SARDAA
Maryland Chapter
Schizophrenia and Related Disorders Alliance of America
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Shattering Stigma – Destroying Discrimination

Montgomery County Council
Testimony re Special Appropriation DHHS $592,202 for Mobile Crisis Response
Hearing Date: July 7, 2020 at 1:30pm
From : Evelyn Burton, Advocacy Chair, Schizophrenia and Related Disorders Alliance of America.
Maryland Chapter Position: Support

The Maryland chapter of The Schizophrenia and Related Disorders Alliance of America (SARDAA), strongly supports the Special Appropriation for expanded Mobile Crisis Services and we thank Councilmember Tom Hucker for sponsoring this proposal. SARDAA is a grassroots non-profit organization promoting improvement in lives affected by serious mental illnesses involving psychosis through support, education, collaboration, and advocacy.

This appropriation is an important step in improving the treatment services for Montgomery County individuals with serious mental illness and diverting them from the criminal justice system and incarceration. Having only one Mobile Crisis Team is not meeting the needs of our County.

I urge you to read the written testimony of Ziva Azhdam concerning the traumatic experiences of her family with Montgomery County police officers who responded to her calls when the Mobile Crisis Team was not available.

However, unless the council takes a broader look to address the countywide policy failures forcing police to serve as de facto mental health professionals, we will continue to experience tragedies and criminalization of those with serious mental illness. Research from the Treatment Advocacy Center found that people with serious mental illness are 16 times more likely to be killed in an encounter with law enforcement than someone without a mental illness. They concluded, "Reducing encounters between on-duty law enforcement and individuals with the most severe psychiatric diseases may represent the single most immediate, practical strategy for reducing fatal police shootings in the United States."

Therefore, counties such as Mariposa County in Arizona, have developed a comprehensive crisis response system (Crisis Now). It includes a high-tech call center, and multiple mobile crisis teams, each with two mental health professionals, who call for police assistance only rarely, if needed. The Crisis Now model also uses separate evaluation centers manned by mental health professionals, instead of a hospital emergency department (ED).

The use of separate evaluation centers provides prompt evaluations by mental health professionals in a quiet environment instead of ED evaluations after a long wait by a physician with limited psychiatric training in a very noisy, anxiety producing environment. It also reduces ED overcrowding and wait problems and can result in significant time saved for a police officer. The Crisis Now model has an average police drop-off time of 3 minutes. Thus, there is no incentive for police to save time by arresting and booking someone to avoid spending more time at a hospital ED. **Earlier this year, Governor Hogan signed House Bill 332 authorizing**

the use of evaluation centers other than hospital ED's. I urge the council to encourage the use of this model in Montgomery County.

The Montgomery County Mobile Crisis Team needs to focus more on helping families prevent tragic outcomes. Families that contact SARDAA would desperately like the Mobile Crisis Team to stop denying services unless the individual is an imminent danger to self or others. When we wait that long, tragedies cannot be prevented. **The team does not appear familiar with the 2017 Maryland Appeals Court decision that even for involuntary hospitalization, the danger criteria can be more broadly interpreted to include expected harmful outcomes after discontinuing needed medication.**

Finally, the County support of expanded hospital inpatient treatment options is vital so that the Mobile Crisis Teams can effectively direct individuals who need that level of care to psychiatric hospitals beds. Otherwise the crisis calls repeat and the county jail continues to serve as the default for institutional care. I urge the County Council to pass a resolution sending a strong message to Governor Hogan, asking his administration to apply for the available federal IMD Medicaid Waiver, which would allow Medicaid payments for inpatient services at psychiatric hospitals such as Adventist Potomac Ridge in Rockville. A sample resolution is attached for your consideration.

SARDAA urges passage of the Special Appropriation for Mobile Crisis Services. Also please consider soon, funding a more comprehensive crisis system. The Crisis Now model saved Maricopa County, Arizona the time equivalent of 37 full time police officers. It could also go a long way to reducing the 25% of the population of the Montgomery County Correctional facility that have serious mental illness. Los Angeles even voted on Wednesday July 2 to cut the Los Angeles Police Department's budget by $150 million and use some of it to replace police officers with unarmed crisis response teams for nonviolent emergency calls. Everyone would benefit, but most grateful would be, those with serious mental illness and their families.

References:

Overview of Crisis Now model: https://www.youtube.com/watch?v=ORq1MkODzQU
Crisis Now website with multiple reports and resources: https://crisisnow.com/
SAMHSA guidelines for mental health crisis care:
https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf

House Bill 332: http://mgaleg.maryland.gov/2020RS/bills/hb/hb0332t.pdf

Maryland Appeals Court decision **In re: J.C.N**.,No. 73, September Term, 2017.

https://cases.justia.com/maryland/court-of-appeals/2018-73-17.pdf?ts=1533048292

Attachments:

1. Sample County Council Resolution urging the Governor to apply for the IMD waiver for mental health.

2. Analysis of the Maryland Appeals Court Decision **In re: J.C.N** by the Treatment Advocacy Center

For further information contact Evelyn Burton, Advocacy Chair at 301-404-0680 burtonev@comcast.net

RESOLUTION NO. : ADOPTED: , 2020
MONTGOMERY COUNTY COUNCIL

A RESOLUTION urging the State of Maryland to seek and obtain an SMI/SED Medicaid demonstration waiver under section 1115(a) of the Social Security Act to allow Medicaid reimbursement for inpatient treatment of serious mental illness in hospitals and psychiatric facilities.

WHEREAS, the decades-long exclusion of Medicaid payments for Institutions for Mental Diseases (IMDs) is a contentious feature of our nation's mental health system, prohibiting the use of federal Medicaid funds for care provided to most patients in mental health and substance use residential treatment facilities with over 16 beds; and

WHEREAS, this prohibition dates back to the original Medicaid legislation and was meant to encourage a transition from institutional warehousing of the mentally ill to community-based treatment; and WHEREAS, in actuality the prohibition creates a major barrier for those with severe mental illness, as residential and inpatient treatment are critical components in the continuum of psychiatric care; and

WHEREAS, as of November 2017, states may apply for a waiver of the IMD exclusion for individuals with substance use disorder (SUD), and as of November 2018, for individuals with serious mental illness (SMI). Specifically, the waiver allows Medicaid to reimburse IMDs with more than 16 beds for patients with mental illnesses; and

WHEREAS, a number of states have since pursued these waivers to help increase bed capacity. MRYLAND has obtained an IMD waiver for SUD, but has not yet requested an amendment to also include SMI; and

WHEREAS, persons in crisis or in need of acute stabilization may require the type of structured inpatient treatment that IMDs can provide, and the Medicaid program is a crucial source of mental health funding; and

WHEREAS, lifting the IMD exclusion could help lessen the access and funding gaps between outpatient systems and more acute levels of care, reducing the psychiatric bed shortage; and

WHEREAS, the argument that reducing funds for inpatient care will reduce rates of institutionalization ignores the forced institutionalization of seriously mentally ill individuals in jails and prisons as well as the inappropriate use of emergency departments and unspecialized hospital beds; and

WHEREAS, many people in need of treatment are instead being warehoused in jails precisely because there are often no treatment options available to them in the community; and

WHEREAS, appropriate hospital capacity will enhance the provision of outpatient care; and

WHEREAS, by seeking an amendment to its existing waiver, the State could apply now for this additional funding to help complete our mental health system, end some of the misery perpetuated by antiquated policy, and, over time, curtail the number of people with mental illness in our jails, prisons, and state hospitals; NOW THEREFORE

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF MONTGOMERY, That the State is hereby asked to seek amendment to its existing IMD waiver to extend such funding to those with serious mental illness.

Analysis of In re J.C.N. decision of the Maryland Court of Appeals by Brian Stettin, Esq., Policy Director of the Treatment Advocacy Center.

In a decision issued on July 30, 2018, the Maryland Court of Appeals made two important rulings interpreting the Maryland Mental Health Law. In re J.C.N., 2018 Md LEXIS 384 (2018) [attached].

The petitioner J.C.N. challenged her 2015 civil commitment by an administrative law judge to the inpatient psychiatric unit of the University of Maryland's Baltimore Washington Medical Center (BWMC).

J.C.N. was originally admitted to BWMC after suffering a stroke. She spent 7 days receiving medical treatment in the hospital's emergency department before being transferred involuntarily to the psych unit. Her civil commitment hearing took place 7 days after the transfer.

At the hearing, evidence was presented that J.C.N. was suffering from severe mental illness, and would likely do significant damage to her career and finances and forego critical medical treatment for both her mental illness and her serious thyroid condition if released from the hospital in her present state. In civilly committing J.C.N. to the hospital, the ALJ relied on this evidence to find that J.C.N. "present[ed] a danger to the life or safety of [herself] or of others" as required by the Maryland civil commitment statute. HG § 10-632(e)(2)(iii).

J.C.N. asked the Court of Appeals to reverse the decision on two grounds -- one procedural and one substantive:

(1) J.C.N. argued that since her hearing occurred 14 days after her hospitalization for the treatment of her stroke, it violated the requirement of HG § 10-632(b) that the hearing take place "within 10 days of the date of the initial confinement of the individual."

(2) J.C.N. argued that the evidence presented did not rise to the level of establishing "a danger to life or safety" within the meaning of HG § 10-632(e)(2)(iii).

The Court of Appeals denied both claims.

In rejecting the procedural claim, the Court held that the term "initial confinement" in HG § 10-632(b) referred to the point at which an individual was placed in an "inpatient institution that provides evaluation, care, or treatment for individuals who have mental disorders." Thus, J.C.N.'s hearing was timely because it occurred within 7 days of her transfer to BWMC's psych unit.

In rejecting the substantive claim, the Court summarized and affirmed the finding of the ALJ:

"Although some of J.C.N.'s delusions, taken alone or in combination with others, might not suggest that at the time of the hearing J.C.N. posed a

danger to herself or others, at least one—the delusion that she could function normally without medication and follow-up treatment—did pose a danger. The ALJ, evidently basing his decision on the credited testimony of [the treating psychiatrist], found that J.C.N.'s "lack of judgment, lack of insight, and these issues about finances as well," demonstrated that she did not have "sufficient judgment" to "maintain [her]self" outside of an institutional setting. Based on that ultimate finding, the ALJ decided that J.C.N. be involuntarily admitted.

The record supports the ALJ's decision. The evidence presented at the involuntary admission hearing, viewed through the prism of the applicable standard of review, … was such that a reasonable person in the position of the ALJ could accept the evidence as adequately supporting his ultimate finding, by clear and convincing evidence, that at the time of the hearing J.C.N. was a danger to herself or others."
This latter ruling has great significance for civil commitment in Maryland.

While many other states use the phrase "danger to life or safety" or one very much like it in their statutory criteria for civil commitment, almost all other states supply an expansive statutory definition for such terminology, making clear that "danger" is not limited to circumstances where the individual is violent or suicidal. These definitions typically specify that an individual's inability to provide for his/her essential survival needs, such as food, clothing, shelter and essential medical care, is grounds for finding the individual a danger to self. The Treatment Advocacy Center classifies statutory language of this nature as a "gravely disabled" standard for civil commitment.

By contrast, the Maryland Mental Health Law does not supply a definition for "danger to life or safety," which has until now left the meaning of the phrase to the discretion of each ALJ. Historically, some ALJs have interpreted the phrase to incorporate a gravely disabled standard, while others have interpreted the phrase narrowly -- insisting on evidence of imminent violence or intentional self-harm.

In re J.C.N. now clarifies that "danger to life or safety" should be read to incorporate a gravely disabled standard. While the facts of this particular case led to the court to invoke the evidence of J.C.N.'s inability to seek essential medical care, the logic of the decision dictates that an individual's inability to meet ANY essential survival need would be an equally appropriate basis for civil commitment.

In other words, In re JCN interprets the current Maryland civil commitment law to incorporate a gravely disabled standard. This should be made known to all ALJs across the state who preside over civil commitments and all clinical professionals in Maryland hospitals who make determinations as to whether to seek civil commitment.

It should also be noted that the court's reasoning rests upon the evidence *en masse* that J.C.N. was unlikely to comply with prescribed treatment for her multiple serious illnesses. The court draws no distinction in importance between the testimony that J.C.N. was unlikely to take her psychiatric medication and the testimony relating to her thyroid medication. This strongly suggests that the decision stands for the proposition that, irrespective of other illnesses that may be present, evidence that an individual is unlikely to comply with treatment for mental illness alone, provided that

such treatment is essential to safeguarding the individual's life or safety, is enough to sustain a finding that the individual presents a "danger to life or safety" within the meaning of HG § 10-632(e)(2)(iii).

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