Public Interest Law Reporter

Volume 19
Issue 3 *Symposium 2013*

Article 5

2013

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Loyola Public Interest Law Reporter

SOMEWHERE TO GO: PROTECTING FAMILIES FACING MENTAL ILLNESS THROUGH HEALTHCARE REFORM AND THE MEDICAL-LEGAL PARTNERSHIP MODEL

by **Amanda M. Walsh**

Introduction

On January 26, 2014, CBS' *60 Minutes* ran a special on youth mental health titled *Nowhere to Go: Mentally Ill Youth in Crisis*.[1] The special described many families' inabilities to access and maintain adequate mental

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health treatment for their children.[2] Specifically, the episode addressed how many families are forced to allow their children to become wards of the state just to access treatment.[3] Although the public reaction to recent mass violence inspired this TV special,[4] these problems have existed for much longer.

In fact, the child welfare involvement of children living with mental illness solely to access mental health treatment has been an ongoing problem for decades.[5] Additionally, parents living with mental illness also become entangled with the child welfare system.[6] One major problem that has led these families to involvement with the child welfare system and face disruption of their family unit is the inability for the child welfare and mental health systems to work together.[7] However, with the implementation of the Affordable Care Act[8] and the Mental Health Parity and Addiction Equity Act[9], which address systemic barriers, now is the time to develop an effective and collaborative model for these vulnerable families. One such model is the Medical-Legal Partnership Model.

System Involvement of Families Facing Mental Illness

An estimated fifteen million children in the U.S. suffer from a major psychiatric illness, such as bipolar disorder, schizophrenia, and major depression.[10] Unfortunately, less than 20% of these youth receive mental health services.[11] When youth are unable to access mental health services, they can experience delays of eight to ten years between the onset of symptoms and treatment.[12] Attempting to bypass these waits, many families are advised to enter their child into the child welfare or juvenile justice systems to access state-provided services.[13] Although no formal tracking system exists, a 2004 Congressional report determined that 3,700 children were placed into the child welfare system in fiscal year 2001 solely to access mental health treatment.[14]

Parents are also struggling with mental illness and accessing treatment.[15] For adults, it is estimated that one quarter are living with a diagnosable mental illness.[16] One study found that "of the individuals who met the criteria for having a serious or persistent mental illness, 65% of them were mothers and 52% were fathers."[17] For these adults, only 29-65% are able to access treatment, depending on their level of impairment.[18] In another study, "nearly 50% of people with an unmet need for mental health care cited cost as a barrier to care."[19] These parents interact with the child welfare system through

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loss of custody and termination of parental rights proceedings.[20] "Approximately three quarters of states specifically include mental illness as a ground for termination of parental rights where the disability makes a person unable to parent."[21]

Although the Adoption and Safe Families Act of 1997 [22] requires states to make "reasonable efforts" to "preserve and reunify" families, states frequently fail to include adequate mental health or other disability-related services in such efforts.[23] This failure is usually a result of a lack of collaboration between the child welfare system and the mental health system: "less than half of State Mental Health Authorities (SMHA) reported that they formally identify whether an adult client is a parent; only 27% of SMHAs reported having specific services or programs designed for their adult clients who are parents."[24] This lack of coordination, in part, has led to an adverse effect on parents with mental illness, "with removal rates of children as high as 70 to 80 percent."[25]

Using Healthcare Reform to Access Mental Health Treatment for Child Welfare-Involved Families Facing Mental Illness

Families facing mental illness "frequently have substantial health and mental health needs, lack insurance coverage completely . . . or experience gaps in coverage . . ., and find the complex world of health insurance and health care difficult to navigate."[26] Key provisions of the Affordable Care Act (ACA) and Mental Health Parity Act can expand mental health coverage for children and parents facing mental illness. Under these Acts, new health plans are required to provide mental health and substance abuse coverage as one of ten essential benefits[27] with federal parity protections.[28]

Additionally, states can choose to expand Medicaid to adults living at or below 138% of the federal poverty line, allowing these "newly-eligible" single, poor adults to access coverage for the first time under Medicaid.[29] Under these new requirements, an estimated 2.7 million uninsured parents will gain eligibility for Medicaid.[30] For parents with serious mental illness or other behavioral health disorders, Medicaid expansion will have the greatest impact on their ability to access health coverage and, ultimately, treatment.[31]

While all children who are child-welfare involved receive Medicaid coverage,[32] the ACA provisions will provide these children with access to simpler enroll-

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ment and better continuity of care when seeking mental health treatment, especially as children from these vulnerable families move between "different relatives and in and out of formal care."[33]

Ensuring System Collaboration Through Medical-Legal Partnerships

Although the ACA and Mental Health Parity Act will provide increased opportunities for mental health care coverage, this does not guarantee system collaboration and family stability. The Medical-Legal Partnership model (MLP) can help to ensure such collaboration and provide services to simultaneously address the mental health and child welfare needs of families.

Through MLPs, attorneys and healthcare professionals "work together to improve the health and wellbeing of vulnerable populations."[34] One of the core tenets of the MLP is to focus on the social determinants of health, which "are broadly understood to be the set of conditions in which people are born, live, learn, work, play, and age that affect their physical and mental well-being."[35] These social determinants can include resources such as income, housing, and education.[36] Currently, many MLPs partner between physical health providers, such as hospitals, and attorneys.[37] Although many of these health providers might also offer behavioral health services, only three of the 261 Health Care Partners participating in MLPs across the U.S. are listed as a mental health clinic or center.[38]

An MLP designed to focus on mental health and partner between attorneys and behavioral health services can provide the continuity of care necessary to assist child welfare-involved families. One example of a MLP using a behavioral health-legal partnership model is BeHeLP, a partnership between Mental Health Advocacy Services, Inc. and Hathaway-Sycamores Child and Family Services in Los Angeles, California.[39] BeHeLP, which was created by Eliza Schafler through an Equal Justice Works postgraduate fellowship, provides holistic legal services to low-income and immigrant families who have children with mental health needs.[40] Schafler states, "Working with mental health professionals has been a great experience. They have a natural understanding the MLP model because their job is to recognize the deeper social issues that affect mental health and well-being." [41] Although BeHeLP does not provide legal

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representation in child welfare proceedings, such as dependency, Schafler noted that a MLP could be created to incorporate such representation.[42]

Through a similar model to BeHeLP, attorneys and behavioral health providers can ensure that parents and children are accessing treatment and care as a preventative measure to child-welfare involvement through holistic services, such as legal representation in areas including housing and public benefits alongside mental health treatment. If these families still become involved in the child welfare system, this model should offer legal representation to guarantee that reasonable efforts are made to ensure family stability for families facing mental illness.

NOTES

1 *60 Minutes, Nowhere to Go: Mentally Ill Youth in Crisis* (CBS television broadcast Jan. 24, 2014), *available at* http://www.cbsnews.com/news/mentally-ill-youth-in-crisis/.

2 *Id.*

3 Id. (stating "They wanted to discharge my daughter. She needed to stay where she was safe and the insurance company would not pay and so I was told by our social worker in the hospital that if I gave my daughter up to Department of Children and Families, that then she would have insurance coverage through the state and she would be allowed to stay.")

4 *60 Minutes*, *supra* note 1 (stating that the failure of the mental health system that "came to the fore the murders at Sandy Hook Elementary School").

5 *See generally* BAZELON CENTER FOR MENTAL HEALTH LAW, RELINQUISHING CUSTODY: THE TRAGIC RESULT OF FAILURE TO MEET CHILDREN'S MENTAL HEALTH NEEDS EXECUTIVE REPORT (2000), *available at* http://www.bazelon.org/LinkClick.aspx?fileticket=-hWbIbUX5v8%3d&tabid=104

6 Katy Kaplan, *Child Welfare Involvement among Parents with Mental Illnesses*, CW360° THE INTERSECTION OF CHILD WELFARE AND DISABILITY: FOCUS ON PARENTS 6, 6 (2013), *available at* http://cascw.umn.edu/wp-content/uploads/2013/12/Fall2013_CW360_WEB.pdf.

7 *Id.*

8 Patient Protection and Affordable Care Act , Pub. L. No. 111-148, 124 Stat. 119 (2010).

9 Mental Health Parity and Addiction Equity Act of 2008, 29 U.S.C. §1185 (a) – (g) (2008).

10 Bonnie Miller Rubin & Ryan Haggerty, *Mother's Quest to Find Treatment for Son Highlights Mental Health System's Limitations*, CHI. TRIBUNE (May 6, 2013), *available at* http://www.chicagotribune.com/health/ct-met-search-for-treatment-20130506,0,2557217,full.story (describing one mother's difficulties in finding mental health treatment for her son across 20 years).

11 *Mental Health Myths and Facts*, MENTALHEALTH.GOV, http://www.mentalhealth.gov/basics/myths-facts/ (last visited May 7, 2014).

12 Press Release, National Institute of Mental Health, Mental Illness Exacts Heavy Toll, Beginning in Youth (Jun. 6, 2005), *available at* http://www.nimh.nih.gov/news/science-news/2005/mental-illness-exacts-heavy-toll-beginning-in-youth.shtml [hereinafter Mental Illness Exacts Heavy Toll].

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13 *See* Sandra P. Thomas, *From the Editor—"Beat 'Em Up, Lock 'Em Up, Give 'Em Up": The Disgraceful Routes to Mental Health Services for American Children*, 25 Issues in Mental Health Nursing 335 (2004).

14 United States General Accounting Office, Child Welfare and Juvenile Justice: Federal Agencies Could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services 1, 14 (2003), *available at* http://www.gao.gov/new.items/d03397.pdf.

15 Olivia Golden & Dina Emam, Urban Institute, How Health Care Reform Can Help Children and Families in the Child Welfare System: Options for Action 8 (2013), *available at* http://www.urban.org/UploadedPDF/412842-how-health-care-reform-can-help.pdf.

16 Kaplan, *supra* note 6, at 6.

17 *Id.*

18 Substance Abuse and Mental Health Services Administration (SAMHSA), Behavioral Health, United States, 2012 22 (2013), *available at* http://www.samhsa.gov/data/2012BehavioralHealthUS/2012-BHUS.pdf.

19 *Id.*

20 Kaplan, *supra* note 6, at 6.

21 Jennifer Mathis, *Keeping Families Together: Preserving the Rights of Parents with Psychiatric Disabilities*, 46 J. Poverty L. & Pol'y 517, 518 (2013), *available at* http://www.bazelon.org/LinkClick.aspx?fileticket=gsoVqDAbIUo%3D&tabid=640.

22 *Id.*; *Adoption* and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2155 (1997) (codified in scattered sections of 42 U.S.C.)

23 Mathis, *supra* note 21, at 518.

24 Kaplan, *supra* note 6, at 6.

25 Mathis, *supra* note 21, at 517.

26 Golden & Emam, *supra* note 15, at 1.

27 Jean Folger, *Essential Health Benefits Under the Affordable Care Act*, Forbes (Oct. 11, 2013), *available at* http://www.forbes.com/sites/investopedia/2013/10/11/essential-health-benefits-under-the-affordable-care-act/ (listing the ten essential benefits every new health plan must cover: ambulatory patient services, emergency services, hospitalization, laboratory services, maternity and newborn care, mental health services and addiction treatment, rehabilitative services and devices, pediatric services, prescription drugs, and preventive and wellness services and chronic disease treatment).

28 Cecilia Muñoz, *The Affordable Care Act and Expanding Mental Health Coverage,* The White House Blog (Aug. 21, 2013), *available at* http://www.whitehouse.gov/blog/2013/08/21/affordable-care-act-and-expanding-mental-health-coverage.

29 Genevieve M. Kenney et al., Opting in to the Medicaid Expansion under the ACA: Who Are the Uninsured Adults Who Could Gain Health Insurance? 1 (2012), *available at* http://www.urban.org/UploadedPDF/412630-opting-in-medicaid.pdf.

30 *Id.* at 3.

31 Joel E. Miller et al., National Association of State Mental Health Program Directors, The Waterfall Effect: Transformative Impact of Medicaid Expansion on States 1, 50-51 (2013), *available at* http://www.nasmhpd.org/docs/publications/NASMHPDMedicaidExpansionReportFinal.pdf.

32 Golden & Emam, *supra* note 15, at 11; *See also* Health Resources and Services Administration (HRSA), *Mental Health and EPSDT*, http://www.mchb.hrsa.gov/epsdt/mentalhealth/index.html (last visited Apr. 13, 2014) (describing Early Periodic Screening Diagnostic and Treatment [EPSDT] services).

33 GOLDEN & EMAM, *supra* note 15, at 12.
34 Daniel Atkins, *Medical-Legal Partnership and Healthy Start: Integrating Civil Legal Aid Services Into Public Health Advocacy*, 35 J. LEGAL MED. 195, 199 (2014).
35 *Id.* at 198.
36 *Id.*
37 *See, e.g.*, NATIONAL CENTER FOR MEDICAL LEGAL PARTNERSHIP, *Partnerships Across the U.S.*, http://www.medical-legalpartnership.org/partnerships/ (last visited Apr. 13, 2014) (including a comprehensive list of Healthcare Partners and Legal Partners).
38 *Id.* (listing Area Mental Health Center in Kansas, Eskenazi Health Midtown Community Mental Health Center in Indiana, and Woodhull Medical and Mental Health Center in New York).
39 Eliza Schafler, *A New Beginning: Behavioral Health-Legal Partnership*, MENTAL HEALTH ADVOCACY SERVICES BLOG (Nov. 6, 2013), http://mentalhealthadvocacyservices.wordpress.com/page/5/.
40 *BeHeLP*, MENTAL HEALTH ADVOCACY SERVICES, http://www.mhas-la.org/ (last visited May 4, 2014).
41 Telephone Interview with Eliza Schafler, Equal Justice Works Fellow, Mental Health Advocacy Services (May 2, 2014).
42 *Id.*