TAKING ISSUE

Prison Overcrowding in the Context of the ACA

Embedded in this month's Law and Psychiatry column is a subtle message that goes beyond the outrageous operations of the California prison system. That message is that solutions to these egregious violations of basic human decency are impossible without looking at prisons in the broader context of the entire criminal justice system.

The three-judge panel in California proposed four mechanisms as remedies to overcrowding: early release, diversion of technical parole violators to community-based sanctions or local jails, similar alternate sanctions for low-risk offenders, and expansion of rehabilitation programming in prisons and communities. All four options are related to moving solutions "upstream," if you will, a criminal justice prevention strategy—prevention that relies heavily on requiring localities to assume state responsibilities.

To cover persons involved with the criminal justice system who have behavioral health disorders, this would mean paying with state dollars for local jail cells, increased supervisory responsibilities for community corrections professionals, and the development of undefined expanded rehabilitation programs—all this as we await the full implementation of the Affordable Care Act (ACA) in 2014, when this justice system–involved population will produce some rather ill-defined impacts on the health care system.

A major addition to Medicaid rolls under the ACA will be single adults at or below 133% of the federal poverty level (FPL) regardless of disability status. These criteria closely fit the modal person in U.S. correctional facilities. Moreover, a section of the ACA states, "An individual shall not be treated as a qualified individual if, at the time of enrollment, the individual is incarcerated, other than incarceration pending the disposition of charges." Does this mean that behavioral health services provided to pretrial detainees while they are in jail will be Medicaid reimbursable if the individuals meet the 133% FPL standard?

Whatever the answer, it points to the fact that in the near term there will likely be strong pressures and big opportunities at the front end of the criminal justice system to prevent unnecessary incarceration of persons with behavioral health needs. The fundamental lesson here is that by looking at only one piece in a very complicated set of systems, we will not solve any of the problems of correctional psychiatry, community psychiatry as it relates to justice system–involved persons with behavioral health disorders, or forensic psychiatry. We need big-picture thinkers. We need to get to the table when health homes, insurance exchanges, and the like are being planned in anticipation of ACA's 2014 implementation. If stakeholders do not get involved now in such planning, every state will soon be California.—HENRY J. STEADMAN, PH.D., *Policy Research Associates, Inc., Delmar, New York*

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