

TESTIMONY

Submitted on behalf of National Council for Community Behavioral Healthcare

“Human Rights at Home: Mental Illness in U.S. Prisons and Jails”

Senate Judiciary Committee

Subcommittee on Human Rights and the Law

September 15, 2009

Dirksen-226

Mental Illness and Addiction among Justice Involved Individuals

The National Council for Community Behavioral Healthcare would like to thank Senator Durbin and the Committee for convening the hearing entitled, “Human Rights at Home: Mental Illness in U.S. Prisons and Jails.” The National Council welcomes the opportunity to comment on the urgent need to address the overwhelming number of individuals under criminal justice supervision who are in need of care for a mental illness and/or substance use disorder. The National Council represents 1,600 Community Behavioral Health Centers and other safety net community-based agencies. Collectively, they serve over 6 million low-income children and adults with mental health and addiction disorders nationwide, many of whom are justice-involved individuals.

Background

There are more than 2.2 million people held in federal and state prisons or in local jails in the United States. The U.S. Department of Justice estimated in 2005 that more than half of all individuals in both prison and jail had a mental health problem and that in 2002 more than two thirds of inmates in jail were dependent on or abusing alcohol or drugs. Each year, more than 1.1 million people diagnosed with mental illnesses are arrested and booked into jails in the United States. Roughly three-quarters of these individuals also experience co-occurring substance use disorders, which increase their likelihood of becoming involved in the justice system. On any given day, between 300,000 and 400,000 people with mental illnesses are incarcerated in jails and prisons across the United States, and more than 500,000 people with mental illnesses are under correctional control in the community.¹

As the number of individuals with criminal records in the United States continues to rise, there is a proportionate increase in the number who have mental health and/or substance use disorders. In many cases, the reason for their arrest is associated with “their lack of income and their unmet need for

services, such as mental health and addiction treatment, and supports, such as housing and employment that are essential to life in the community.”ⁱⁱ The National Council is concerned with this alarming trend and urges the Congress and Administration to support policy initiatives that ensure that individuals with mental illness and substance use disorders are diverted from incarceration when appropriate and linked with healthcare and support services before release in order to assist their re-entry into the community and to reduce recidivism. Such policy initiatives include funding for the Second Chance Act and the Mentally Ill Offender Treatment Crime Reduction Act. Critical programs targeted at treatment for justice involved individuals also reside within the Department of Health and Human Service’s Substance Abuse and Mental Health Services Administration (SAMHSA) and expanded resources for SAMHSA programs, including the Substance Abuse Prevention and Treatment Block Grant and the Mental Health Services Block Grant, would significantly expand treatment availability.

Implications of Benefit Disenrollment for Incarcerated Individuals with Mental Illness

Incarcerated individuals with mental illness have higher rates of homelessness, unemployment, past physical and sexual abuse, and substance abuse and dependency than those without mental problems.ⁱⁱⁱ Individuals returning to communities upon release from jail and prison face numerous barriers to successful transition including limited access to subsidized housing, job prospects, educational opportunities, and health insurance. Many individuals with criminal records do not have access to employer-based health insurance through work and must rely on public funding for medical care.

Corrections facilities spend substantial amounts of money to provide mental health services and medications to incarcerated persons, yet due to a lack of coordination, many are released without access to services in the community, compromising their recovery. For newly released inmates seeking medical coverage, applications for Medicaid enrollment can take up to 3 to 5 months for approval. As a result, the released person is likely to enter the community without access to mental health and addiction services for 90 days or more, increasing the risk of relapse, re-hospitalization, and recidivism.^{iv}

Medicaid coverage upon release increases the likelihood of persons with mental illness receiving continuity of care. A study conducted by Morrissey et al. (2006) found that persons enrolled in Medicaid upon release are more likely “[...] to receive services more quickly, and to receive more days of service than those without Medicaid in the 90 days after their release from jail.” In a second study, Morrissey et al. (2007) found that inmates with mental illness who are enrolled in Medicaid at the time of release have fewer detentions in the following year than those released without enrollment in Medicaid, thus indicating reduced recidivism rates.^v

Federal policy has encouraged states to suspend SSI and Medicaid benefits during incarceration, yet many states continue to terminate eligibility for these programs. Clearly, this discrepancy needs to be addressed in order to ensure that incarcerated individuals receive federal benefits and are able to access the necessary services the day they leave jail or prison. As permitted by federal policy, the National Council urges that legislation be adopted by states to suspend, rather than terminate, the Medicaid benefits of eligible individuals during incarceration. To implement legislation successfully, state

governments and local correctional facilities need to work in partnership to integrate their systems and communicate effectively to ensure individuals have access to benefits when released. In the interim, state and local agencies should work with correctional facilities to identify those who are eligible upon release, quickly reinstate benefit eligibility, and utilize strategies to ensure continuous care.

Court-Involved Youth

Many youth who come into contact with the juvenile justice system suffer from mental health and substance abuse problems and addiction. According to the National Institute on Drug Abuse, from 1986 to 1996, drug-related juvenile incarcerations increased nearly threefold. Studies have documented that there is significant overlap between the populations of youth served by community mental health agencies and youth in contact with the community's juvenile court. In 2000, among adolescents detained for offenses, 56 percent of boys and 40 percent of girls tested positive for drug use. Alarming, the number of youth incarcerated within the adult population of 2.2 million is increasing. A recent brief authored by the National Council on Crime and Delinquency (NCCD) showed a significant increase over the past decade of youth entering the adult criminal justice system, specifically adult jails. Today, one in 10 youth incarcerated in the U.S. are admitted to an adult prison or jail.

Mental health and substance abuse services must be provided to young people under community supervision and those in secure settings in order to help them achieve success. We strongly recommend swift passage of S. 678, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, because it strengthens and updates critical components of the Juvenile Justice Delinquency and Prevention Act (JJDP), which has been protecting youth across the nation for over 30 years. Additionally, S. 678 makes meaningful improvements that expand several of the core protections and other areas contained in the bill, including strengthening emphasis on the need for mental health and substance abuse services for young people in the juvenile justice system.

Strategies to Support Continuity of Care for Court-involved Adults and Youth

Several strategies can be employed to ensure continuity of care for court-involved adults and youth with mental health and substance use disorders. These include, but are not limited to:

- **Suspension of eligibility instead of termination:** As suggested previously, state Medicaid policy could allow incarcerated individuals—where applicable by Federal law—to maintain Medicaid eligibility, to ensure continuity of care. Released individuals would then be able to go directly to a Medicaid provider, demonstrate eligibility, and receive services, without interrupting access to medications and other treatment. This is the most desirable approach since it does not require that a new application be filed and benefits can be restored with minimal delay.
- **Pre-release planning:** For those whose benefits were terminated or who were not previously enrolled, a desirable option is to ensure that an application for Medicaid, SSI and other benefits are submitted well in advance of release (at least 1 to 3 months prior) so that assistance is available upon release. A variety of Federal, state, and local funds and grants support

enrollment in public programs as part of the discharge planning process. Pre-release planning varies by the length of an individual's incarceration period, the size of the correctional facility, and the resources available. Planning programs can include ensuring that the individual has identification cards (i.e. for Medicaid), a supply of medications, and community resource supports (i.e. food stamps, cash assistance, and housing) upon release. Co-locating relevant specialized staff (i.e. trained social workers) or local Social Security Administration staff at the institution to facilitate the process is advisable. A case study from Texas indicates that having a single agency with responsibility for discharge planning (especially assisting with benefit enrollment) is most effective.

- **Diversion programs.** These programs divert individuals with mental illness and/or substance use disorders to community-based services as an alternative to incarceration to prevent them from cycling in and out of the criminal justice system and their community services. Providing appropriate services and addressing the complex needs of diverted individuals enables them to live successfully in the community, thereby reducing the risk of homelessness, recidivism, and institutionalization.
- **Re-Entry Programs.** These programs are designed to connect individuals released from incarceration with supports and services that foster effective integration into the community. Evidence-based programs are comprehensive in nature and include a range of services designed to reduce recidivism, particularly pre-release programs, mental health and drug treatment, transitional housing support, and vocational training/placement.

Additional Programs of Importance:

- **Forensic Intensive Case Management (FICM)** is designed for justice-involved people with multiple and complex needs and features services provided when and where they are needed. FICM focuses on brokering rather than providing services directly, making it less expensive than ACT. For a brokered service model to be effective, communities must have adequate and accessible services to which individuals can be linked. What makes these services "forensic" is "criminal justice savvy," that is, providers understand the criminal justice system and the predicaments of their clients involvement in it.^{vi}
- **Supportive Housing** is permanent, affordable housing linked to a broad range of supportive services, including treatment for mental and substance use disorders. Supportive housing can significantly decrease the chance of recidivism to jails and prisons and is less costly on a daily basis than jail or prison. Unfortunately, affordable housing is in short supply in many communities, and individuals with drug-related offenses often have trouble securing public housing assistance. Housing for justice-involved individuals must balance the needs for supervision and the provision of social services.^{vii}
- **Peer Support Services** can expand the continuum of services available to people with mental and substance use disorders and may help them engage in treatment. Forensic peer specialists

bring real-world experience with multiple service systems and an ability to relate one-on-one to people struggling to reclaim their lives. The practice of consumer-driven care—as exemplified by the involvement of mental health consumers in service design, delivery, and evaluation—is at the heart of a transformed mental health system.

Over the past 50 years we have gone from institutionalizing people with mental illnesses, often in subhuman conditions, to incarcerating them at unprecedented and appalling rates—putting recovery out of reach for millions of Americans. Clearly, jails and prisons were never intended as a community’s primary setting to provide acute care services to individuals experiencing serious mental illnesses. In most cases they are ill equipped to do so. We must move toward a day when people with mental and substance use disorders receive the effective community-based interventions they need and deserve, and jails and prisons no longer are forced to serve as primary, de facto treatment facilities.^{viii}

Thank you for your attention to this important issue. Please feel free to contact Alexa Eggleston, Director of Public Policy, at alexae@thenationalcouncil.org, 202-684-7457 ext 243, or Chuck Ingoglia, Vice President of Policy, chucki@thenationalcouncil.org , 202-684-7457 ext 249 if you have any questions about the information presented in this document or would like to receive additional information about the National Council for Community Behavioral Healthcare.

ⁱ Ending an American Tragedy: Addressing the Needs of Justice-Involved People with Mental Illnesses and Co-Occurring Disorders. National Leadership Forum on Behavioral Health/Criminal Justice Services, September, 2009. Available online at www.thenationalcouncil.org.

ⁱⁱ The Bazelon Center for Mental Health Law. (2001). For people with serious mental illnesses: Finding the key to successful transition from jail to community. Washington, D.C.

ⁱⁱⁱ *Id at 1.*

^{iv} Issue Brief: Continuity of Care for Justice Involved Individuals with Mental Illness, available online at <http://www.thenationalcouncil.org/galleries/policy-file/Continuity%20of%20benefits%20for%20justice%20involved%20individuals%20with%20MI.pdf>

^v *Id at 1.*

^{vi} *Id.*

^{vii} *Id.*

^{viii} *Id.*