Mental Health Advocacy Network

Consumer & Family Network
Mental Health America of ND
Youth Move Beyond
The Arc of Bismarck
Federation of Families for Children's Mental Health
Protection & Advocacy Project
ND Association of Community Providers
Fraser, Ltd.
Individual Consumers & Families

Senate Judiciary Committee
Sixty-seventh Legislative Assembly of North Dakota
House Bill 1427
March 30, 2021
Senator Diane Larson, Chair

Good afternoon Chair Larson and Members of the Senate Judiciary Committee. I am Carlotta McCleary, Executive Director of Mental Health America North Dakota and Executive Director of the North Dakota Federation of Families for Children's Mental Health. Today I speak on behalf of the Mental Health Advocacy Network (MHAN). MHAN advocates for a consumer /family driven mental health system of care that provides an array of service choices that are timely, responsive and effective.

MHAN has provided testimony since the 64th interim human service committee meetings (2015-2016) regarding our priorities for mental health services. We argue that peer to peer and parent to parent support, consumer choice, diversion from corrections, a core services zero-reject model, and conflict free grievance and appeals processes, and the access to a full and functional continuum of care serve as the backbone to correcting the crisis in North Dakota's behavioral health system.

MHAN is speaking in support of HB 1427. All parts of this bill pertain to the children and families we serve, but this is especially the case with Section 3: The Planning Committee for Children in Need of Services (CHINS). During the Sixty sixth legislative session, MHAN stressed that North Dakota needed to put the HSRI Report of 2018 into action. That report, much like the Schulte Report of 2014 said that North Dakota needed to drastically reduce its reliance on institutionalization and make sure that it had a fully functional community-based mental health system for children, their families, and adults that is as near their home as possible. Among the accomplishments of the last legislative session were the commitment to apply for the 1915(i) State Plan Amendment, prevention and early intervention pilot program in schools, the behavioral health pilot program, and the behavioral health resource coordinator in our schools.

MHAN sees HB 1427 as a big piece to the puzzle in ensuring that HB 1035 is implemented so that children with mental health disorders and their families can finally receive the right service, at the right time, as nearest their home as possible.

Roughly 10% of all children in North Dakota have a serious emotional disturbance (SED). As of 2019, this translates to roughly 18,000 children. We are currently serving only 1 out of every 18 children who have a serious emotional disturbance. A child with a serious emotional disturbance (SED) is defined by SAMHSA as "children and youth who have a diagnosable mental, behavioral, or emotional disorder in the past year, which resulted in functional impairment that substantially interferes with or limits the child's role in family, school, or community activities." As a result of not having access to care, many children are being sent into the juvenile justice system. From 2011 to 2017, the number of children in juvenile corrections who had a serious emotional disturbance rose from 49% to 79%. Although there have been improvements, children with serious emotional disturbance still represent most children in the corrections system despite only accounting for 10% of all children in North Dakota. Youth that have a low risk to reoffend are more likely to recidivate and less likely to complete high school if they are arrested or referred to court as opposed to being diverted from formal juvenile justice system involvement. Research shows that outcomes improve if children and youth are given access to community-based services rather than receiving those services in the juvenile justice system.

The *Olmstead* decision of 1999 and subsequent litigation made clear that people with disabilities (including children with serious emotional disturbance) must be given access to community-based services before requiring that they seek only institutional care. Let me be clear: *Olmstead* applies to children too. It has always been a legal obligation for the state mental health system to provide children with SED and their families access to community-based services. Children with SED who have been inappropriately referred to the juvenile justice system because of a lack of community-based mental health services still have a legal right to receive community-based services, irrespective of any hesitation to provide those services. There is no leniency granted to states that allow for a few years

to go by before children can receive help. These community-based services are required now and were expected to be in place long before today.

MHAN argues that the central strength of HB 1035 and this bill is its emphasis on ensuring that "low risk youth" (who are often children with serious emotional disturbances) have access to community-based services without necessitating the involvement of the Juvenile Justice System. HB 1035 would create a new legal category "Children in Need of Services" (CHINS), which would include children and youth who are engage in truancy, runaways, and incorrigible behaviors. Those children and youth would no longer be under the jurisdiction of the Juvenile Court and can no longer be arrested or referred to court. Instead, the Human Service Zones and the Department of Human Services would be providing community-based services. To do this, HB 1427 and 1035 would establish a cross-systems, cross-agency service planning process to work together to develop a plan that youth at risk of or currently involved in the juvenile justice system can obtain research-based services to meet their needs. Once more, HB 1035 would prevent *Olmstead*-violating practices like denying a child access to community-based services due to claims of a lack of community-based services. It is no longer permissible to claim these children have no other options but the juvenile justice system to receive services they had a legal right to receive in the community. It is the responsibility of the Human Service Zones and the Department of Human Services to create programs for these children. Only youth that are a public safety risk should be considered for placement in secure facilities out of the home.

In the several decades' long mental health crisis in North Dakota, families have not had access to needed mental health services. Even families that had access to some services, their plans would often require them to call law enforcement if their child was in a mental health crisis. The justice system was never intended to be the system that served children with mental health needs, but for decades it has been the only system that had services. While we make these changes, we must ensure families have access to the services their children need. North Dakota has a legal and moral obligation to provide children and their families community-based mental health services.

Thank you for your time and I would be happy to answer any questions you may have.

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2019 Updated North Dakota Mental Health Statistics

Any Mental Illness (Adults 18+), United States (2019): 20.6% (51.5 million)[1]

North Dakota Adult Population: 581,891[2]

North Dakota AMI (Adult) Translation: 119,869.5

Serious Mental Illness (Adults 18+), United States (2019): 5.2% (13.1 million)[3]

North Dakota Adult Population: 581,891[4]

North Dakota SMI (Adult) Translation: 30,258

SMI Definition: "Refers to people age 18 or older, who currently or at any time during the past year have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified in the diagnostic manual of the American Psychiatric Association that has resulted in functional impairment, which substantially interferes with or limits one or more major life activities. Major life activities include basic daily living skills (e.g. eating, bathing, dressing); instrumental living skills (e.g., maintaining a household, managing money, getting around the community, taking prescribed medication); and functioning in social, family, and vocational/educational contexts."[5] [6]

Any Mental Illness (Children), United States: 16.5%[7]

North Dakota Children Population (2019): 180,171[8]

North Dakota AMI (Children) Translation: 29,728.2

Serious Emotional Disturbance (Children), United States: 10.06%[9]:

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[1] National Institute of Mental Health, "Statistics: Mental Illness," https://www.nimh.nih.gov/health/statistics/mental-illness.shtml (accessed March 5, 2021).

[2] The Annie E. Casey Foundation: Kids Count Data Center, "Total Population by Child and Adult Populations in North Dakota," https://datacenter.kidscount.org/data/tables/99-total-population-by-child-and-adult-populations?loc=36&loct=2#detailed/2/36/false/1729,37,871,870,573,869,36,868,867,133/39,40,41/416,417 (accessed March 5, 2021).

[3] National Institute of Mental Health, "Statistics: Mental Illness."

[4] The Annie E. Casey Foundation: Kids Count Data Center, "Total Population by Child and Adult Populations in North Dakota."

[5] Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC), *The Way Forward: Federal Action for a System That Works for All People Living with SMI and SED and Their Families and Caregivers* (December 13, 2017), 11 https://www.samhsa.gov/sites/default/files/programs_campaigns/ismicc_2017_report_to_congress.pdf (accessed March 27, 2021).

[6] The definition for Serious Mental Illness (SMI) has largely been consistent since published in United States Government Printing Office, "Substance Abuse and Mental Health Services Administration-Center for Mental Health Services (Action: Final Notice)," *Federal Registrar* 58 no. 96 (May 20, 1993): 2945.

[7] Daniel G. Whitney, Mark D. Peterson, "US National and State-Level Prevalence of Mental Health Disorders and Disparities of Mental Health Care Use in Children," *JAMA Pediatrics* 173, no. 4 (2019): 389-391. https://jamanetwork.com/journals/jamapediatrics/fullarticle/2724377 (accessed March 5, 2021).

[8] The Annie E. Casey Foundation: Kids Count Data Center, "Total Population by Child and Adult Populations in North Dakota."

[9] Nathaniel J. Williams, Lysandra Scott, Gregory A. Aarons, "Prevalence of Serious Emotional Disturbance Among U.S. Children: A Meta-Analysis," *Psychiatric Services* 69, no. 1 (January 1, 2018): 32-40. https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201700145 (accessed March 5, 2021).

North Dakota Children Population (2019): 180,171[10]

North Dakota SED (Children) Translation: 18,125.2

SED Definition: "Children and youth who have had a diagnosable mental, behavioral, or emotional disorder in the past year, which resulted in functional impairment that substantially interferes with or limits the child's role in family, school, or community activities."[11] [12]

Children Health Insurance, North Dakota (2019):

-Medicaid Enrollment (Kids Count), Aged 0-20: 56,371 (26.6%)[13]

-Medicaid children (Kaiser FF): 1/5 children in ND: 36,034.2[14]

-Children who have health insurance, by type:[15]

-Employer-based only: 116,000 (62%)

-Direct-purchase only: 12,000 (6%)

-Other private: 6,000 (3%)

-Public only: 30,000 (16%)

-Both public & private: 8,000 (4%)

-Uninsured: 15,000 (8%)

-ND Children ages 0 to 18 enrolled in Healthy Steps (CHIP) in 2019: 3,002 (1.6%)[16]

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[10]The Annie E. Casey Foundation: Kids Count Data Center, "Total Population by Child and Adult Populations in North Dakota."

[11] Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC), *The Way Forward: Federal Action for a System That Works for All People Living with SMI and SED and Their Families and Caregivers* (December 13, 2017), 20 https://www.samhsa.gov/sites/default/files/programs_campaigns/ismicc_2017_report_to_congress.pdf (accessed March 27, 2021).

[12] The definition for Serious Emotional Disorder (SED) has largely been consistent since published in United States Government Printing Office, "Substance Abuse and Mental Health Services Administration-Center for Mental Health Services (Action: Final Notice)," *Federal Registrar* 58 no. 96 (May 20, 1993): 2945.

[13] The Annie E. Casey Foundation: Kids Count Data Center, "Medicaid Recipients Ages 0 to 20 in North Dakota," https://datacenter.kidscount.org/data/tables/10817-medicaid-recipients-ages-0-to-20?loc=36&loct=2#detailed/2/any/false/1729,37,871,870,573,869,36,868,867,133/any/21043,21044 (accessed March 5, 2021).

[14] Henry J. Kaiser Family Foundation, "Medicaid in North Dakota" (October 2019) http://files.kff.org/attachment/fact-sheet-medicaid-state-ND (accessed March 5, 2021).

[15] The Annie E. Casey Foundation: Kids Count Data Center "Children who have health insurance by health insurance type in North Dakota" https://datacenter.kidscount.org/data/tables/10183-children-who-have-health-insurance-by-health-insurance-type?loc=36&loct=2#detailed/2/36/false/1729,37,871/4847,4848,4849,4153,2807,2811/19706,19707 (accessed March 5, 2021).

[16] The Annie E. Casey Foundation: Kids Count Data Center "Children ages 0 to 18 enrolled in Healthy Steps (CHIP) in North Dakota," https://datacenter.kidscount.org/data/tables/10818-children-ages-0-to-18-enrolled-in-healthy-steps-chip?loc=36&loct=2#detailed/2/any/false/1729,37/any/21045,21046 (accessed March 5, 2021).

-Medicaid in ND Adults, aged 19-64: 1/13 (7.69%), or 44,747.4[17]

ND Medicaid 1915(i) State Plan Amendment

-Anticipated number served: 11,150

[17] Henry J. Kaiser Family Foundation, "Medicaid in North Dakota" (October 2019) http://files.kff.org/attachment/fact-sheet-medicaid-state-ND (accessed March 5, 2021).