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

October/November 2008 Newsletter

National Association of County Behavioral Health and Developmental Disability Directors

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New Housing Initiative Emphasizes Prevention and Planning for Consumers with Concomitant Developmental Disabilities and Mental Illness

During the July NACo Annual Conference, NACBHDD member **Chad VonAhnen (**Director of the Sedgwick County, Kansas, Developmental Disability Organization) delivered a presentation on an innovative initiative aimed at addressing the needs of individuals with both developmental disabilities and mental illness who are involved in crisis situations in their current housing. The initiative, which received funding for 2008, with additional funding awarded for 2009, seeks to address the often complicated behavioral needs of individuals with developmental disabilities who also have mental illness. The need for a program like this is significant; VonAhnen believes Kansas state client data indicates that up to 40% of individuals eligible for developmental disability services in Sedgwick County have dual diagnoses.

VonAhnen reports that a task force that included a cross-section of personnel was convened in late 2006 in response to the specific needs of consumers in their community. Concerned families, both families of the individuals with the troubling behaviors and the families of those individuals with developmental disabilities who were not having the difficult behavior problems, have been another impetus for moving the initiative forward.

The task force recommended the following:

1. Create an alternative placement to support those individuals who currently cannot be safely supported in their home. Often, if the police come, and the individual is taken to the emergency room, they will not be admitted, may spend hours in the emergency room, or go to jail. In most cases, there is no real resolution to the problem.
2. Implement a response team to respond to and work with individuals in crisis.
3. Train staff and affiliated providers with a focus on making sure that the staff on the front lines have the tools to work with these individuals.

Prevention and planning *before* a crisis occurs

After the task force released its recommendations VonAhnen, community service providers, and a representative from the state of Kansas visited the Waisman Center in Wisconsin. The Waisman Center has been developing programs like this for about twenty years, and VonAhnen's organization was especially interested in their emphasis on prevention and planning *before* a crisis occurs.

A critical component of prevention is a fully developed behavioral support plan for individuals.
VonAhnen explained that the Waisman Center stresses that the troublesome behavior often displayed by individuals with developmental disabilities and mental illness is frequently driven by things that are otherwise not obvious, such as a medical condition or a dental issue that needs to be addressed and treated. Staff can try to understand what drives the negative behavior and see if there is something that can be done to address the problem before a troubling behavior or crisis occurs.

While Sedgwick County is the second largest county in Kansas, VonAhnen notes that it is difficult to find professionals with both developmental disability and mental health expertise. To date, they have contracted with one psychologist who works actively with their consumers, and he has had twenty-four referrals.

A critical part of the effort involves working with law enforcement to help officers understand that yelling at the person does not help and may exacerbate the problem. As a result, local law enforcement personnel are being trained in CIT crisis intervention.

How would the program work?

Safe House, a community-based home renovated to provide security and safety for the resident, staff and neighborhood, is an alternative to short-term institutionalization or hospitalization. Placement at Safe House is intended for seven to fourteen days. During this time, Safe House staff can work with the individual on a current behavioral support plan and any modifications that are needed. VonAhnen hopes that Sedgwick County's Safe House will be operational in 2009.

VonAhnen stressed that the current focus is on the crisis teams and training staff and law enforcement personnel in crisis intervention so that the majority of situations can be resolved without needing Safe House placement. The steps that would be taken are:

1. A call to the crisis center is placed. A crisis response person is dispatched if needed.

2. The Safe House staff and the crisis center talk. The staff member goes to the location to deescalate the situation. If the individual can be stablized, he or she may be able to stay in the current setting. But, if they are not stable, and hospitalization is not needed, the individual can go to the Safe House. The end goal is to minimize use of the Safe House, but have it available when needed.

Multidisciplinary training is planned.

VonAhnen is currently exploring available training for front-line staff such as teleconferences that address treating dysfunctional behavior. In addition, his organization, along with the Wichita State Center for Community Support and Research, will host a two-day conference in mid-November as part of the ongoing effort to improve services for individuals with developmental disabilities and mental illness. The speaker will be Derrick Dufresne, founder and senior partner of Community Resource Alliance. The first day of the conference is aimed at policy makers and administrators, and will cover Systems Transformation. The second day is intended for families, direct care staff, case managers, and other stakeholders, and will cover Practical Implementation. Because of the multidisciplinary nature inherent in this effort, a broad representation of the community has been invited. VonAhnen notes that education will be ongoing. "We're looking forward to continuing to educate the community about this issue."

Potential costs savings.

While VonAhnen says there is no information yet on savings related to the program, he does know that serving an individual in the community costs $35,663 per year and that serving an individual in a state institution is $148,155 per year.

NACBHDD Members interested in finding out more about the Sedgwick County plan can go to their website at: http://www.sedgwickcounty.org/cddo/CBG_fast_facts.pdf. For information on the Waisman Center's program go to: http://cow.waisman.wisc.edu/ties/html.

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ADA Amendments Act of 2008: What It Means for NACBHDD's Consumers

[The ADA Amendments Act and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 were two pieces of legislation passed this year after years of advocacy efforts by many partners including NACBHDD. In the next few months, the Newsletter will cover these two laws, both of which are of critical importance to NACBHDD and the individuals NACBHDD serves].

NACBHDD recently spoke with Chai Feldblum, JD, Professor of Law and Director of the Federal Legislation and Administrative Clinic at Georgetown University, about the ADA Amendments Act of 2008 (ADAAA), signed into law by President Bush on September 25, 2008 (eighteen years after the original ADA) and effective January 1, 2009. Feldblum calls the ADAAA "an incredibly important

piece of legislation" for NACBHDD and the individuals NACBHDD serves. The ArchiveADA website, a comprehensive, online archive on the ADA and ADAAA developed by Feldblum and her associates, notes that **"**Over time, Supreme Court decisions whittled away at the definition of disability, narrowing the protections available to citizens and eroding the intent of the law." Feldblum says that often, in recent years, the ADA has been helpful only because many employers did not realize how "cramped" the law had become. Now, with the ADAAA, she says the law has been "revitalized."

Feldblum says of the ADA Amendments Act, "The new legislation will be absolutely key to mental illness and developmental disabilities in two ways."
1. Mitigating Measures: For individuals with mental illness, the primary change in this area is that individuals may be fully functional with medication, and this will not be held against them if they have mental illness. Felblum explains that one way the Supreme Court narrowed the scope of people covered under the ADA was to rule that mitigating measures, such as medication or devices, could be taken into account when determining if a person was substantially limited in a major life activity. Often this resulted in the individual, who might function well with the mitigating measure, being ruled as not having a disability even if the impairment was the basis of the discrimination.

Feldblum says that this correction in the legislation will be critical when people with serious mental illness seek accommodations. The ADAAA provides that the ameliorative effects of mitigating measures should not be considered in determining whether an individual has an impairment that substantially limits a major life activity. An exception is made for "ordinary eyeglasses or contact lenses," which may be taken into account.

A **"**Comparison of the ADA (as construed by the courts) and the ADA, As Amended" chart best describes the intent of the ADAAA around mitigating measures and is available at the ArchiveADA website:
(http://www.law.georgetown.edu/archiveada/documents/ComparisonofADAandADAAA11-5-08final.pdf).

2. Major Life Activities: These changes were made specifically to cover individuals with mental illness and developmental disabilities. The language in the ADAAA reads as follows:
The definition of disability includes, with respect to an individual "a physical or mental impairment that substantially limits one or more major life activities of such individual." The ADAAA added the following language: *"A major life activity also includes the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."* [Citation: ADA Amendments Act (ADAAA), Pub. L. No. 110-325, § 4(a), 122 Stat. 3553, 3555 (2008) (to be codified at 42 U.S.C. § 12101) (amending Americans with Disabilities Act (ADA), § 3(2)(B), 42 U.S.C. § 12101 (1990)).]

Feldblum explains the importance of this language change in cases and situations such as *Charles Littleton, Jr. versus Wal-Mart Stores, Inc.*, in which a man with developmental disabilities was not allowed to bring his job coach into his Wal-Mart interview. The interview did not go well, and as a

result, he did not get the job. As Feldlbum notes, under the ADA, a limited function tended to focus more on something "that you could see," and involved substantial work to address. However, as Feldblum describes it, under the new law, proving an individual in a situation such as Charles Littleton's has a right to an accommodation such as a job coach will involve "two paragraphs and 20 minutes of work." Then, she notes, one moves on to the question of whether having a job coach is a reasonable accommodation, which Feldblum says it is, and beyond that, whether such an accommodation is a hardship for Wal-Mart. The new law did not address this, as it was part of the underlying ADA.

The comparison chart on ArchiveADA is helpful in explaining the changes in "Major Life Activities" and summarizes the major changes in the law. Click this link to access the chart: http://www.law.georgetown.edu/archiveada/documents/ComparisonofADAandADAAA11-5-08final.pdf .

How will information about the ADA Amendments Act and what it means be communicated to the legal community, the business community and consumers?

Feldblum described an education effort about the legislation on three fronts:

- The legal community. Feldblum says that there are already a number of seminars underway, offered by various professional groups. She will be speaking about the legislation to the American Bar Association. In addition, Feldblum and her colleagues have set up the ADAArchive website with the hope that it is a place lawyers can go to access very simple legal information.
- The business community.   A similar education effort is going on in the business community.
- Consumers. Emily Benfer, Supervising Attorney / Teaching Fellow at the Federal Legislation and Administrative Clinic at Georgetown, is currently involved in regulatory issues related to the law and continues to work with consumer groups.

Resources

The ArchiveADA can be accessed at http://www.law.georgetown.edu/archiveada/. Various information can be accessed at the Archive including an article authored by Chai Feldblum, Kevin Barry, and Emily Benfer that provides a history and summary of the ADA and ADAAA. Feldblum emphasizes that the ADAAA is only one piece of the picture, and she laments that there "are so many things to be done [such as addressing stigma]. Now the law is at least serving its purpose in creating the floor to enable some redress."

Look for an interview with Emily Benfer about her work with the regulations related to the ADAAA and her work with advocacy organizations in NACBHDD's **November Newsletter**.

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Medicaid Moratoria Expire in April; Medicaid Chair Emphasizes Focusing on Determining Essential Services Consistent Across State Plans

David Wiebe, Chair of NACBHDD's Medicaid Subcommittee and Executive Director, Johnson County Mental Health Center in Mission, Kansas, attended the SAMHSA/CMS Invitational

Conference on Medicaid and Mental Health Services/Substance Abuse Treatment in Baltimore on September 25, along with twelve of the Medicaid Subcommittee members and NACBHDD Executive Director Ellen Witman and Government Affairs and Public Policy Director Maeghan Gilmore.

This was the last joint SAMHSA/CMS conference on Medicaid.
Jeffrey Buck, Ph.D., Associate Director for Organization and Financing in SAMHSA's Center for Mental Health Services, announced at the beginning of the meeting that the 2008 conference would be the last SAMHSA/CMS Invitational Conference on Medicaid and Mental Health Services/Substance Abuse Treatment. Wiebe reports that no reason was given for discontinuing the conference, but he speculates that it may have to do with cost. However, Wiebe did delineate some drawbacks to the conference. In particular, he noted that the long-standing dichotomy between CMS' third-party payer, traditional medical model and mission of containing costs and SAMHSA's consumer-driven, transformation model is often apparent at these meetings but never really addressed despite the fact that it has been of great concern to NACBHDD and other behavioral health stakeholders for a long time. Further, he explained, "We've moved from an institutional system to a community-based system, whose vision as often expressed by former SAMHSA Administrator Charles Curie is to provide 'a life in the community for everyone.' It is important that CMS designs its reimbursement mechanisms to effectively support this vision."

This ongoing conflict in the missions of SAMHSA and CMS has prevented the conference from ever focusing on the fundamental need for a consistent policy applied uniformly in every state throughout the country, supporting the full range of services needed to maintain "a life in the community." The essential community-based services needed to serve persons with severe mental illness are often not covered under CMS's increasingly narrow and restrictive medically necessary rules, explains Wiebe. Usually, the conference includes a lot of small workshops focusing on how to use Medicaid to support small scale demonstration-type programs. Many of these programs are made possible by creatively written state programs and waivers that work around CMS rules. Wiebe notes that the waiver itself is, by its very name and definition, an exception to the rules and each state can write a waiver in their own creative way. There is no real consistency across the country about how this works.

The Medicaid Moratoria expire in April; a new Administration will arrive in January. What are NACBHDD's plans?
The Medicaid Subcommittee, which Wiebe chairs, works to communicate its members' collective perspective on Medicaid in their own counties and states to NACBHDD's Washington, DC staff. The Subcommittee met at the CMS/SAMHSA Invitational Conference and will meet again, probably by conference call, before the end of the year. The Subcommittee keeps up on boath regulatory and legislative developments in Medicaid. However, Wiebe points out that it is critical to understand that with Medicaid and the way it functions, "if you've seen one state, you've seen one state." Maeghan Gilmore, NACBHDD's Director of Government Affairs and Public Policy, works with the Subcommittee to find the "common threads" among the various perspectives.

Wiebe notes that Medicaid has become so increasingly narrow and restrictive that a number of "our services don't very often fall within its scope." Looking forward, he says one question

confronting the Subcommittee and NACBHDD is, "Do we continue down the same path of trying to conform to CMS' medically necessary rules, which are restrictive and often an administrative burden, or do we try to find some breakthrough approach to provide the services our consumers need to sustain that life in the community through Medicaid or some other mechanism?"

NACBHDD is one of many players in the advocacy community working together on Medicaid, and the organization actively contributes the perspective of county authorities and providers when working with the various advocacy partners. Wiebe describes the complex Medicaid issues and all the related concerns as "an enormously difficult issue to get your arms around. And again, you've seen one state, you've seen one state." As a result, he says, "We can't do it alone." Because NACBHDD is an affiliate of the National Association of Counties (NACo) the two organizations work closely on these issues at the staff and member levels (Wiebe chairs NACo's Behavioral Health Subcommittee). NACo's public policy agenda includes strengthening Medicaid and NACo has a resolution that supports the Medicaid rehabilitation services option.

Wiebe says he has a better idea of what the end product should look like than he has of what is needed to arrive at the end product, but he does believe a Congressional directive is needed to achieve the end product. Specifically, Congress should recognize the essential nature of the programs and supports necessary to maintain a life in the community for individuals with severe mental illness and developmental disabilities and the need for uniformity in state Medicaid plans across the country. Wiebe points out that, generally, there is agreement that elderly people should be cared for, and Medicaid pays for nursing homes – to the extent that long-term nursing home care is the largest single Medicaid expenditure. Wiebe believes a similar philosophy should be applied to the individuals NACBHDD serves, and he says, "We need to get away from the alphabet soup of waivers. Consumers need a *fundamental benefit* that they can count on for these *essential services*."

What can NACBHDD members do before the expiration of the moratoria in April? Discussion about and agreement on essential services is critical.

Wiebe explains that is important for members to focus on determining and agreeing on the essential services necessary to sustaining a life in the community for the individuals NACBHDD serves. The Medicaid Subcommittee will be discussing ways to move toward a uniform policy that assures consumers in every state access to these essential services which should be a fundamental part of every state Medicaid plan.

NACBHDD members may contact David Wiebe at David.Wiebe@jocogov.org with comments or questions.

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Membership Campaign: NACBHDD Seeks to Expand Membership and Strengthen Voice In Washington, DC

Executive Director Ellen Witman discussed the upcoming membership campaign in a recent Memo to Members. (Membership was a central topic of the July Board meeting.) Witman's note to members, reprinted below, emphasizes NACBHDD's outreach in an effort to further strengthen and

enhance the voice of county behavioral health and developmental disability authorities at this critical turning point.

NACBHDD is making a major effort to reach out to county and other local behavioral health and developmental disability authorities that are not yet NACBHDD members to urge them to join us in 2009. As the ***only national association in our nation's capital that speaks with a unified voice on behalf of local governmental authorities*** responsible for administering public mental health, addiction, and developmental disability systems of care, NACBHDD offers a ***unique and essential*** perspective in discussions of Medicaid regulations, mental health parity, jail diversion programs, recovery supports and health care reform, to name just a few of the many issues we cover. Having your representatives at the table is vital to the success of the work all of you do to assist the most vulnerable members of our communities.

As we plan for a new Administration and a new Congress in 2009, the NACBHDD Board wants to expand our membership in order to strengthen our voice, increase our influence and build an even more effective and responsive organization. More members will give us better insight into the diversity of county programs, special populations and financing arrangements. More members will broaden our access to Members of Congress and key Administration officials. More members will increase our revenues and enable NACBHDD to build our staff and enhance our advocacy on your behalf. More members will enable us to develop additional materials and other resources and to engage our members in teleconferences, webinars and seminars on critical issues.

To further assure that NACBHDD has the financial resources we need to grow, the Board approved an increase in dues for next year and added a "Corporate Partners" membership category so that we can seek additional support from corporate sponsors. If you have corporate contacts you think might have an interest in supporting NACBHDD and would like to share that information with us, please send an email to me at: ewitman@nacbhd.org. Any leads will be greatly appreciated. Our **2009 Membership Campaign** materials will go out at the beginning of October. I encourage you to talk to your colleagues who are not NACBHDD members and urge them to join us. Our members are our best recruiters. Tell them:

- NACBHDD was part of the critical coalitions that succeeded in getting moratoria enacted for six proposed Medicaid regulations that would have negatively impacted authorities, providers, and consumers.

- NACBHDD was the *only organization representing county authorities* at the table when CMS met with all of the national associations representing state level directors (mental health, aging, alcohol and drug abuse, developmental disabilities).

- NACBHDD is one of 18 national partners that make up the Campaign for Mental Health Reform.

- NACBHDD is a partner in the Whole Health Campaign that urges policy makers to remember that physical health and mental health are inextricably connected and any reform proposals must include both.

- NACBHDD participates in numerous coalitions working on legislative and regulatory concerns around developmental disabilities, veterans health care, supported housing, workforce issues, jail diversion, and many other aspects of behavioral healthcare.

Feel free to share ***DC Updates***, the ***NACBHDD Newsletter***, and ***Memo to Members*** with your colleagues so they can see what they are missing.

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HOLD THE DATES! March 9-11, 2009 - NACBHDD's 2009 Legislative and Policy Conference will be held at the Churchill Hotel in Washington, DC.

The 2009 Legislative and Policy Conference is a not-to-be-missed event! As a new President, new Executive Agency Directors and a new Congress begin their work, you will have the opportunity to hear from representatives of key federal agencies, Congress, national organizations and other leaders in the fields of behavioral health and developmental disabilities. We will spend time on Capitol Hill and meet with Members of Congress and key Congressional staff.

Conference and hotel registration information will be posted on the NACBHDD website (www.nacbhdd.org) soon. Keep checking for updated information.

The Nation's Capital is the place to be in March 2009! Plan to join us and make your voice heard.

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NACBHDD's Board of Directors to Meet With Texas State Association

On October 30 and 31, the NACBHDD Board of Directors will hold its meeting in Austin, Texas in conjunction with the Texas Council of Community MH/MR Centers, Inc. This Texas state association is a new member of NACBHDD, and NACBHDD is pleased to be working with them. The Board enthusiastically accepted the Texas Council's invitation to hold the October Board meeting in Austin. Board meetings are open to all NACBHDD members, although only Board members may vote on business items. Look for a report on the October Board meeting in the **November Newsletter**.

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NACBHDD wishes to thank the **Ohio MRDD Boards' Association** for its sponsorship of this month's *NACBHDD Newsletter*.

For information on how your company or organization can sponsor the *Newsletter* or other NACBHDD publication and events, please contact: Ellen G. Witman, Executive Director, at ewitman@nacabhd.org or call 202-942-4296.