

Children's Rights & Medicaid

Mississippi disAbility MegaConference
June 13, 2014

SPLC  Southern Poverty Law Center

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Our Clients

- J.B.
- L.P.
- L.M.
- L.S.

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Access to Mental Health Services

"Most children in need of mental health services do not get them."

- Report of the U.S. Surgeon General at 180

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Access to Mental Health Services (II)

“Rural areas have incidents of serious mental and behavioral health problems equal to or greater than urban areas.”

- Sawyer et al., quoted in NAMI Report at 45.

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We Are Not Alone

Lowest-performing states are Mississippi, Louisiana, New Mexico, Kentucky, Alabama, Texas, Missouri, Georgia, South Dakota, and South Carolina.

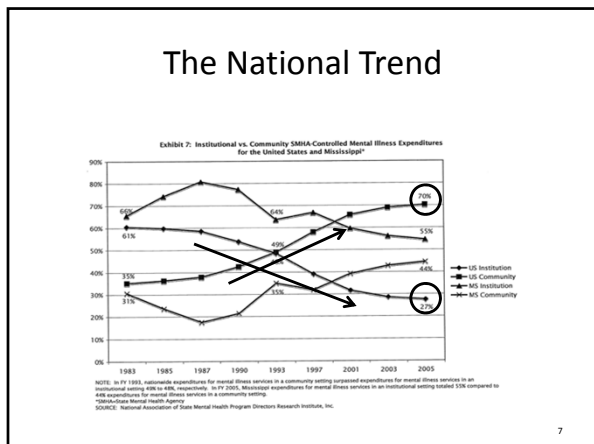
- NAMI Report at 45.

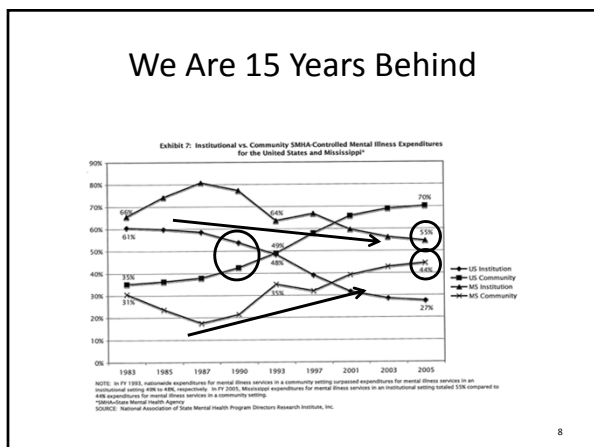
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What Are Others Doing?

Institutions → Home and Community Services

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The Legislature Knows

“Mississippi’s mental health system has not reflected the [national] shift in service delivery methods.”

“The State will be forced to move toward providing more community-based care in the near future.”

- Building facilities, not closing them
- Institutional spending 152% higher than SE average
- #2 nation, per-capita spending on institutional care

-- Joint Legislative Committee (PEER) Report (2008)

The Federal Government Knows

- In 2011, DOJ found Mississippi in Violation of the ADA:

*"This has led to the **needless and prolonged** institutionalization of adults and children with disabilities who could be served in more integrated settings in the community with adequate services and supports."*

"[S]ystemic failures ... place qualified individuals with disabilities at risk of unnecessary institutionalization now and going forward."

-- U.S. Department of Justice (2011)

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What Is SPLC Doing?

- *J.B. v. Barbour* ("Troupe")
- Medicaid-eligible children with emotional or behavioral needs
- Goal: Support Families by Increasing HCBS

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The Claims

- Medicaid Act
 - "EPSDT" requires States to affirmatively provide services
 - State's response?

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Under EPSDT, Mississippi Must:

- Affirmatively arrange for treatment, and must not wait for claims to be submitted. 42 U.S.C. § 1396a(43)(B)-(C).
- Effectively inform individuals about EPSDT benefits and services. 42 C.F.R. § 441.56(a)
- Provide necessary support services like transportation and appointment scheduling to help individuals access services.
- Make available a variety of individual and group providers qualified and willing to provide EPSDT services. 42 C.F.R. § 441.61
- Provide needed services to correct or ameliorate mental health conditions, even if services are not in the state's Medicaid plan. 42 U.S.C. § 1396d(r).

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Low Participation in Mississippi

Rank	State	Medicaid Enrollees	EPSDT Participation Ratio	Medicaid Expenditures (Per Enrollee)
1	Indiana	679,769	100%	\$1,987
2	Delaware	90,731	90%	\$3,815
3	California	4,665,571	78%	\$1,761
4	North Carolina	1,010,922	78%	\$2,349
5	Massachusetts	543,090	78%	\$3,459
6	Arizona	681,537	76%	\$2,280

47	West Virginia	206,729	44%	\$1,917
48	South Dakota	94,157	44%	\$2,557
49	Wyoming	53,211	42%	\$3,074
50	Mississippi	391,852	41%	\$1,601
51	Arkansas	415,411	38%	\$2,131

U.S. Dep't of Health & Human Servs., Health Resources & Servs. Admin., 2008, <http://www.mchb.hrsa.gov/chusa10/state/obsc/402menu1.html>

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The Claims (II)

- Medicaid Act
 - “EPSDT” requires States to affirmatively provide services
 - State’s response?
- Americans with Disabilities Act
 - Services must be provided in most integrated setting appropriate to child’s needs
 - State’s response?

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The Supreme Court Says:

“Unjustified isolation . . . is properly regarded as discrimination based on disability.”

Olmstead v. L.C., 527 U.S. 597 (1999).

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Why Not Institutions?

- Little evidence of positive outcomes
- Many children don't improve
- Many children get worse:
 - Isolated from their family
 - Can acquire new maladaptive and negative behaviors
- Can't learn and practice skills in the environment where they will ultimately need to use these skills.

Sources: DOI, Bazelon Center for Mental Health Law; Surgeon General, Bruns, E.J., et al. Intervening in the Lives of Youth with Complex Behavioral Health Challenges and Their Families: The Role of the Wraparound Process. Am J Community Psychol. 2010 December; 46(3-4): 314-331. doi:10.1007/s12464-010-9346-5.

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Institutional Abuse & Neglect

Congressional investigators found fear and intimidation at psychiatric facilities, physical abuse, sexual abuse, verbal threats, regular harassment, reliance on seclusion and mechanical restraints, inadequate treatment, and indecent living conditions.

-- Department of Justice (Feb. 5, 2014)

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Institutions Are Costly

MISSISSIPPI DIVISION OF MEDICAID
PSYCHIATRIC RESIDENTIAL
TREATMENT FACILITIES (PRTF)
CALENDAR YEAR 2014

PROVIDER NAME	Per Diem Rates
Cares Center	376.86
Crossing, The	373.10
Diamond Grove	347.49
Millicreek PRTF	366.92
Millicreek of Pontotoc	372.07
Parkwood Residential TC	356.15

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The Legislature Knows

1. What has been the cost per child, per day, at the Gulfport Specialized Treatment Facility?

The total cost per day, per child is \$641.56

2. What is the average length of stay at the Gulfport Facility since January 1, 2008?

The average length of stay for a child at the Department of Mental Health's Gulfport Facility is 150.5 days.

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DOJ Knows

“Mississippi could serve roughly four persons with mental illness in the community for every one it serves in its institutions.”

-- 2011 Findings Letter

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HCBS Alternatives

- Mississippi Youth Programs Around the Clock
- But:
 - Enrollment Caps
 - Not all HCBS services covered

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Kids Need Full HCBS

- Comprehensive assessments
- Intensive case management
- Family education and support
- Mobile crisis services
- In-home therapy
- Behavioral support services for the child and the family
- Training and support to improve self-care
- Training and support to achieve employment and educational objectives
- Training and support for independent living skills
- Therapeutic foster care

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Example: Wraparound Milwaukee

- Better clinical outcomes
- Reduced youth in RTCs by 80%
- Reduced Medicaid psych. hospitalization by 90%
- Recidivism down; school attendance up
- Lower costs

See Bruce Kamradt, Director of Wraparound Milwaukee. See also Kamradt B, et al. Services for high-risk populations in systems of care. In: Stroul BA, Blau GM, editors. The system of care handbook: Transforming mental health services for children, youth, and families. 2008.

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Wraparound Outcomes

- Children in Wraparound:
 - Are hospitalized less often;
 - Have fewer arrests and stays in detention;
 - Sustain their mental health improvements;
 - Have less suicidal behavior; and
 - Have better school attendance and achievement.

-- Bazelon Center for Mental Health Law

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What You Can Do

- Know your rights to EPSDT services
 - Call Medicaid to request EPSDT screening & services
- Contact Elected Officials
 - AG Jim Hood: responsible for State’s defense or settlement
 - Rep. Bryant Clark: introduced HB 1004

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Discussion

andrew.canter@splcenter.org



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