

INTRODUCTION

The mental health service system in the United States is in crisis, incapable of meeting the needs of hundreds of thousands of people desperately seeking help. This model law was developed as a new advocacy initiative to address the crisis. It would establish for people with serious mental illnesses a right to voluntary recovery-oriented services designed to promote independence, economic self-sufficiency and relationships with peers, families and others.

Today, unfortunately, the services available to most people with serious mental illnesses are neither sufficient nor recovery-oriented. They are designed primarily to reduce the most obvious symptoms, minimizing the need for expensive hospitalization but promising little more. Some of the results are documented in the sidebar opposite and in a booklet, *Disintegrating Systems: The State of States' Public Mental Health Systems*, published by the Bazelon Center for Mental Health Law.

Driven at least in part by low expectations, these stopgap services rarely aim at promoting independence, gainful employment and fulfilling relationships—goals we all seek. And even these services are in extremely short supply, depriving many consumers of the only help, however inadequate, that might enable them to avoid unemployment, homelessness or contact with the criminal justice system.

The reason is only in part economic. During the past decade, spending for mental health care has declined as a percentage of overall health spending.¹ However, the crisis is due less to a lack of funds than to neglect of human needs, reflected in misallocation of the dollars that are available. Rather than economizing, states have shifted the cost of serving people with serious mental illnesses to other systems, such as criminal justice. For example, during the same 10 years, the fastest growing budget item in nearly every state was for corrections, in part because growing numbers of individuals with mental illnesses came into the states' corrections systems.²

This model law is designed to stimulate reallocation of states' and localities' resources toward realizing its vision of a comprehensive system of recovery-oriented services and supports. Although the vision is ambitious, the model is grounded in reality. Many states are ready to redirect resources to mental health instead of continuing to spend significant dollars on the criminalization and needless dependency of individuals with mental illnesses. In several states, individuals and groups until recently at odds on the issue of involuntary outpatient commitment are now joining in efforts to create a right to mental health services. For example, in Califor-

nia, site of some of the most contentious debates, the California Alliance for the Mentally Ill and several consumer groups are supporting a bill to create a right to treatment. Importantly, the bill would remove provisions of current legislation that limit the availability of services “to the extent resources are available.”

The Bazelon Center for Mental Health Law presents this model in the hope that advocates, providers, legislators and policymakers in states across the country will use it to encourage legislative efforts to address the insufficiency and inappropriateness of existing mental health services and supports.

In the context of findings on the inadequacies of the current mental health system and the advances in knowledge that allow today’s mental health systems to offer services and supports that will promote recovery, the model law states its purpose: to empower all people with serious mental illnesses to obtain, on a voluntary basis, mental health services and supports identified by individualized planning.

It spells out a set of rights afforded to individuals with mental illnesses who request services, creates a formal process for individuals to assert these rights and provides for the use of existing administrative and court processes to enforce them.

How to Use the Model Law

Although many technical issues are involved in writing a piece of legislation and we could have spent years working out every detail, we release the model law now as a way to begin discussion of the most critical issue in mental health today: the lack of quality, recovery-oriented services for those who seek help. We encourage state-based advocates, family members, consumers, policymakers and others to use this law as a starting point for writing their own legislation to afford people with mental illnesses the right to services.

We thought carefully about the issues raised in this law and obtained comments on drafts from a range of constituents. As a result, side-by-side with the model law, we offer a commentary to alert readers to areas that are particularly difficult or that deserve additional attention as they work to create legislation or programs for their states or communities. Relevant statutes and pending legislation are referenced in the commentary and a few are provided in the appendices.

We urge readers to form or join local task forces to discuss the issues. A task force can tailor the model law to fit within existing state or local mental health codes, where appropriate, and make changes where needed. We welcome the opportunity to work with members of such task forces who are interested in pursuing an entitlement to mental health services.

Conclusion

In writing this law, the drafters, staff attorneys Mary Giliberti and Michael Allen, consulted widely with consumer, family and advocacy groups and with individuals representing those interests. We received significant and valuable feedback from

representatives of the National Association of Rights Protection and Advocacy (NARPA), the National Mental Health Association (NMHA), the National Alliance for the Mentally Ill (NAMI), the National Empowerment Center and the National Association of Protection and Advocacy Systems (NAPAS). We urge advocates and policymakers interested in enacting legislation based on this model law to contact these groups, seek their expertise and invite their participation in the campaign.

We especially sought comments from organizations in California, where recent legislative activity in the mental health arena has been very intense, and received helpful comments from Protection & Advocacy, Inc., the California P&A, and the California Mental Health Planning Council. In addition, a number of individuals—consumers and experienced advocates—sent us constructive feedback on early drafts of the model law.

We appreciate the thoughtfulness of all of these individuals' and groups' contributions and have tried to be responsive to the concerns they expressed, both in drafting the law and in the commentary. However, this final product represents the views of the Bazelon Center for Mental Health Law. It is our vision of a mental health service system for adults that honors an individual's choice, preferences and abilities.

Notes

1. U.S. Department of Health and Human Services, *Mental Health: A Report of the Surgeon General*. Rockville, MD (1999) at 417.
2. Petersilla, Joan, *When Prisoners Return to the Community: Political, Economic and Social Consequences*, Research in Brief—Sentencing & Corrections: Issues for the 21st Century, Washington D.C.: U.S. Department of Justice, National Institute of Justice, November 2000, NCJ 184253.