NACBHDD
National Association of County Behavioral Health & Developmental Disability Directors
The voice of local authorities in the nation's capital

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NEWSLETTER

JANUARY 23, 2019

RESPONDING TO THE TEXAS V. HHS COURT DECISION

As readers recall, in 2017, the President signed a tax bill into law that eliminated the Affordable Care Act's (ACA) penalty for people who did not comply with the mandate to obtain health insurance. That led Texas and 18 other GOP-state Attorneys General to file a lawsuit in February 2018 in the US District Court for the Northern District of Texas to dismantle the ACA altogether in a case now known as *Texas et.al v. United States*. As a result, in June 2018, 17 Democratic Attorneys General, joined by many others who filed *amicus* (friend of the court) briefs, argued that the suit lacked merit since halting the entire ACA violates congressional intent. After all, Congress had left the rest of the law standing when it repealed the penalty.

THE LEGAL DECISION AND ITS IMPACT. In mid-December 2018, the Federal District Court Judge, Reed O'Connor, who presided over arguments in the case, held the ACA to be unconstitutional. His decision rested on 2 key points. First, since the 2017 Tax Cuts and Jobs Act eliminated the tax penalty for those not purchasing health insurance, the tax-related constitutional basis for the individual mandate no longer existed. Second, he found that the remainder of the ACA could not stand without the "essential" mandate. Therefore, his decision set aside the entire ACA—essentially ending it altogether.

Unless overturned, the ruling *will* result in the loss of health insurance for as many as 171 million individuals, a 50% hike in uninsurance rates. Protections for some 130 million with pre-existing conditions—including over 45 million with behavioral disorders—who purchase their own health insurance *will* evaporate. Medicaid coverage expansion to people living at up to 138% of the federal poverty level, around 15 million people, *will* disappear. Children will no longer be covered on their family health insurance to age 26. Critically, ACA *essential benefits* would no longer be required; *annual and lifetime limits* on certain services—such as behavioral health care—would be reimposed.

Fortunately, at least for the short-term Judge O'Connor has ordered a stay in his ruling, leaving the law intact as court challenges proceed. Not surprisingly, the federal government opposes stay, as do the Republican-led group of Attorneys General that brought the original suit.

NEXT STEPS THROUGH THE COURTS. Even before the new year began, a coalition of 16 Democratic state and DC Attorneys General joined together to appeal Judge O'Connor's ruling to the Louisiana-based 5th Circuit Court of Appeals. Since then, the House, now under Democratic control, officially voted 235-192 in favor of the *Restoring Congress for the People Resolution* directing the House Counsel to defend the ACA on behalf of the House. Only 3 Republicans voted in support of the resolution. House Democrats shortly followed that vote by filing a motion with the Court of Appeals to allow the House to participate as a defendant in the appeal Judge O'Connor's decision.

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Teddi Fine, MA, Editor

Clearly, the Department of Justice (DoJ) and other engaged entities are working file their responses to the appeal. Those responses are due as this newsletter goes to press. However, DoJ has asked to delay its brief submission on the grounds that the partial government shut-down means DoJ attorneys are "unable to prepare their opposition at this time due to the lapse in appropriations."

Without question, the ACA's future will be litigated all the way to the Supreme Court, which, in 2012, upheld the ACA, ruling the individual mandate to be a tax and that Congress has the authority to levy taxes. Then, in 2015, the Court upheld the law's tax subsidies for low- and middle-income earners. This would mark the third time the ACA will be litigated before the high court. And, this time, Chief Justice Roberts is likely to be the swing vote, assuming the court composition remains the same as it is today.

And also without question, as 2019 begins, it is increasingly clear to us that, despite clear public opinion to the contrary, efforts to sabotage the Affordable Care Act (ACA) through a variety of means will continue unabated in the courts, in Congress (with reintroduction of ACA repeal measures) and through specific Administration action or inaction (such as detailed next story about Medicaid block grants). The longer this decision is dragged out, the longer the health care system will be subjected to disruption and confusion. That means we must continue to be vigilant and to take appropriate action when indicated.

CMS Looks to State Medicaid Block Grants

Readers may recall that in the last Congress, Republican Senators Lindsey Graham (SC) and Bill Cassiidy (LA) introduced ACA "repeal and replace" legislation that included turning Medicaid into a state block grant, allocating fixed dollars to states based on a set of specific criteria related to population characteristics. The measure gained little traction and, along with the larger Republican effort to repel the ACA, failed to advance in the Senate. Unfortunately, it appears that the Center for Medicare and Medicaid Services may well have resurrected the idea – and this time, in a way that obviates the need for legislation altogether.

While short on details, reports we have read suggest that, just as a state can use Section 1115 waivers to add work requirements as a condition of Medicaid, it would be able to use same type of demonstration waiver to request to have its Medicaid funds provided as a block grant with an annual ceiling. In exchange, the state would be granted broader flexibility in how it conducts this federal-state partnership program.

Whether this is feasible, or even legal, remains an open question. After all, the Medicaid law and the ACA do set specific parameters regarding just how much leeway CMS and states have in both funding and health care service design, structure and scope for Medicaid beneficiaries. The best word we have read in accounts about this CMS proposal is the word "optional." At this point, we have absolutely no idea which, if any, states would want to opt into such a block grant. And, at this point, we have little detail about the proposal which, we hear, may be announced in the next few months. However, given the legal implications already bearing down on Section 1115 waivers, this Medicaid block grant concept is very much up in the air. We cannot now say whether it will or will not actually see the light of day. We caution everyone to be alert. Should this proposal move forward, we need to be ready with comments; and if it is implemented, we need to be ready to participate in potential legal remedies.

Countdown to DC: NACBHDD Legislative & Policy Conference

Please join us for our next NACBHDD Legislative and Policy Conference, ***Taking Stock of Key Developments***, on March 4-6, 2019, at the Cosmos Club, in Washington, DC.

The conference will provide the latest information on the status of the ACA, Medicaid, and evolving federal reimbursement models. The current human resource crisis and crises in our field—opioids and suicide—also will be highlighted. Our 2019 legislative priorities will be discussed and materials on each shared with participants.

We will be joined by Assistant Secretary Dr. Elinore McCance-Katz, who will share the latest on SAMHSA and its programs. As in past years, Conference participants will engage their Representatives and Senators during a visit to Capitol Hill. Similarly, a Capitol Hill reception and awards ceremony will be another highlight event that shouldn't be missed.

A block of sleeping rooms at the Cosmos Club is available for the nights of March 3-5. Reservations can be made by calling 202-387-7783 and identifying the NACBHDD room block.

Bits From DC

Dear Colleagues:

Happy New Year to each of you!

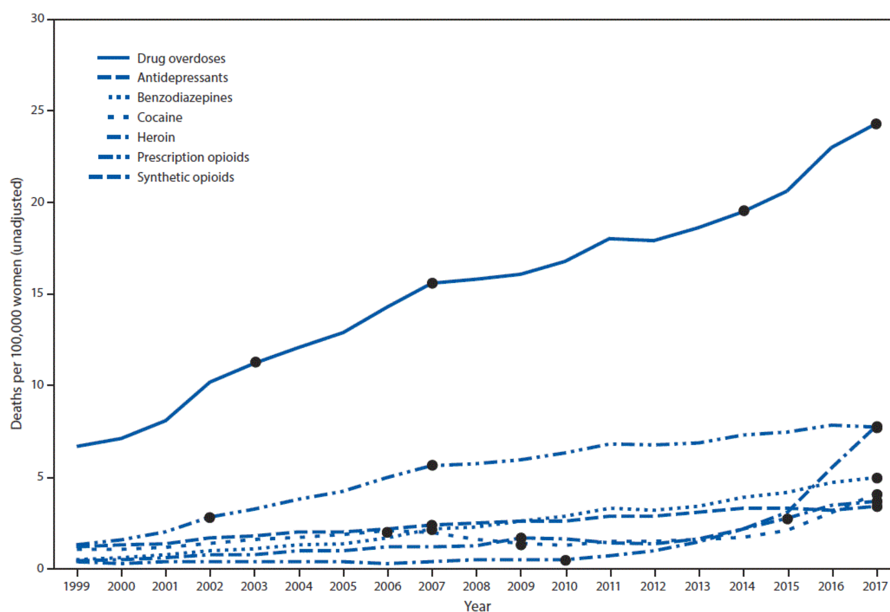
We are in the final phases of preparing for our 2019 NACBHDD Legislative and Policy Conference, to be held from March 4 to 6 at the Cosmos Club in Washington, DC. Our theme is "Taking Stock of Key Developments". We will address issues ranging from new developments in the Medicaid Program, to the Texas et. al. vs. HHS ACA case, and even ACES training for providers. As you know, this conference is the "best little meeting in America". I hope to see all of you when we convene on March 4.

The Texas et. al. vs. HHS case shocked the field in December, when a Federal District Court invalidated the Affordable Care Act. The action has been "stayed" pending appeals, which are being organized now. We will be working with other organizations in the health field to prepare amicus briefs for the appellate and Supreme Court in support of the ACA as the case moves forward. This case is likely to consume much of our attention in 2019. Please stay tuned for new developments.

I hope that 2019 is a very good year for America and for all of you.

Ron Manderscheid, PhD
Executive Director, NACBHDD and NARMH

Drug Overdose Deaths Among Women Aged 30–64 Years — United States, 1999–2017 (CDC)



Centers for Disease Control and Prevention. Morbidity and Mortality Weekly, January 11, 2019.

Between 1999 and 2017, the crude drug overdose death rate among women, ages 30-64, increased by 260%. During that time, overdose death rates increased for those involving synthetic opioids (1,643%), heroin (915%), benzodiazepines (830%), prescription opioids (485%), cocaine (280%) and antidepressants (176%)

News and Notes

- **More Changes at CMS.** After fewer than 3 months on the job, *Mary Mahew*, director of the CMS's Center for Medicaid and CHIP Services, has resigned. The former head of Maine's Department of Health under then-governor LePage (R), Mahew has accepted a position with Florida's new governor, Ron DeSantis (R). Recall that Mahew is a staunch opponent of Medicaid expansion. Expect much the same in her new role in the Sunshine State.

- **ACA 2019 ENROLLMENT**. A final CMS snapshot shows 8.4 million people signed up for plans during open enrollment through the federal marketplace, healthcare.gov, a drop of about 43,000 people from numbers released last month. CMS will release more information in March, including enrollment numbers from states that don't use healthcare.gov.
- **NACo WEBINAR: REDUCING MENTAL ILLNESS IN JAILS**. Join the *National Association of Counties* (NACo) for a webinar discussing how counties can best leverage resources to meet county goals on reducing the number of people who have mental illness in jails. Thurs, February 14, 2–3:15pm ET. Register online at: https://www.naco.org/events/"stepping-"-your-efforts-reduce-mental-illness-jails
- **EARLY EXIT ANNOUNCEMENT.** *Lamar Alexander* (R-TN), Chairman of the Senate Health, Education, Labor and Pensions Committee, will retire in 2020. A man who values working across the aisle with his colleagues, Alexander stepped down from Republican leadership some years ago when he saw the growing divide between legislating and politics. As HELP Committee Chairman, he teamed up with ranking minority Senator Patty Murray (D-WA) to replace the No Child Left Behind program and to shepherd the significant 21st Century Cures Act from concept to law. Perhaps in the coming two years, he will feel even more unfettered to vote as his conscience, not his party, governs.
- **TRANSITIONS.** We are saddened to report the death of former NIMH Director, research psychiatrist and longtime chair of psychiatry at the University of California San Diego *Lewis L. Judd*, MD, at age 88. A passionate advocate for brain science as the underlying basis for mental illnesses, he hailed the 1990s as the "Decade of the Brain" at NIMH and beyond.

RURAL/URBAN DISCREPANCIES IN OPIOID PRESCRIBING

A new CDC report analyzing patient opioid prescription data during 2014–2017 found that the percentage of patients prescribed an opioid was higher in rural than in urban areas. In 2017, 14 rural counties were among the 15 counties with the highest opioid prescribing rates. Higher opioid prescribing rates put patients at risk for addiction and overdose.

The article suggests that higher odds of opioid prescribing in rural counties may result from prescription drug use and misuse at an earlier age, from higher prevalence of chronic pain among persons living in rural areas, coupled with a larger population of older adults with conditions associated with pain. Further, those in rural areas often have limited access to medication-assisted treatment facilities and alternative therapies.

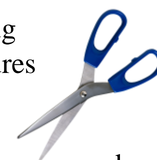
On the positive side, significant decreases in opioid prescribing were found to occur in both rural and urban areas following release of the CDC *Guideline for Prescribing Opioids for Chronic Pain in March 2016.*

The findings suggest that tailoring health care practices and intervention programs to community characteristics will remain important. Download the Morbidity and Mortality Weekly Report, *Opioid Prescribing Rates in Nonmetropolitan and Metropolitan Counties Among Primary Care Providers Using an Electronic Health Record System,US, 2014–2017* at: https://www.cdc.gov/mmwr/volumes/68/wr/mm6802a1.htm?s_cid=mm6802a1_e

HILL HAPPENINGS: THE GOOD, THE BAD AND THE UGLY

- **SENATE COMMITTEE ASSIGNMENTS UNVEILED**. Newly sworn-in Senators *Mitt Romney* (R-UT) and *Mike Braun* (R-IN) will serve on the Senate Health, Education, Labor and Pension Committee. They join Senator *Jacky Rosen* (D-NV) as new lawmakers on the committee. Senators Lamar Alexander and Patty Murray remain as Chairman and ranking minority members of the Committee. Freshmen Todd Young (R-IN) and Catherine Cortez Masto (NV) have been appointed to the Senate Finance Committee. Stay tuned for further updates and announcements about committee assignments as we head toward the NACBHDD Legislative and Policy Conference next month.
- **WITH SHIFT IN MAJORITY, DEMOCRATIC HOUSE COMMITTEE CHAIRS NAMED.** Representative *Frank Pallone* (D-NJ) moves from ranking minority to chairman of the important House Energy and Commerce Committee. Congresswoman *Anna Eshoo* (D-CA) will serve as chairwoman of its Health Subcommittee. New York Democrat Nita Lowey will be the first female Representative to serve as chairwoman of the House Appropriations Committee. And, after many years on the committee, Congressman *Richard Neal* (D-MA) will chair the House Ways and Means Committee.

- **New House Budget Chair Wants Single-Payer Input**. House Budget Committee Chairman John Yarmuth (D-KY) has asked the Congressional Budget Office (CBO) to prepare a report on the "design and policy considerations" related to creating a single-payer health care system. Unlike requests from his Republican colleagues, the Chairman isn't interested in costing out a specific bill. Rather, he's looking for a variety of ways a single-payer health plan could be structured and funded. Stay tuned.
- **ACA-related Activities Already Ongoing.** Energy & Commerce Chairman Frank Pallone (D-NJ) plans a hearing later this month to focus on the impact of the ACA-related *Texas v. HHS* initial ruling. And, perhaps unsurprisingly, an ACA repeal measure already has been introduced. This time, it is by Representative Steve King (R-IA) who, notwithstanding his formal reprimand by the House for racist remarks, has already garnered over a dozen cosponsors.
- **Fighting Excessive Drug Pricing.** Both House and Senate are working to help curb the upward spiral of drug pricing. New Senate Finance Committee Chairman, Senator Chuck Grassley, says he is pressing for measures that will (1) allow people import medications from Canada, (2) impose a ban on "pay for delay" that keep generics off the market longer, and (3) make product samples more readily available to generic drug developers. A group of Senate Democrats, led by Senators Cory Booker (D-NJ), Bernie Sanders (I-VT) and Amy Klobuchar (D-MN), have introduced 3 separate drug-cost measures. The first, consistent with Grassley's wishes, would allow importation of cheaper drugs from Canada. The other two would let Medicare negotiate drug prices and would strip specific medication monopolies from companies with prices above the average for the same drug in Europe and other wealthy countries. At the same time, in the House Oversight Committee, new Democratic Chairman Elijah Cummings (D-MD) not only has met with HHS Secretary Azar about ways to lower drug prices, but also has planned a January 29 hearing to assess the "skyrocketing prices of prescription drugs."



- **Dems Put Gun Control Back on the Docket**. Exactly 8 years after the deadly Arizona shooting that nearly claimed the life of former Representative Gabrielle Giffords (D), House Democrats introduced legislation, HR 8, to require universal background checks for gun purchases. Sponsored by Representatives Mike Thompson (D-CA) and Peter King (R-NY), the legislation would expand federal background checks preceding commercial gun sales to include unlicensed gun sellers, including those operating on the Internet or at gun shows. Four other Republican Congressmen have endorsed the bill: Chris Smith (NJ), Fred Upton (MI), Brian Mast (FL) and Brian Fitzpatrick (PA). The measure is almost guaranteed House adoption, particularly given the overwhelming public support for the issue in the wake of shooting after shooting and the chorus of young advocates for gun control following the Parkland tragedy. It certainly marks a change from "thoughts and prayers" that have been the by-words following tragedy after tragedy during the past 8 years of Republican control of the House. Clearly, though, the measure faces rough sledding, at best, in the Republican-controlled Senate, where Majority Leader McConnell has little taste for the topic.

Public Option Healthcare: Federal, State, Local Initiatives Being Considered

Movement toward all-payer health coverage or public option healthcare isn't just taking place at the federal level. Rather, state and local Democrats across the country also are embracing a bigger role for public insurance programs. As noted elsewhere in this newsletter, New York City Mayor Bill de Blasio has rolled out what he calls a "revolutionary plan to guarantee health care for every New Yorker." The mechanism is a locally run public option for health insurance. Washington Governor Jay Inslee**,** a possible 2020 candidate, announced his own legislation to establish a statewide public health insurance option. And on the very day California Governor Gavin Newsom took office, he called for expanding ACA premium subsidies to additional middle-income individuals and families in the State. Democrats in the Colorado State legislature are considering a public insurance option and a number of other states— including New Mexico—are seriously exploring Medicaid buy-in proposals. After 8 years of effort to do in the ACA, it seems we are now entering a period where the goal is to build on the ACA to make affordable, publicly supported health care a reality for ever more Americans. New and positive directions in health insurance coverage increasingly is going to be under consideration are many states. Keep on top of what is happening in *your* state!

DEVELOPMENTS IN ME /DD:
ADDRESSING ISSUE OF INCARCERATION OF PEOPLE WITH DISABILITIES

The National Association of County Behavioral Health & Developmental Disability Directors (NACBHDD) and Benchmark Human Services (Benchmark) have partnered to co-sponsor an initiative to bring national attention to the needs of persons with intellectual and developmental disabilities (I/DD) as they relate to the criminal justice system.

This call to action is to address the policy vacuum that currently exists regarding persons with I/DD involved with the criminal justice system. While there is considerable activity at federal and state levels to address the needs of persons with mental illness involved with the criminal justice system, there is no similar initiative to address the needs of persons with I/DD interacting with this system. A major goal is to bring national attention to this growing need and to develop a Hill Briefing tentatively scheduled for the period March-May 2019.

The two organizations recently hosted a meeting in Washington, DC, to establish objectives, note key issues, and develop a plan to highlight critical issues. Those in attendance included Valerie Bradley (President Emerita, The Human Services Research Institute); Eileen Elias (Director, Disability Services Center and Senior Policy Advisor, JBS International); Vijay Ganju (Independent Consultant and former Secretary General, World Federation of Mental Health); Alyssa George (Fellow, Bazelon Center for Mental Health Law); Mary Lee Fay (Executive Director, National Association of State Directors of Developmental Disabilities Services); Ron Manderscheid (Executive Director, NACBHDD); Jeff Cross (President, Public Solutions, Benchmark); and Nikki Ford (Development Strategies Director, Benchmark). The work group will be expanding to include executives from the ARC and national law enforcement associations.

"The growing incidence of persons with I/DD being incarcerated in local jails is a significant concern across the country," said Cross. "These individuals frequently have a dual diagnosis of I/DD and mental illness but have little access to behavioral health services. There is an acute need for policy changes and increased support to local law enforcement and service provider agencies to address this issue."

Manderscheid added, "This effort addresses the new and disconcerting problem of incarceration of transition age youth with I/DD in our county and local jails—an issue that needs immediate attention. Our effort will bring potential solutions to the attention of the new Congress after they convene in January."

OVER THE FENCE:
NO "I" IN TEAM: UTILIZING COLLABORATIVE CARE ACROSS RURAL COMMUNITIES

JENNIFER (ROSEMAN) CHRISTMAN
PRESIDENT, NARMH

With limited access to specialized services, rural communities rely on primary care physicians (PCPs) as the main point of contact for patients. However, these doctors may not have the necessary mental health training or access to a mental health professional referral. Now, healthcare communities have begun to think creatively about integrative patient-centric solutions.

The US Department of Health and Human Services (HHS) and its Health Resources and Services Administration (HRSA) state that ninety million residents live in designated Mental Health Professional Shortage Areas (MHPSAs). Within these MHPSAs, it is estimated that over 4,000 to 6,000 new mental health professionals would be required to meet the identified need. In the face of this extreme shortage, many families rely heavily on PCPs to guide mental health care treatment plans.

This creates opportunity for collaboration between psychologists and PCPs to effectively treat patients in need of mental health services. "Teamwork and working as a collaborative unit are essential in rural areas where resources such as financial means are at a premium. Collaborative care not only enhances communication as others have noted, but also promotes creativity in the delivery of services." (Haxton & Boelk, 2010).

Referred to as "warm handoffs" doctor-to-doctor communication allows for the friendly introduction of patients and comprehensive care for the entire person, not just one issue. By hearing from a trusted PCP of a treatment plan, this method also helps to de-stigmatize mental health concerns in rural areas. It creates one point of focus, allows for more open communication, and eliminates confusion in treatment.

Also referred to as Collaborative Care, this integration allows for PCPs, mental health professionals, and extended care workers to create a team environment treating the patient as a whole. The National Institute of Mental Health has also acted on the need of Collaborative Care. As of January 2017, Medicare has added additional payment coverage for

PCP's who are working within its framework. Many interactions between patients and doctors, but also doctor-to-doctor, are done via technology-based communications (skype, phone, emails). This allows additional opportunities of physician peer collaboration through telehealth.

This model continues to prove successful in the creation of care plans for at-risk populations in rural settings. In 2017, the CDC released data showing that Americans in rural communities were more likely to commit suicide than in urban settings at 17.32 in every 100,000 individuals. Although many suicide preventative measures must be done in person, telehealth options make it possible for more easily accessible check-ins and follow-up reminders. As stated by the Suicide Prevention Resource Group, one step in the comprehensive rural care plan is to create a system of integrated communications from the ER to the PCP to the mental health professional and family. By forming this link, patients are less likely to "slip through the cracks" and can obtain the care needed.

Collaborative models continue to gain momentum throughout many mental health programs, allowing for new and better healthcare opportunities. Alliance of health, tech, and human interaction continues to aid progress in the expansion of mental health resources in rural communities.

AROUND THE DEPARTMENTS AND AGENCIES

- **DANGER! ACA PROPOSED PAYMENT NOTICE FOR 2019 COVERAGE YEAR RELEASED**. At last, the Centers for Medicare & Medicaid Services (CMS) has issued its proposed 2019 annual Notice of Benefit and Payment Parameters (NBPP) delineating the financial and regulatory guidelines to which ACA marketplace insurers must adhere. The news is not good for the ACA or for the people it serves. It would raise premiums, reduce enrollment and lower subsidy funding. CMS estimates premium subsidy changes alone would increase consumer premiums by $181 million and decrease marketplace enrollment by 100,000. Further, the NBPP would (a) Cut premium tax credits by $900 million in 2020 and 2021, and by $1 billion in 2022 and 2023; (b) Increase out-of-pocket costs caps by $400 (family) and $200 (individual); and (c) Reduce premium tax credits by $189 for a family of 4 at 300% of the federal poverty level. In addition, the NBPP would allow states to set *essential health benefit* packages (benchmark plans) annually. Thus, CMS essentially would let states drop the ACA's 10 essential benefits and to cherry-pick essential benefits based on coverage in a "typical employer plan" or another state's plan, or by "selecting a set of benefits to become the state's EHB plan." A state could eliminate certain ACA essential benefits (e.g., prevention, behavioral health) and curtail coverage for the full range of needs of people with pre-existing conditions.

  CMS asks for public input on eliminating both "silver loading" by insurers and automatic renewal of marketplace subsidies and coverage. When it comes to automatic re-enrollment, know that, this year, 1.8 million people were re-enrolled automatically in federal marketplace states. By ending automatic re-enrollment, people will have to remember to re-enroll and, if they don't, they immediately will lose coverage. Similarly, eliminating "silver loading" could hurt the people the ACA is designed to serve. Silver loading occurred when, following the Administration's decision to terminate cost-sharing subsidy payments, insurers increased premiums for silver plans to offset the lost subsidy. While prohibiting this practice would reduce federal costs, it also would hike both out-of-pocket premiums for many subsidized enrollees and premiums for middle-class consumers not eligible for subsidies. This kind of request for comment often foreshadows later regulatory changes to implement the very practice on which comments are sought. Ironically, the NBPP also notes the Administration supports a legislative fix to restore the ACA's cost-sharing subsidies— funding the White House itself ended, and the very reason silver loading has occurred. Both concerned legislators and ACA supporters are calling the changes out as sabotage.
- **IMPACT OF THE PARTIAL FEDERAL FURLOUGH**. The human, economic, program and policy damage grow ever-larger as the furlough of parts of the federal government stretches beyond the 20-day mark. Furloughed Food and Drug Administration employees fear the lapse in funding and staffing could cost lives, including through oversight, drug approvals and compassionate-care drug trial management. Food inspections have been radically curtailed or even halted, placing consumers at risk. Unpaid wages for federal workers alone are estimated at $200 million per day, and that doesn't count the losses incurred by contract workers, a population that has been growing under the current Administration's stated goal of shrinking the federal workforce. And while federal employees at the affected agencies will receive back pay, the same cannot be said for these contractors. And we have just learned that several agencies are now requiring workers to return to their jobs without pay, or face termination.
- **VA PRIVATIZING HEALTH CARE?** New draft VA regulations, modeled on the DoD's Tricare Prime program, would make it easier for veterans to get care in privately run hospitals while the federal government picks up the tab. The

proposed changes are a product of the Mission Act, adopted in the last Congress. Veterans also could access a system of walk-in clinics by paying a small copayment. Such clinics would act as a bridge between private providers and VA facility emergency rooms. For individuals, private care could mean shorter waits, more choices and fewer out-of-pocket costs, and could prove popular. Supporters—among them the Koch brothers-supported Concerned Veterans for America—argue that the new rules would streamline care available to veterans and prod VA facilities to compete for patients, making them more efficient. However, if implemented with no separate source of funding, the proposal would redirect money that the current VA health system uses to provide specialty care – such as behavioral health care – into the payment stream for services provided by private hospitals and clinics. Perhaps not surprisingly, the majority of veteran-serving organizations are harshly critical of the Administration's proposed plan of action. The proposed rule remains a work in progress, but one that could be sprung on the Nation's veterans at a moment's notice by the Administration.

- **CMS Clears State Medicaid Waivers.** To date, the Administration has approved a total of eight Section 1115 Medicaid waiver work requirements, with the most recent submitted by Maine, Arizona and Michigan. In all 3 states, the work requirements will take effect in 2020. In *Michigan*, adults, ages 19-62 and eligible through Medicaid expansion, will be required to work at least 80 hours a month or complete training activities to keep their Medicaid coverage. Education, job hunts, community service and participation in substance use treatment will also count toward the requirements. In *Maine*, based on the waiver submitted by the previous Republican governor, work requirements will apply to the traditional Medicaid population—individuals who make less than $12,000 a year between ages 19-64. Such individuals will be required to work 20 hours a week to retain their Medicaid coverage. Exceptions exist for pregnant women and those physically or mentally unable to work 20 hours a week. The *Arizona* work requirement waiver is the first to include an exemption to this requirement for members of federally recognized tribes, approved following a tribal consultation at the state and federal levels. It requires Medicaid beneficiaries, ages 19 through 59, to work or engage in other qualifying community activities for at least 80 hours per month. Exemptions will include pregnant women, medically frail beneficiaries and those in treatment for an SUD. More waivers await CMS review, and let's see if Maine's new Governor retracts the work requirements.

- **Manpower, SUDs and Loans.** A new HRSA National Health Service Corps loan repayment program will provide student loan repayment assistance to clinicians who agree to serve on the frontlines of the opioid crisis in underserved communities. Clinicians accepted to the program may receive up to $75,000 for 3 years of full-time service at a health care facility that has been designated by HRSA as an NHSC-approved substance use disorder site. A part-time service option, with a maximum award of $37,500, is also available. Learn more about the NHSC Substance Use Disorder Workforce Loan Repayment Program and how to apply on the HRSA website (www.hrsa.gov)
- **OTC Naloxone?** As readers know, if administered quickly, Naloxone can counter the effects of opioid overdose, usually within minutes; its wider availability and quick action to administer it can be lifesaving. However, Naloxone now requires a prescription, a potential barrier to its use. The Food and Drug Administration has found that pharmaceutical companies say a deterrent to moving Naloxone to the over-the-counter (OTC) market is that OTC drugs need to have consumer-friendly drug facts labels (DFL) with concomitant studies showing that consumers can understand how to use the medication without medical supervision. So, the FDA has developed and consumer-tested and validated a model DFL with easy-to-understand pictograms on how to use the drug. It's a model that medication developers can use to obtain approval for OTC Naloxone and increase its access. The model DFL comes in 2 versions: One for use with a nasal spray, another for use with an auto-injector. Apart from product-specific information, the model DFLs otherwise contain all the key information needed for an untrained bystander to administer Naloxone. Moving the products to FDA for OTC approval is now up to the manufacturers.

NARMH Call for 2019 Annual Conference Proposals

At its 2019 Annual Meeting, *From Surviving to Thriving: Embracing Connections,* NARMH hopes to gain insight from rural communities nationwide about how embracing connections, even unexpected ones, can move a community from merely surviving to thriving. To that end, NARMH is seeking proposals for Conference presentations. Such proposals include, but are not limited to, the following suggested interdisciplinary themes:

- *Surviving to Thriving*. How have efforts to sustain community resiliency and enhance

connections affected the mental and behavioral health of rural residents?

- *Innovations in Service Delivery*. How have innovations in service delivery enhanced care for rural and frontier community members, including those with specific and often unaddressed needs? Who are our partners and how do we make connections in innovative service delivery?
- *Dilemmas in Addressing Trauma*. What resources/strategies foster strength and healing for different types of trauma?
- *Rural and Frontier Workforce Development Strategies*. What are the most challenging workforce issues and how can they be addressed?
- *Embracing the Reality of Behavioral Health in Rural Communities – Struggles, Responses and Successes*. Funding limitations, dwindling populations, economic impacts, community resilience are among possible areas for vibrant conversation.
- *Co-Occurring Substance Use Disorders*.

The deadline to submit a proposal is February 1, 2019, or until the agenda is filled.

RECENT ACA COURT RULING PUTS BEHAVIORAL HEALTHCARE UNDER DURESS

RONALD MANDERSCHEID, PHD

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Few headlines coming out of the winter holidays were as upsetting as U.S. District Judge Reed O'Connor's decision to invalidate the Affordable Care Act (ACA). Now, we must employ every means through the courts and through the Congress to overturn this very wrong-headed decision.

Here are a few comments about the legal aspects of the case. First, Judge O'Connor did not invoke the principle of separability. This means that he did not separate the tax clause in the ACA, which he determined to be unconstitutional, from other features of the legislation. This should have been done and clearly will become the basis for an appeal of the decision to the Appellate and Supreme Courts. Second, Judge O'Connor stayed a date certain for implementation of his decision. This leaves all aspects of the ACA in legal limbo and creates monumental uncertainty.

Implementation of Judge O'Connor's decision would cause catastrophic consequences. Unless a higher court steps in, healthcare for tens of millions of people and vital consumer protections literally could disappear. The following would be gone:

- Marketplace tax credits and coverage for 10 million people
- Medicaid expansion currently covering 12 million people
- Protections for 133 million people with pre-existing conditions when they buy coverage on their own
- Allowing kids to stay on their parents' insurance until age 26
- Ban on annual and lifetime limits
- Ban on insurance discrimination against women
- Limits on out-of-pocket costs
- Improvements to Medicare, including reduced costs for prescription drugs
- Rules to hold insurance companies accountable
- Small business tax credits

Just a moment's reflection will suggest that these actions would throw the nation's entire healthcare system into chaos. Behavioral health would be harmed disproportionately because it has benefitted disproportionally from the ACA.

We must not permit this to happen. As we did in 2017, we again will organize a very broad-based healthcare coalition to overturn Judge O'Connor's decision. We will work in the Senate and in the House; we will work in every state; we will work in the Appellate and Supreme courts; and we will work in every venue possible.

Please join us. Your healthcare and the healthcare of your family members are at stake.

ON THE LEGAL FRONT

- **OXYCONTIN IN COURT.** Purdue Pharma, the maker of OxyContin, is being sued by the State of Massachusetts, which argues that the Sackler family, the sole owner of Purdue Pharma, not only heavily marketed the painkiller to

clinicians when it was first launched, but also subsequently sought to shift the blame for addiction to the patients. This, notwithstanding their clear knowledge that the medication is highly addictive. Stay tuned for updates on this suit.

- **KENTUCKY MEDICAID WORK REQUIREMENTS ON THE DOCKET AGAIN**. The on again-off again State plan to impose work requirements on Medicaid beneficiaries looks like it may well be off again, following a new suit challenging the second go-around of the State's Section 1115 waiver approval by CMS. Recall that Kentucky was the first state to gain CMS approval to impose a work requirement and that initial implementation was halted last year by a federal judge. Following a "public comment period," Kentucky resubmitted the waiver request which again was cleared by CMS. Now, another class-action suit has been filed, arguing that the new waiver and its enabling regulations are, again, illegal, for many of the same reasons argued when implementation was halted the first time. The result of the suit, however it is adjudged, could affect over 90,000 people in the State and set a benchmark for similar suits in other states. In other words, it's a big deal, so keep tuned.

SPARK INITIATIVE: FINDINGS OF NATIONAL PROVIDER SURVEY ON SELF-DIRECTION PROVIDES IDEAS ON IMPROVING SUPPORT FOR AND ACCESS TO SELF-DIRECTED SERVICES

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In 2018, the Spark Initiative completed a national survey of providers who serve individuals with intellectual and development disabilities to better understand the supports and barriers that provider agencies face today. The research was led by a group from the National Leadership Consortium on Developmental Disabilities at the University of Delaware to develop and disseminate a national survey of service providers to better understand how providers are currently supporting adults to lead self-directed lives and the barriers and catalysts to such supports.

The survey included questions about barriers and facilitators to self-direction, agency practices of self-direction and individual values about self-direction. Respondents were asked to rank barriers and facilitators to better understand what holds agencies back from or assists them in providing self-directed services. They were also asked to share agency practices and values around self-direction, to better understand how agencies operate to provide self-directed services and supports.

A total of 475 respondents from 37 states participated in the survey. Together, they represented a relatively even regional distribution and included input from providers in various levels of positions, were largely from private, not-for-profit agencies, and supported fewer than 300 people.

The findings reveal insight into key areas, including agency desire and capacity to deliver self-directed services; agency self-direction practices; values related to self-directed services; barriers and facilitators to self-directed services; and how solutions to self-directed services were prioritized. These deep insights can be used to provide key stakeholders, such as state and federal policymakers, managed care organizations, researchers, provider agencies, families of people with I/DD and people with intellectual and developmental disabilities themselves, with ideas about how to support, provide and access self-directed services.

While there is a considerable desire to provide services and supports that are designed and led by people with intellectual and developmental disabilities, the survey shows that there are varying degrees of agency capacity to provide self-directed services across the U.S. The movement to convert agencies supporting people with intellectual and developmental disabilities from congregate settings to individualized, self-directed models may require additional supports for successful transformation. Findings from this survey provide an important benchmark in the intellectual and developmental disabilities field's understanding of how to continue the shift toward self-directed services and supports. Click here to download the complete survey findings.

The Spark Initiative The Spark Initiative brings together leaders in government, non-profit and private sectors to discuss solutions to better support people with intellectual and developmental disabilities. Supported by Optum, the goal of the Spark Initiative is to define and help drive a unified national effort to better serve people with disabilities, mainly through changes in the service delivery system. For more information on Spark, please go to optum.com/sparkidd.

AROUND THE STATES

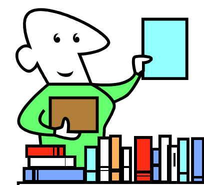
- **CALIFORNIA.** Governor Gavin Newsom (D) has espoused an assertive agenda to expand ACA subsidies to help middle-class families purchase health coverage, lower prescription drug costs and offer Medi-Cal (Medcaid) coverage to undocumented immigrants up to age 26. Because the Governor proposes to implement a statewide individual health insurance mandate, ACA subsidy expansion would be funded by penalties paid for by those not carrying health insurance. Recall that the ACA's national individual mandate will end in 2020 unless reinstated at the federal level.
- **COLORADO.** The very first 5 bills introduced by Democrats, now controlling both the State General Assembly and the Senate, relate to health care and education costs. Critically, a Senate bill would create a public option health insurance plan that, beginning in the fall of this year, those living in the highest-cost areas could buy instead of their current insurance. A House bill would expand that program statewide in 2020.
- **IDAHO.** While recognizing he must implement the voter referendum adopting Medicaid expansion, Governor Brad Little (R) remains unclear about whether he would propose to add work or other requirements for some of the adults in the expansion population. His decision, which remains uncertain at this time, could affect as many as 60,000 low income Idaho residents.
- **MAINE.** In her first executive order, the State's new Governor, Janet Mills (D), has ordered the State to implement Medicaid expansion, more than a year after voters approved the measure. The order calls on state health officials to "swiftly and efficiently" implement Medicaid expansion and directs the state Department of Health and Human Services to work with lawmakers to provide "sustainable" funding for Maine's share of Medicaid expansion. Maine was the first state to approve a Medicaid expansion ballot referendum, but former GOP Gov. Paul LePage refused to implement it.
- **NEW YORK.** New York City Mayor Bill de Blasio (D) has pledged no less than $100 million in City funds to provide medical care for undocumented immigrants and others who can't get health insurance through what he dubs NYC Care, a locally run, public option plan. The new initiative places greater emphasis on early primary-care services rather than later, urgent emergency room care. It will take a few years to get the full program up and running. At the same time, the City's First Lady, Charlane McCray, has announced creation of a new "Office on ThriveNYC," the next step in her initiative designed to serve those with mental health needs. By establishing the office, she hopes to make ThriveNYC a part of all City agencies and help ensure its sustainability for years to come. Susan Herman, Deputy Commissioner at the NYPD, will serve as Senior Advisor to the Mayor within the Office of ThriveNYC. Dr. Gary Belkin, the City's Executive Deputy Commissioner for the Health-Mental Hygiene, will serve as the Office's chief of policy and strategy. The First Lady will continue to oversee the future directions for the program.
- **OHIO.** The State has asked CMS to approve a new, 5-year Section 1115 waiver request for substance use disorder inpatient and residential treatment in managed care and fee-for-service for adults and children. The demonstration would allow the State to maintain critical access to medically-necessary SUD treatment services in the most appropriate setting, regardless of length of stay, as part of a comprehensive continuum of SUD treatment services. The waiver is needed given recent Medicaid managed care regulations that impose new limitations on the State's use of IMDs as alternative settings for behavioral health services. The waiver also would allow the State to use its fee-for-service program to provide medically-necessary physical, mental health and SUD services in the most appropriate setting for individuals not eligible for enrollment in managed care.
- **OKLAHOMA.** If approved by CMS, a State-proposed Section 1115 waiver would enable the state to add "community engagement" requirements as a condition of eligibility for certain individuals age 19 through 50. That's a shorthand way of saying that the State wants to add work requirements for adult, childless Medicaid beneficiaries in that wide age band. We expect CMS to approve the request, much as it has previous similar requests to require work, education or community service by this population as a condition of receiving Medicaid. Stay tuned.
- **PENNSYLVANIA**. All 21 members of the State Senate Democratic caucus will introduce 2 key ACA-related measures, the first to codify the 10 ACA's essential health benefits (including behavioral health) into state law, the second to forbid insurers from using a person's pre-existing medical condition to deny insurance coverage. Governor Tom Wolf (D) supports the proposals but, with a Republican-controlled Senate, the bills' future prospects remain unclear.
- **TENNESSEE.** The State has submitted a Section 1115 waiver amendment request to impose "workforce participation and community engagement" requirements for single adults, ages 19-64, to participate in the TennCare (Medicaid) program. Individuals would be required to undertake work or community engagement (which includes paid or volunteer work, general or vocational education, job training and homeschooling) for 20 hours each week. The

amendment purports also to provide supports to help individuals "achieve their education- or employment-related goals." Time will tell if CMS approves the amendment.

- **WASHINGTON**. Governor Jay Inslee (D) joined Democratic legislators to propose a "public option" health plan as part of the State's ACA health insurance marketplace. The goal is to help stabilize the marketplace following federal Republican efforts to scuttle the ACA that have given rise to increased premiums and deductibles. Stay tuned to see if this measure becomes the first enacted in the growing movement toward a national health care.
- **WISCONSIN**. During his second day in office, Governor Tony Evers (D) signed an executive order directing the State Department of Health to develop a plan to expand BadgerCare (the State Medicaid program) to cover people up to 138% of the federal poverty level. A second executive order requires State agencies to find ways to protect coverage for people with pre-existing conditions. Concurrently, he is working to extricate the State from its prior role as a party to the Republican lawsuit *Texas v. HHS.* Stay tuned; we have no idea how any of these proposals will sit with Republican State lawmakers.

ON THE BOOKSHELF: RECENT PUBLICATIONS OF NOTE

- **KAISER FAMILY FOUNDATION.** *Medicare-for-All and Public Plan Buy-In Proposals: Overview and Key Issues* compares key components of the 115th Congress' leading bills to broaden the role of Medicare and Medicaid to serve additional consumers. The measures are entirely likely to resurface in the current Congress. Some would create a new national health insurance program for all U.S. residents, replacing virtually all other sources of public and private insurance (Medicare-for-all) to more incremental approaches that would create a new public plan option, as a supplement to private sources of coverage and public programs. Read the document at: http://files.kff.org/attachment/Issue-Brief-Medicare-for-All-and-Public-Buy-In-Proposals-Overview-and-Key-Issues



- **NATIONAL ACADEMIES OF SCIENCES, ENGINEERING AND MEDICINE.** *Integrating Health Care and Social Services for People with Serious Illness: Proceedings of a Workshop* explored challenges and opportunities related to integrating health care and social services for people with serious illness. Speakers examined the rationale for integration of health care and social services for people with serious illness, explored examples of innovative partnerships and collaborations that provide integrated services, and discussed the potential policy challenges and opportunities for integrating health care and social services. The workshop also featured a session devoted to the unique role and needs of family caregivers, who often serve as a bridge between the health care and social services sectors. The workshop convened stakeholders with a broad range of perspectives, from patient advocates to family caregivers and from clinicians to health care payers. Download the proceedings at: https://mail.google.com/mail/u/0/?tab=wm#label/Manderscheid+NEW/FMfcgxwBVDCvpGWKnXfGQWbvSVvmMhJH
- **NATIONAL ACADEMIES OF SCIENCES, ENGINEERING AND MEDICINE.** *Improving Care to Prevent Suicide Among People with Serious Mental Illness: Proceedings of a Workshop* summarizes a workshop discussing what is known, what is currently being done and what needs to be done to identify and reduce suicide risk among people with serious mental illness in the US. Six plenary presentations and breakout sessions gave rise to a series of major themes and messages on the topic. A subsequent moderated Twitter chat continued the conversation about the intersection between suicide prevention and serious mental illness. Download the report summarizing the workshop and follow-up twitter chat at: https://www.nap.edu/read/25318/chapter/1
- **SAMHSA**. *Medicaid Coverage of Medication-Assisted Treatment for Alcohol and Opioid Use Disorders and of Medication for the Reversal of Opioid Overdose* discusses Medicaid coverage of FDA-approved medications for treatment of alcohol and opioid use disorders, limitations on coverage (such as prior authorization requirements), background on federal laws, policies, innovative practices and policies at the state level. Download the report at: https://store.samhsa.gov/product/SMA18-5093
- **OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION**. ASPE has released *Telehealth and Opioid Use Disorder Treatment*, a new report on how telehealth can connect patients and providers in rural areas and areas underserved by behavioral health services with quality treatment for Opioid Use Disorder. Download the report at: https://aspe.hhs.gov/system/files/pdf/260276/OUDTeleIB.pdf

MARK YOUR CALENDAR

- **COMMUNITY MENTAL HEALTH ASSOCIATION OF MICHIGAN (FORMERLY MACMHB).** The 2019 Annual Winter Conference will convene February 5-6, 2019, with a pre-conference Institute on February 4. All are at the Raddison Plaza Hotel, Kalamazoo, MI. For more information or to download presentation proposal information, go to: www.macmhb.org
- **NATIONAL ASSOCIATION OF COUNTIES.** NACo will host its *2019 Legislative* Conference from March 2–6, 2019, Washington, DC.
- **NACBHDD** *Spring Board Meeting*, March 3, 2019, Cosmos Club, Washington, DC.
- **NACBHDD** Legislative and Policy Conference, March 4 and 6, 2019, Washington, DC.
- **COLUMBIA UNIVERSITY**. The University will host *Punishing Trauma: Institutional and Individual Responses and Consequences for Children's Adversities* on Friday, April 26, 2019. The conference aims to provide an interdisciplinary space for conversations between graduate students, faculty, and members of the community who work with, study, and confront issues related to the effects of incarceration on children, families and communities. For more information, contact: punishingtrauma@gmail.com
- **KENNEDY FORUM**. *Working Well: Innovative Strategies for Workplace Wellbeing* will shine a spotlight on workplace well-being, and, in turn, create a better health care system for all. The community forum will be held Tuesday, June 11, 2019, Chicago Cultural Center, Chicago, IL. For more information: www.thekennedyforum.org/2019meeting
- **UNIVERSITY OF WISCONSIN-STOUT.** The 5th Annual *National Rural Institute on Alcohol and Drug Abuse,* June 23-27, 2019, Menomonie, WI. For more information, go to: Rural Institute .
- **NACBHDD** *Summer Board Meeting*, July 15 and 16, 2019, Las Vegas, NV.
- **NARMH.** NARMH's 45th annual conference, with the theme *From Surviving to Thriving: Embracing Connections,* will convene August 26-29, 2019, in Santa Fe, NM. Readers and others are encouraged to submit presentation proposals by February 1, 2019. For more information go to: www.narmh.org .
- **AATOD**. The 2019 annual conference, titled *Out of the Shadows: Managing the Opioid Epidemic through the Continuum of Care,* will be held October 19-23, 2019, Disney Coronado Springs Hotel, Orlando, FL. The early registration deadline is January 31, 2019. For more information go to: http://www.aatod.org

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