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Promoting and Protecting the Rights of Persons with Disabilities

PRESENTATION BEFORE THE JOINT MEETING OF THE COURTS CORRECTIONS AND JUSTICE COMMITTEE AND THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

August 6, 2014

Discussion about Assisted Outpatient Mental Health Treatment
Nancy Koenigsberg, Legal Director

New Mexico is not New York (or NY is unique)

"The legislature further finds that if such court-ordered treatment is to achieve its goals, it must be linked to a system of comprehensive care, in which state and local authorities work together to ensure that outpatients receive case management and have access to treatment services." Chapter 408, Section 1, §§ 2, Legislative Findings, Kendra's Law, 1999.

"Because implementation of the AOT program in NY was accompanied by an infusion of new services, it is impossible to generalize these findings [of the study of the NY program] to states where services do not simultaneously increase." Marvin Swartz, MD, Jeffrey Swanson, et. al, New York State Assisted Outpatient Treatment Program Evaluation, June 30, 2009.

$ 32 million (annually)

- $ 9.55 new case manager positions
- $15.00 medication grant
- $ 4.40 prison and jail discharge planning managers
- $ 2.40 oversight
- $ .65 medication monitoring

$125 million in addition, for enhanced community services to develop a single point of access program and for increased capacity for Assertive Community Treatment (ACT) and Intensive Case Management (ICM).

Yet, with this infusion of money, some counties in the northern and more rural parts of the state do not use AOT due to lack of infrastructure and support. Other counties chose not to implement AOT because they were able to address their community's concerns with the additional funds.

70% of all NY AOT cases are in New York City.

84% of AOT cases are filed while someone is in the hospital; thus it functions as a discharge plan.

Types of services available:
Housing
Assistance Accessing Public Benefits
Intensive Case Management: no more than 15 people per case manager
Counseling
Access to psychiatry
Access to medical care
Substance abuse and co-occurring disorder treatment
Intensive Outpatient Treatment
Life Skills education
Vocational Assistance where appropriate

If additional funds and services are not added to the existing system, there is a zero-sum game. Court-ordered services of necessity take away services from a current or potential client who is seeking them voluntarily. With limited resources, who should ration the services? Should such decisions be made by the court or by those responsible for allocation of medical services?

There is no single AOT law or model

There are various kinds of laws throughout the country. No study has been done to determine whether they have been implemented and whether they are effective. It is therefore very misleading to represent that X number of states have AOT without having examined the various laws and how they work in those communities.

Many places don't implement the laws because they do not have the services or infrastructure to support AOT. Or like New York, only some parts of the state implement the law because rural communities are unable to support AOT.

Current state of the New Mexico behavioral health system

Since Managed Care was introduced in 1998, the public behavioral health system has undergone multiple transitions. Each transition has eroded the system.

There are very few intermediate services and supports left in the system - the very services that are necessary for a community behavioral health system.

It is widely believed that there are fewer professionals providing behavioral health care In July, the news carried a story that La Frontera in Southern New Mexico laid off 87 staff; it is not known how many of these people were clinicians.

Centennial Care is New Mexico's Medicaid program which includes behavioral health

There are four managed care organizations (MCOs) -Presbyterian, Molina, Blue Cross/Blue Shield and United Health - which contract with behavioral health providers. Care is supposed to be integrated and coordinated through the managed care organization.

Each MCO conducts a health risk assessment. If person has a behavioral health *and* substance abuse problems, he or she should be screened for higher level of care coordination through a comprehensive needs assessment.

People with complex behavioral health needs may be eligible for level three care coordination which means a phone call once a month and a face to face meeting quarterly, with efforts at linking people to services and integrating health care and behavioral health care. Each level three care coordinator has 50 clients.

The behavioral health service package is not even minimally adequate:

There is no intensive case management in the behavioral health benefit package - a service that is a cornerstone of any AOT program.

Intensive outpatient treatment is a substance abuse service only.

There are a limited number of Assertive Community Treatment teams:

- 4 in Bernalillo County
- 1 in Dona Ana County
- Presbyterian Medical Services (serves San Juan, Sandoval, Santa Fe, Eddy, Luna and Torrance counties - number and location unknown)
- Tri County Community Services (serves Colfax and Taos counties, number and location unknown)

Information is necessary about whether the ACT teams are implemented with fidelity to the model and what the outcome data is for each team.

Initial impressions of proposed legislation

The definition of AOT does not address recovery or illness management as desirable goals. Instead, the focus is on 'compliance', drug and medication testing. It appears designed to catch people "doing badly."

There is no money appropriated for services for the people being ordered into treatment: There is a request for an appropriation of $3 million to DOH for surveillance, and money for data gathering and the courts, but ***not a penny for the mandated services***. Further, all of these services cannot be billed to Medicaid or commercial insurance because, for example, ACT services must be voluntary, not court ordered.

The Department of Health conducts surveillance of communicable diseases; mental illness is not a communicable disease. It is unclear how each county public health office will oversee behavioral health services as they do not provide behavioral health services or case management.

Allowing AOT orders for individuals who already have a guardian or mental health treatment guardian or agent appointed by the individual seems to defeat the purpose of these alternatives and muddles those roles.

The individual is to be provided with "information regarding the respondent's access to, and the availability of, recommended assisted outpatient treatment in the community." What does this mean? Is there any guarantee that all court ordered services will be available? What if the services ordered are limited to only those that are available in the person's community and the array is insufficient to meet the person's health care needs?

What New Mexico needs

Outreach and engagement - evidence based models are now available (Lisa Dixon, M.D. M.P.H., Center for Practice Innovations, Columbia University, NY)

Peer supports

Wrap around services
- Housing
- Assistance Accessing Public Benefits
- Intensive Case Management: no more than 15 people per case manager
- Counseling
- Access to psychiatry
- Access to medical care
- Substance abuse and co-occurring disorder treatment
- Intensive Outpatient Treatment
- Life Skills education
- Vocational Assistance where appropriate