California State Senate Select Committee on Mental Health Hearing
May 31, 2013

Increasing Safety and Reducing Costs Under Realignment and the Affordable Care Act

Sharon Aungst, Director
The Partnership for Community Excellence at CA Forward

Summary of Testimony

The testimony is focused on behavioral health as it relates to criminal justice.

- Prison mental health
- Parole and behavioral health
- Probation and behavioral health
- The Affordable Care Act (ACA) and county criminal justice systems

Addressing both criminogenic and behavioral health issues using evidence-based practices with good fidelity will result in improved offender outcomes, reduced recidivism and reduced costs.

Prison Mental Health

In California, we have focused on providing treatment that helps inmates function adequately in prison. Prison mental health has had very little capacity to address reentry or recidivism despite its importance to offenders' success when they return to their communities.

CDCR assisted with obtaining benefits for those in the Enhanced Outpatient Program (residential), crisis beds, and DMH hospitals which make up a small proportion of those on the mental health caseload. With implementation of ACA all inmates, and especially those with behavioral health disorders, should be enrolled prior to leaving prison. However with CDCR budget cuts and continued focus on *Coleman,* the mental health class action lawsuit, this situation is unlikely to improve in the near future.

There are a number of ways to save money on mental health in prisons. One of the single most important ways to save money is to decrease the use of and the length of time in segregation for inmates with serious mental illness. This has also been a significant issue for the Plaintiffs and Special Master in *Coleman* for many years.

Segregation, by definition, is isolation. Isolation can result in two problems:

- Those predisposed toward mental illness but are not exhibiting symptoms when placed in segregation are more likely to experience a crisis that precipitates a psychotic break.

- Those with mental illness often decompensate

The results are:

- Providing acute treatment and often long term treatment to those who develop a mental illness. DMH hospital rates this year are $630 per bed per day or over $200,000 per bed per year.
- Providing crisis and/or hospital level care for those with mental illness who go into crisis. Repeated crises result in decreased ability to function and to recover.

Crisis and hospital care drive significant cost. Prison outpatient services and residential care are much less expensive, so avoiding unnecessary isolation is beneficial to the inmate-patient, CDCR's budget and county government, which is responsible for offenders supervised by probation upon release.

Parole and Behavioral Health

CDCR's Division of Parole Operations (DAPO) currently pays 100 percent of the cost for most parolees' mental health and substance use disorder treatment services, including medications. In a report released this month, LAO recommends that CDCR "maximize the federal reimbursements that will be available for parolee mental health treatment, especially if the state expands Medi-Cal eligibility." They recommend increasing Medi-Cal application assistance for parolees with mental illness and to claim federal reimbursement for these costs as well as the services they provide. They estimate that the State could save about $6 million in 2013-14 and $28 million annually upon full implementation of ACA in 2014-15. Although we agree with LAO that the State should recoup the costs of enrollment and services they provide, we disagree that DAPO should be a Medi-Cal provider.

DAPO should adopt a model that integrates offenders into their county behavioral health system immediately upon release. There are three reasons this is a more effective approach:

- Experienced Medi-Cal providers have had pay backs because of errors. CDCR has no experience with Medi-Cal and would struggle with avoiding these errors.
- People with serious mental illness go into crisis with any change in their lives. Changing providers and moving the parolee from a DAPO provider to a county provider could precipitate a crisis and behavior that could result in re-arrest.
- DAPO is limited in the services they provide and most people with serious mental illness require a more comprehensive set of services and supports.

Integrating parolees immediately upon release into the county behavior health system where they plan to reside reduces potential crises, increases the range of services that can be offered and saves significant dollars. DAPO should provide the match dollars to counties to provide Medi-Cal services. Non-Medi-Cal services already offered by DAPO

to parolees, such as housing assistance, will continue to be important resources for these offenders.

Probation and Behavioral Health

County probation and behavioral health authorities and their providers must work closely together in order to achieve better outcomes for probationers with mental illness and/or substance use disorders. There are a number of evidence-based programs and practices in community corrections and behavioral health.

We have to address both the behavioral health and the criminogenic risks and needs of the offender and do so within the context of a person's culture, learning style, etc. Researchers have found that when mental health providers only deal with mental health needs we have little success keeping these offenders out of the criminal justice system. This is because their criminal behavior is based on criminogenic factors that are not adequately addressed. When probation focuses on criminogenic factors without addressing the behavioral health issues, they also have little success. Both must be addressed jointly by behavioral health and probation.

The use of evidence-based programs and practices in probation and behavioral health for offenders with behavioral health disorders helps people recover and reduces recidivism. Some mental health services can be reimbursed through Medi-Cal and others cannot. For example, Forensic Assertive Community Treatment (FACT), an adaptation of the evidence-based program ACT, is considered a promising program for people with serious mental illness involved in the justice system. It focuses on preventing arrest and incarceration. It requires comprehensive case management, low client to staff ratios and treatment services, which are reimbursable through Medi-Cal. However, ACT/FACT also requires services such as employment and housing supports that are generally not Medi-Cal reimbursable.

The Affordable Care Act (ACA) and County Criminal Justice Systems

The convergence of Realignment and ACA creates significant opportunities that can be leveraged to reduce recidivism and county costs and better integrate public services in counties. A large percentage of the individuals who cycle in and out of the justice system do not have health insurance and suffer from a myriad of health problems, including mental illness and substance use disorders. These untreated or unmanaged health problems, particularly behavioral health disorders, contribute to recidivism and high costs in the justice system.

The generous Medicaid reimbursement rate of 100 percent from 2014 to 2016, then decreasing to 90 percent by 2020, and the plan subsidies provided for those who are not Medicaid eligible, provides enormous opportunities for local criminal justice systems. Widespread health plan enrollment of people in jails and on probation coupled with both currently under-utilized and new health care resources, wholly or partially funded by federal dollars, will result in reduced:

- Jail operating costs;
- Jail population pressures;
- Health care expenditures by probation; and/or,
- County general fund expenditures for health care and criminal justice.

Counties should focus on enrolling all eligible offenders incarcerated or under supervision. The State should also change the rules to allow for suspension versus termination of Medi-Cal while detainees and offenders are incarcerated.

Under ACA the mental health benefit will likely stay the same. It is important to remember that many of the services and supports needed by people with serious mental illness are not reimbursable under Medicaid (and by extension Medi-Cal) and they will not be reimbursable under ACA. Mental health relies on other funding to cover these expenses.

The Drug Medi-Cal benefit has been very limited in CA and some treatment options, supported by the evidence, are not included in the benefit. Counties will have an option to expand the benefit for their county if they pay all the costs associated with the expansion, which means expanding coverage for those who have been eligible and paying the 50 percent match. Counties will need to think carefully about this choice, but we know that without services many offenders will continue to recidivate.

By increasing the number of offenders enrolled in Medi-Cal and expanding the benefits for offenders with substance use disorder services (approximately 70 percent have some level of need) we can reduce recidivism by up to 9 percent.

We see ACA as a win for offenders' outcomes, public safety and county budgets if implemented thoughtfully. Partnerships between criminal justice and health care systems will be critical to taking full advantage of these opportunities.

The Partnership for Community Excellence is offering regional convenings to assist counties in leveraging both the increased opportunities for health coverage under ACA and the increased flexibility and local responsibility under Realignment to increase both safety and savings.