[As Approved]

MENTAL HEALTH/POINT OF CONTACT THROUGH JAIL RELEASE TASK FORCE

FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
February 8, 2019

FY19-MH #01. Develop Collaborative Pilot Programs to Provide Care for Jail Detainees with Acute Behavioral Health Needs [Policy; Budgetary]

Recommendation FY19-MH #01

This recommendation creates pilot options to provide quality care for individuals held in jail who have acute behavioral health needs that are beyond the ability of the jail to manage and who do not meet criteria for diversion with the goals to develop information and experience necessary to advance a state-wide solution. This recommendation proposes the following:

- A care transitions partnership between local and regional acute care hospitals and county jails that provides quality care for jailed individuals who have acute behavioral health needs that are beyond the ability of the jail to manage.
- The target patient population includes those who are not eligible for diversion programs due to the serious nature of the criminal charge and whose behavioral health needs surpass the capacity of the jail to manage with existing in-house medical and/or mental health service providers.
- This partnership allows for the transfer of jailed individuals to acute care facilities for provision of appropriate services and is modeled after, and expands upon, the existing partnerships and transfer protocols for individuals experiencing a medical crisis while being held in jail.
- To support the development of initial pilot sites and to allow for one-time building modifications or other required changes, it is anticipated that additional state funds will need to be allocated to pilot this solution in one rural region and one urban region.

Discussion

Every day in Colorado, numerous individuals with behavioral health needs are housed in local jails. While some of these individuals are appropriate for diversion programs, some are not based on the nature of their charges and are required to remain in a jail.

Feedback from county jail administrators suggests that a minimum of 100 individuals annually, statewide, may need to be transferred from a jail to an acute care provider.[1] Currently the most common method jail officials have to manage this population is to request a court order to transfer the individual to Colorado Mental Health Institute/Pueblo (regardless whether competency is raised or not, due to acute psychiatric needs); there is a significant backlog for those awaiting transfer.

Jails have limited capacity to provide necessary treatments or services for these individuals who are required to remain in jail. Jails are not authorized to provide involuntary medication to individuals and not all jails in our state have nursing staff or mental health staff available daily, and very few have around-the-clock staffing. Jails can initiate and access hospitalization services for individuals with acute

[1] Based on information obtained from several metro-county jail officials, it is estimated that the acute behavioral health population is about 1% of the total jail population. There are approximately 13,000 jail beds in Colorado, suggesting that the size of this target population is a minimum of 100-130 individuals over the course of a year that require services for acute needs. Additionally, recent projections by the Office of Behavioral Health (OBH) for restoration beds is upwards of 250-300 which appears to support (albeit with a slightly different focus) this estimate of approximately 100 beds total for the state to meet this acute need.

medical concerns and can even seek reimbursement for those acute care providers for Medicaid-eligible individuals during their detention.

However, efforts to transfer these individuals with acute behavioral health needs to these and other community services for stabilization and services are often unsuccessful. Effectively addressing the mental health needs of this patient population will not only provide direct benefit to the individuals and improve safety for jail staff, but may also significantly improve outcomes, such as system expenditures and recidivism, that would otherwise be absorbed by the broader community if no appropriate services are provided.

It is anticipated that most of these individuals will be eligible for Medicaid during their incarceration based on data from the Department of Health Care Policy and Financing (HCPF) indicating that approximately 65-75% of individuals leaving Colorado Department of Corrections are Medicaid eligible. Further, a survey of jails undertaken by the Task Force suggests the rates for jail populations to be higher. As a result, any community-based stabilization service, provided they are administered in accordance with federal regulations, would be eligible for reimbursement from the HCPF, the state executive agency that administers Colorado's Medicaid program.

It is anticipated that additional state resources would be necessary to cover additional services and costs associated with these episodes of care.

PILOT DESCRIPTION

Target Population for Proposed Pilot: The pilot population would include individuals booked into jail who are ineligible for diversion programs and whose behavioral health needs exceed jail resources. These individuals require an acute care setting for stabilization and treatment. This facility will need to be "27-65 designated"[2] and need to meet security requirements required by the Sheriffs' Departments. The Task Force estimates the size of this population to be a minimum of 100 individuals per year, statewide. Depending on the regions selected for the pilot, the pilot may serve less than 100 individuals per year.

Facility and Services: A pilot facility would be a private hospital or private acute care facility that is "27-65 designated" and enrolled for Medicaid reimbursement from HCPF. Such facility would be designated by HCPF as an "01 facility," which is language that HCPF and the Center for Medicare and Medicaid Services (CMS) use to designate an acute care facility which, for the lay person, would be understood as a general hospital. The facility can offer both emergent physical health and behavioral health services.

It is recommended that the General Assembly provide support to pilot this solution in one rural region and one urban region to examine different resource models and to develop the necessary information

[2] Facilities designated by the Office of Behavioral Health to provide services as specified under C.R.S., §27-65, Care and Treatment of Persons with Mental Health Disorders.

and experience to advance a statewide solution. When the pilot proves to be successful, it is anticipated that a statewide solution would require at least four facilities to ensure regional access for all jails.

Maintenance of Custody and Security: An agreement must be drafted between the care facility and sheriffs' offices for the design and implementation of access controls that meet the demands of detention for those individuals in custody.

- The transferring jail will be responsible for transporting the patient to the receiving facility and for any associated transportation costs. However, the jail and the receiving facility may develop an agreement or method for security and transportation when long distance transportation would be a burden for the jail.
- The transferring jail will be responsible for providing or arranging for necessary and appropriate security for the transferred individual while individual is at the receiving facility.
- The transferring jail may utilize its own staff to provide security for the patient, or may develop agreements with other counties, law enforcement agencies or other entities to provide necessary and appropriate security at the facility.

Process:
The process for the provision of these services would include these elements:

1. Determine eligibility for appropriateness for this emergency referral for acute behavioral health care and eligibility for Medicaid;
2. Custody transfer;
3. Treatment plan and service provision for acute behavioral health needs; and
4. Transition back to jail and court system, ensuring a rapid process to mitigate decompensation risks upon return to jail.

Funding Strategy: Funding for these pilots will require a blend of Medicaid reimbursement, state funding to support up-front capital costs, and county funding to support additional needs for transport, security and costs associated with individuals not covered by Medicaid.

Medicaid: Per CMS standards,[3] any acute care hospital stay that exceeds 24 hours is covered by Medicaid provided the patient is eligible for Medicaid. This benefit is agnostic to diagnosis (physical health, behavioral health, etc.). Jails are responsible for health care costs incurred by individuals held for less than 24 hours.

State: State funding will likely be necessary to support both up-front and ongoing costs[4] that may include modification of beds, building security measures and staffing.

[3] Federal rule: SSA Section 1905 (a)(xvii)(29)(A) and HCPF's interpretation of this policy.

[4] Information gathered by the Task Force resulted in two cost estimates: 1) Hospital administrators suggests an approximate $50,000 per room renovation to accommodate acute behavioral health population needs; and 2) According to the Office of Behavioral Health, the current daily cost for an existing state mental health hospital bed is $717.

County: Fiscal support from individual counties would include costs related to security staff on site, transportation to and from facility, and costs for services provided to individuals without Medicaid benefits. It is proposed that counties combine resources to secure a regional entity which would meet the needs of patients described here.

Administrative Oversight State Entity

It is expected that local counties may experience difficulties with identifying, contracting with and utilizing secure hospitals or facilities. Therefore, an Administrative Oversight (AO) State entity is needed to:

- assist with the identification of possible secure-bed facilities that can provide the type and level of behavioral health care that may be required;
- issue a Request for Services (RFS) or take other action to identify potential providers;
- assist with the establishment of rates;
- engage in other matters that will assist the counties in accomplishing placements;
- assess and document the efficacy of this policy intervention; and
- oversee utilization rates, outcomes and contract negotiation and compliance.

Additional state funds may be necessary for the AO to carry out the administrative duties specified above. Other regulatory bodies exist and will continue to be relevant for the pilot sites. Examples of these include, but are not limited to, The Joint Commission[5] (jointcommission.org/), Colorado Department of Public Health and Environment (colorado.gov/cdphe), and the Board of Pharmacy (colorado.gov/dora/Pharmacy).

[5] The Joint Commission is an independent, not-for-profit organization that accredits and certifies nearly 21,000 health care organizations and programs in the United States.