs raises serious privacy implications in the absence of a legitimate reason or probable cause for the search. Clients in SUD residential settings

are protected by the Health Care Bill of Rights, MN Statute 144.651, which in Subdivisions 15 and 19 respectively, includes

> "Patients and residents shall have the right to respectfulness and privacy as it relates to their medical and personal care program. Case discussion, consultation, examination, and treatment are confidential and shall be conducted discreetly"; and
>
> "Patients and residents shall have the right to every consideration of their privacy, individuality, and cultural identity as related to their social, religious, and psychological well-being. Facility staff shall respect the privacy of a resident's room by knocking on the door and seeking consent before entering, except in an emergency or where clearly inadvisable."

Given these statutory rights embedded within the licensing regulations for SUD treatment programs, OMHDD would question whether the use of drug detection dogs, in sweeping searches across the facility, including patient rooms, is even allowable. It would seem to violate the current rights language. Moreover, given our statutory mission to promote the highest attainable standards of treatment and justice for our clients, we would emphasize going beyond whether such practices are simply *allowable* to whether they are *advisable.*

OMHDD believes that, without question, the mere presence of drug detection dogs in treatment settings fundamentally transforms the treatment environment such that it becomes less of a treatment setting and more of an adversarial and potentially hostile environment where, in the absence of any probable cause, everyone feels treated as a suspect. OMHDD has concerns that this will result in diminishing any trusting relationship at the facility and, by extension, precluding the development of a therapeutic relationship with treatment professionals. OMHDD contends that it is also inconsistent with the provider's obligation to develop a person-centered individual treatment plan. There is certainly nothing individualized or person-centered about being required to submit to search by a drug detection dog as a condition of accessing treatment.

Additionally, OMHDD highlights the potential conflict between the use of drug detection dogs and potential privacy implications pursuant to CFR 42 Part 2. The act of bringing the dog and its handler into the setting to conduct the search reveals the presence of individuals in the facility seeking SUD treatment with no discernable treatment function. It also begs the question what happens if the dog alerts to the presence of substances? Would potentially vulnerable clients be discharged to the street without any sort of due process or coordination of care to ensure access to ongoing treatment? Would law enforcement be contacted? For clients on probation or otherwise completing treatment as a result of some court involvement, would the substance detection be shared with those entities? Again, we would point to CFR 42 Part 2 regulations that would seemingly prohibit such notification barring a client's informed consent. If such notification is prohibited, it would seem the dogs serve no purpose other than to, at best, create an unnecessarily adversarial and hostile treatment milieu and, at worst, criminalize the treatment environment in a way that has the potential to both violate client rights and erect barriers to continuity of much needed care.

OMHDD has additional questions about whether the use of drug detection dogs is consistent with trauma-informed care principles. We know that many of our clients in SUD settings have had interactions with law enforcement as a result of their substance use and other personal histories. For many of them, these interactions have been intensely traumatic. We maintain concerns that the implementation of a law enforcement tactic, such as the use of drug detection dogs, in a treatment setting has great potential to re-traumatize clients in what should be a safe and therapeutic environment where they have an opportunity to begin to address previous trauma - not to have that trauma triggered unnecessarily.

This issue must also be considered recognizing the sad reality of systemic racism affecting BIPOC communities and the many years of trauma related to negative interactions with a biased and prejudicial law enforcement system as a result of that racism. OMHDD has additional concerns regarding the potential for BIPOC clients in SUD treatment settings to be further traumatized by the seeming criminalization of the treatment environment and the potential for racial inequity in the deployment of drug detection dogs in these settings.

In considering this issue, OMHDD encountered numerous reports questioning the reliability of drug detection dogs. We are aware of research that suggests the false positivity rate may be more than 50%, with some reports indicating the dogs are inaccurate as much as 70-85% of the time. In fact, in reviewing certification standards for the US Police Canine Association (USPCA), a law enforcement dog/handler team may achieve contraband certification at only a 70% accuracy threshold. OMHDD has concerns that private contractors promoting this service may have no certification mechanism and, thus, a complete lack of industry oversight and without any complaint process for those unfairly impacted by a potential false positive. Further, there is no apparent provision or grievance process for clients in BIPOC communities should there be instances of racial bias, profiling, stereotyping, or discrimination in the execution of this service. Given the unfortunate reality that cases of racial discrimination are reported far too often, OMHDD has grave concerns about the potential for these unfair and unacceptable practices to be replicated by an industry without any proactive prevention measures nor oversight body to respond if they occur.

OMHDD has been made aware of situations where drug detection dogs may alert to the *previous* presence of substances. One troubling scenario would be the previous presence of substances in, say, clothing or other personal items that have not yet been laundered having the potential to result in a search violating a client's rights. OMHDD encourages DHS and others to consider how traumatic this experience would be for a client who had, in fact, done nothing wrong and brought no substances into the facility but was nonetheless treated as a suspect, required to submit to such a search, and – even if ultimately exonerated – nonetheless experienced the humiliation, anxiety, and possible trauma resulting from that process in what should have been a safe and therapeutic environment for SUD treatment.

OMHDD strongly opposes the use of drug detection dogs in SUD treatment facilities. We believe that the language in the Health Care Bill of Rights surrounding privacy suggests that such tactics are not only inadvisable but unallowable. However, were such a practice allowed in these treatment facilities, we would emphatically urge DHS to develop strong limitations and guidelines on when and how they could be used. At a minimum, those parameters and policies would need to take into account not only clients' right to privacy, but the potential for significant harm associated with trauma and racial inequities in the execution of drug detection dog searches by providers in an unregulated industry, recognition of the potential fallibility of drug detection dogs, include due process provisions, clarity on what actions a facility may take if substances are discovered via such a search, and what information, if any, may be shared with individuals outside the facility.

OMHDD cannot envision a guideline or policy that can sufficiently address the fundamental alteration of the treatment environment created by the presence of drug detection dogs conducting facility searches. We do recognize and understand the need to keep SUD treatment settings free of substances, and the challenges providers wrestle with in their attempts to do so, but it is the position of OMHDD that there are already provisions allowing providers to conduct a search when there is reasonable suspicion to do so. The use of drug detection dogs, however, is an inverse to what is currently accepted practice. It results in a search of everyone, treating all clients as potential suspects, in a seeming attempt to proactively prevent the presence of substances in its facility but without regard for the rights of all clients or the significant potential to do real and lasting harm.

In response to the request from DHS for our position on the use of drug detection dogs in SUD programs, all Regional Ombudsmen were consulted to determine whether they were aware of programs/facilities employing these tactics and whether they had ever received a client complaint involving drug detection dogs in treatment programs. The answer was a resounding no; none of our staff have received a complaint involving these practices nor had OMHDD been made aware that facilities were using drug detection dogs until our agency was copied on the email to DHS. We appreciate being made aware of the practice so we may not only communicate our opposition regarding those SUD treatment programs/facilities currently deploying drug detection dogs but advocate against the expansion to other settings or parts of the state.

Thank you for the opportunity to provide comment on this matter. Please contact me with any questions. We look forward to additional discussions surrounding this important issue.

Sincerely,

Lisa Harrison-Hadler
Deputy Ombudsman