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

UNDER THE MICROSCOPE

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A LEGISLATIVE STATUS REPORT: BEHAVIORAL HEALTH AND I/DD ISSUES

ISSUE.

A new Congress convenes every 2 years, concurrent with the 2-year term of members of the House of Representatives. Each time a Congress ends, all the legislation introduced in the House or Senate "dies" if it has not become law. Whether or not a measure was the subject of hearings or even a vote in one of the two bodies in the previous Congress, it must be reintroduced in the new Congress. Some bills never return; other measures are dusted off and are reintroduced again and again in hope of passage or, at least, of hearings. Historically, most bills never are the subject of a hearing, much less a vote in Committee or on the House or Senate floor. And, historically, that has been the fate of much legislation focused on the issues with which we grapple daily.

However, in this 113th Congress, another kind of history has put behavioral health on the front burner in both the House and Senate. It's a history punctuated by recent tragedies that might have been prevented—Newtown, Aurora, Tucson, Virginia Tech, and others—highlighting behavioral health in the Nation's consciousness as a public health issue as never before. In recent months, the House has held hearings on the topic of mental health; the Senate has adopted mental health provisions as part of post-Newtown legislation. And this week, a White House Conference on Mental Health, with both the President and Vice President participating will further advance a national conversation to increase understanding and awareness about mental health.

It's a perfect storm in the best possible way for behavioral health. We have what may be an unprecedented window of opportunity to help advance the rights, health, and recovery of the people we serve in behavioral health programs in counties across the country. To that end, we provide a synopsis of key behavioral health-related measures before the House and Senate. Some have greater impetus behind them; others have less. But all are of concern to NACBHDD, other organizations in our field, and millions of consumers and their families.

The next step, of course, is action – your action – to help encourage lawmakers to move the measures through both House and Senate and to the President's desk for signature and enactment into law.

ANALYSIS.

On the Front Burner. Three key mental health-focused bills were introduced in both the House and Senate in the wake of the Newtown shootings. They remain very much in play, despite the demise of the legislation in the Senate to curb gun violence. We discuss each in turn.

- The ***Mental Health in Schools Act*** was introduced in the 113th Congress in the House as H.R. 628 by Rep. Napolitano (D-CA) and other members of the Mental Health Caucus, which she co-chairs. A companion Senate bill (S. 195) was introduced by Senator Franken (D-MN) and 18 cosponsors. Both measures would revise existing Public Health Service community, children and violence programs to enable local communities and schools to apply a public health approach to mental health services. To that end, grants will be made available to help schools develop, implement, evaluate and sustain comprehensive school mental health programs to help children manage behavioral health problems and issues related to both trauma and violence. It also will provide for education and training of school personnel, family members of children with mental disorders, and concerned members of the community to help reduce misunderstandings and misperceptions about mental problems.

- The ***Mental Health First Aid Act*** was introduced as H.R. 274 in the House by Rep. Barber (D-AZ) with 24 cosponsors, and as S. 153 by Senator Begich (D-AK) with 13 bipartisan cosponsors. Barber, as some may

recall, was a staff member to Rep. Gabrielle Gifford at the time of the shooting in Tucson where both were injured. The measure, as with the Mental Health in Schools Act, was introduced shortly after the Newtown shootings at the start of the 113th Congress. It would make grants at the local level to initiate and sustain mental health first aid training programs that would give individuals such as teachers, first-responders, community workers and others the skills to safely de-escalate crisis situations, recognize the signs and symptoms of mental illnesses, and provide timely referral to mental health services, ideally in the early stages of a mental problem.

- The ***Excellence in Mental Health Act***, S. 264 in the Senate and H.R. 1263 in the House, was introduced in the 113th Congress, respectively, by Senator Stabenow (D-MI) with 18 colleagues, and by Rep. Matsui (D-CA) with 10 cosponsors. The measure, designed to boost access to comprehensive, community-based mental health services, would create and establish criteria for a cadre of federally-qualified community *behavioral* health centers, eligible for Medicaid payment, to be administered by SAMHSA as an analog to currently functioning Medicaid-eligible, federally-qualified health centers administered by HRSA. While certification would be limited to a 5-year period, SAMHSA would be required to provide an opportunity for recertification at the end of each 5-year period.

In March 2013, the first two measures were rolled together as the *Mental Health Awareness and Improvement Act* (S. 689), introduced by Senators Harkin (D-IA) and Alexander (R-TN), HELP Chairman and Ranking Minority member, respectively, and 18 of their colleagues. The bill was subsequently approved by the Senate Labor and Human Resources Committee and readied for the Senate floor. Consistent with its component parts, the bill reauthorizes and improves programs to boost awareness, prevention and early identification of mental problems, and to promote linkages to appropriate services for children and youth. Title I focuses on school settings by promoting school-wide prevention through the development of positive behavioral supports and encouraging school-based mental health partnerships. Title II focuses on suicide prevention (specifically reauthorizing the Garrett Lee Smith Act); helping children recover from traumatic events; providing mental health awareness for teachers and other individuals; and assessing barriers to integrating behavioral health and primary care.

In April, Harkin and Alexander offered the measure as an amendment to the Senate's post-Newtown package to curb gun violence. The vote on the amendment was 95-2, with only Senators Paul (R-KY) and Lee (R-UT) opposing. Unfortunately, the vote came a day *after* the Senate had rejected broader background checks on gun purchases, prompting Senate Majority Leader Harry Reid to suspend further votes on amendments to the bill and pull the measure from further consideration, at least for the time being.

Majority Leader Reid's decision also meant that many other proposed amendments to the gun legislation were not considered at all, among them, the Excellence in Mental Health Act. This measure was not rolled into the *Mental Health Awareness and Improvement Act. U*nlike the Frankin and Begich bills, this legislation has been the subject of some controversy. Might creation of and Medicaid eligibility for FQBHCs as entities distinctly separate from existing FQHCs be seen as a retrenchment from integrated care within both the Medicaid program and the ACA? Given the "meh" response to it by the National Association of Counties because funding would come from Medicaid disproportionate share funds needed by county hospitals, coupled with the negative reaction by state Medicaid directors, it is a matter of conjecture whether this measure will see further consideration in either the Senate or the House, where an analog measure is pending action.

Nonetheless, given the overwhelming vote on the Harkin-Alexander amendment, mental health issues do have a remarkable degree of bipartisan support in the Senate, particularly when wrapped in the mantle of gun reform. But the authors of all of these behavioral health measures aren't necessarily waiting for guns to be debated again on the Senate floor before trying to move the behavioral health agenda forward. Many currently are looking for ways to bring the measures to the Senate floor for votes either through other vehicles or on their own. For example, Harkin and Alexander may add the Mental Health Awareness and Improvement Act provisions into the reauthorization of the Elementary and Secondary Education Act, expected to be marked up over the summer.

On the House side, notwithstanding the impetus for action, none of the companion bills have been the subject of specific House attention or action. Instead, House lawmakers have focused on gathering information about mental health issues by asking questions in letters and at hearings. Though they acknowledge that mental health is a legitimate topic on which to focus post-Newtown legislation, their motives and intent remain somewhat unclear.

Other Behavioral Health Measures. A number of other measures of concern to our field either are languishing or have yet to be introduced in the 113th Congress. Focused on such issues as the justice/behavioral health interface and electronic health records, they are of significance to counties and to the people we serve. They warrant not only hearings, but enactment as law. But first, legislators will need to be educated about their importance and relevance to improving individual, community and overall public health, and to curbing avoidable costs to the justice and health care systems.

- The ***Justice and Mental Health Collaboration Act of 2013*** was introduced in both the House and the Senate early in the 113th Congress. In the House, the measure (H.R. 401) was introduced by House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations ranking member, Bobby Scott (D-VA), and Representative and former sheriff Nugent (R-FL). It has 27 bipartisan cosponsors. A comparable measure (S. 162), also with 27 cosponsors, was introduced by Senators Franken (D-MN) and Johanns (R-NE). The bill is designed to help improve access to mental health services for people who come into contact with the criminal justice system. Building on earlier successes of the 2004 Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA), this bill supports law enforcement training, support for mental health and veterans treatment courts, resources for corrections systems and other collaborative approaches. Without reauthorization, the MIOTCRA will expire in September 2013. The proposed legislation in House and Senate would extend the program for an additional 5 years. Moreover, it would fill critical gaps, such as making additional resources available for veteran treatment courts that help veterans suffering from PTSD and other behavioral problems; supporting transitional and reentry programs in correctional facilities; allocating resources to help communities better address "high utilizers" of public services; offering broader behavioral health-related training in police academies and orientations; and promoting the use of evidence-based practices. In addition to cosponsors from both sides of the aisle, the measure has the support of the National Alliance on Mental Illness, the National Association of Counties, the National Sheriffs Association, the American Legion, and other law enforcement, mental health, veterans and judicial organizations.

- The ***Second Chance Act Reauthorization Act*** needs to be reintroduced and enacted. It was last offered as S. 1231 in the 112th Congress by Senate Judiciary Chairman Leahy (D-VT) and had a number of cosponsors. Notwithstanding its approval by the Judiciary Committee, it "died" without consideration at the close of the 112th Congress. Without reauthorization, the Second Chance Act, initially signed into law in 2008 with broad bipartisan support, too, will die, despite its benefits as a re-entry program for the increasing number of people with mental or substance disorders found in and being discharged from the justice system. The law represents an important federal investment in strategies to increase public safety and reduce recidivism by authorizing funding for the development and coordination of reentry services, such as employment training, substance abuse treatment, and mentoring. Evidence-based reentry programs facilitate the often difficult transition from prison to the community and not only reduce crime, but save taxpayer dollars.

- The ***Behavioral Health Information Technology Act*** is another measure that NACBHDD and other colleague organizations are working to see reintroduced in the 113th Congress, perhaps as an amendment to other legislation moving on the House and Senate floors. The measure, introduced in the last Congress as H.R. 6043 by Representative Murphy (R-PA) and as S. 539 by Senator Whitehouse, would simply amend the HighTech Act to extend health information technology assistance eligibility under the Public Health Services Act and Medicaid/Medicare to behavioral health, mental health, and substance abuse professionals and facilities, entities simply left out when the High Tech Act first became law.

All of these legislative initiatives are within our reach at this time in our Nation's policy and program history. But we need your help—our supporters in Congress need your help—to keep the wheels of government moving forward.

ACTION STEPS.

The time is ripe for action. And it needs to be taken *before* the end of the 113th Congress in roughly 18 months. We are at a special moment during which we can help effect change in how behavioral health is perceived by the public and how it is codified in policy by lawmakers. We have the opportunity to build a critical mass toward action

and enactment of measures that can help better identify and respond to behavioral problems before they begin or intervene early in their course. We have the opportunity to promote policies and programs that advance recovery for those with behavioral disorders. And we have the opportunity to restructure disparate care systems into an integrated health system that emphasizes the whole person, instead of remaining stuck in a model that segregates mind and body, and illness from person.

Out of the tragedies of Newtown, Aurora, Tucson, Virginia Tech and so many more must come renewed resolve to make change happen in behavioral health. To that end, it's time to be in touch with your Senators and Representative and to urge your colleagues to do the same.

- Urge their immediate action to advance the *Mental Health Awareness and Improvement Act* (S. 689) either as a whole or as its two constituent parts—the *Mental Health in Schools Act* (H.R. 628 and S. 195) and the *Mental Health First Aid Act* (H.R.274 and S. 153)—through the Senate and House for enactment into law.

- Urge them to move the *Justice and Mental Health Collaboration Act* through hearings and committee markup to the floor for action and reauthorization before this important law expires.

- Urge them to work toward introduction and action on *Second Chance* reauthorization legislation and on the *Behavioral Health Information Technology Act*.

- Urge them to revise the *Excellence in Mental Health Act* to focus more directly on the creation of integrated care delivery systems led by behavioral healthcare entities. Also urge them to find an alternative source of funding for this bill.

- Remind them that people with behavioral disorders can and do recover, and that they have the opportunity to take the next great step toward lifting the misunderstanding and disparate treatment of both behavioral disorders and the people who experience them.

The time is now. Our efforts with each of our House and Senate delegations are needed, to keep the impetus for change in behavioral health going, to ensure an historic opportunity is not lost to the vicissitudes of political inertia. Let's all work together—and encourage others to do s as well—to grasp the opportunity presented at this special moment.

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