Access to Psychotropic Medication

Report to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders (SJR 97/HJR 142, 2002)

October 18, 2002

Written public comments may be submitted to Nancy Roberts by November 8, 2002, at the following address: Division of Legislative Services, General Assembly Building, 910 Capitol Street, Richmond, Virginia, 23219 (e-mail nroberts@leg.state.va.us or fax 804-371-0169). Comments will be compiled by staff and presented to the Committee at its meeting on November 25. If you have questions, please call Nancy Roberts at (804) 786-3591.

Report of the SJR 97/HJR 142 Workgroup Studying Offender Access to Psychotropic Medication

Department of Corrections

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September 30, 2002

Report of the SJR 97/HJR 142 Workgroup Studying Offender Access to Psychotropic Medication

Executive Summary

Senate Joint Resolution 97 and House Joint Resolution 142 direct the Department of Corrections (DOC) and the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) to examine ways to ensure that offenders who are being released from state correctional facilities have access to appropriate medications and that these medications are managed while the offender is in the community. In addition, the resolutions require that the Departments include in their recommendations the contents required in a memorandum of agreement to ensure continuity of care for offenders in post-incarceration status.

The study process found that the Department of Corrections currently has several procedures in place to help ensure that offenders being released to the community have access to medications and that there is continuity in the provision of mental health services. These procedures include:

1. Psychotropic medications and follow-up prescriptions are provided to mentally disordered offenders who being released to the community;

2. Mentally disordered offenders who are scheduled for release from a DOC facility and who are in need of acute care mental health services are civilly committed to the Forensic Unit at Central State Hospital; and

3. Prior to their release from its facilities, the DOC does release planning for aftercare and other services for mentally disordered offenders who do not meet civil commitment criteria.

The DOC and DMHMRSAS make the following recommendations regarding offenders' access to medications upon their release to the community:

Within the DOC:

1. Fill the only existing Community Corrections' mental health services position;

2. Establish a Senior Psychologist position for each Region in Community Corrections to supplement and expand upon the services of the one existing mental health position;

3. Designate at least one Probation and Parole District in each Region to pilot specialized 'mental health' caseloads and identify at least one P.O. as a 'mental health services specialist';

4. Distribute basic information on Federal Medicaid and disability programs to all mental health services professionals to aid in the discharge planning process; and

5. Develop a means whereby Case Management Counselors are provided information and application forms for offenders for all relevant federal and state benefits programs.

6. Regarding a memorandum of agreement, the DOC and DMHMRSAS recommend that the following elements be considered:

   The Department of Corrections will:

   a. Begin discharge planning for a mentally disordered offender upon his/her intake into the DOC;

   b. Contact the designated Probation and Parole District at least 90 days prior to the offender's expected release date to review aftercare plans and services needs;

   c. Notify the CSB or other local mental health services provider at least 60 days prior to an offender's expected release to arrange aftercare mental health services;

   d. For acutely mentally ill offenders, initiate planning with the Forensic Unit at Central State Hospital for civil commitment to DMHMRSAS to be effective on the day the offender is to be released from the DOC;

   e. If prescribed psychotropic medication, ensure that an adequate supply of medication and a back-up prescription are provided to the offender and/or to the Probation and Parole District;

   f. Forward a copy of the aftercare discharge plan to the Probation and Parole District and to the Community Services Board (CSB) or other community mental health services provider.

   The Department of Mental Health, Mental Retardation and Substance Abuse Services will:

   a. Collaborate with DOC to develop appropriate release plans for each offender civilly committed to DMHMRSAS; and

   b. Collaborate with DMHMRSAS and CSBs to support effective release planning for offenders to be released to the community and in need of services from the CSBs.

To follow up on the above activities, it is recommended that representatives from the DOC, DMHMRSAS and CSBs meet to develop a draft interagency agreement between the DOC and DMHMRSAS, and to review and refine procedures for discharge planning for individuals released or from DOC facilities who require mental health, mental retardation and/or substance abuse services from Community Services Boards or other community providers.

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September 30, 2002

I. Introduction and Background

The 2001 Session of the General Assembly directed the Joint Commission on Behavioral Health Care, the Virginia Commission on Youth and the Virginia State Crime Commission to examine treatment options for offenders who have mental illness or substance abuse disorders (SJR 440, Senator R. Edward Houck). As outlined in SJR 440, the study was to include mental health and substance abuse services delivered to and needed by adult and juvenile offenders at the state and local levels. The Commissions were directed to review the current system for delivering mental health and substance abuse services, including assessment, treatment, post-release, and follow-up. To effectively address this range of issues, each of the Commissions appointed members to serve on a special study committee.

The Committee heard testimony that service availability is not uniform and that critical needs exist in transition services when an offender is released from a state correctional facility, including, for example: (i) identifying and developing transition resources; (ii) providing mental health specialists for Probation and Parole Districts; (iii) providing regional mental health professionals for Probation and Parole Districts; (iv) developing specialized case loads; (v) providing services for offenders with a history of violence; and (vi) providing services for offenders who have multiple diagnoses.

Because communities in Virginia often do not have sufficient capacity to treat offenders with mental illness and substance abuse disorders when they are released from state correctional facilities, and because there is no comprehensive and systemic approach to funding these services, the result is inequitable access to care across Virginia.

The Department of Corrections reported to the Committee that at least 18 percent of the individuals under state probation and parole supervision have significant mental health problems. This translates to a total of 1,527 offenders who were under supervision and in need of mental health services and who returned to the community during the time period of July 1, 2001 through June 30, 2002 (18% of the 8,485 offenders who were released under supervision). Probation and Parole districts typically rely on Community Services Boards for services; however, gaps in service exist. In almost every instance, demand exceeds the ability of Community Services Boards to provide services. In nearly every community, consumers, including offenders, experience waiting lists for services.

The Committee made numerous recommendations including that the Department of Corrections recommend ways to ensure the appropriate management of medications for offenders when they are released from state correctional facilities. Also noted in the Committee's key findings and recommendations was

that there was a lack of interagency collaboration. Clearly defined responsibilities for serving adult and juvenile offenders with mental illness and interagency collaboration do not exist in many communities across the Commonwealth. Further, there does not appear to be a consensus as to whether the responsibility for providing treatment services should reside with the criminal justice system or the mental health treatment system.

II. Study Requirements

Senate Joint Resolution 97 and House Joint Resolution 142 state:

"The **Department of Corrections** and the **Department of Mental Health, Mental Retardation and Substance Abuse Services** are requested to examine ways to ensure offenders' access to appropriate medications and the management of medications for offenders when they are released from corrections facilities. The Departments shall include in their recommendations the contents required in a memorandum of agreement to ensure continuity of care for offenders in post-incarceration status. The Department of Corrections and the Department of Mental Health, Mental Retardation and Substance Abuse Services shall report their findings and recommendations, jointly, to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders by September 30, 2002."

III. Study Process

Within the Department of Corrections:

Review of current policies and procedures by Robin Hulbert, Ph.D., Mental Health Program Director and individual meetings and/or discussions with the following stakeholders:

Walt Pulliam, Chief of Operations for Community Corrections, DOC
Dennis Gaulden, Manager of the Community Release Unit, DOC
Doug Chaffins, Transition Specialist in the Community Release Unit, DOC
Patty Gilbertson, Executive Director, Hampton-Newport News Community Services Board

James Morris, Ph.D., Director, Office of Forensic Services, DMHMRSAS
James Martinez, Director of Mental Health Services, DMHMRSAS

IV. Findings

Within the Department of Corrections

The DOC currently has the following procedures in place to help ensure that offenders being released to the community have access to appropriate medications and that there is continuity in the provision of mental health services. The details of each are included in Appendix I.

1. The DOC provides psychotropic medications to mentally disordered offenders who are being released to the community;

2. The DOC civilly commits acutely mentally disordered offenders upon their release from a DOC facility. These individuals are committed to DMHMRSAS and are admitted initially to the Forensic Unit at Central State Hospital (CSH). At CSH the individual is evaluated for possible transfer to another DMHMRSAS facility. Such a transfer may occur based on the individual's treatment needs and is consistent with risk assessment findings.

3. The DOC does release planning for aftercare and other services for mentally disordered offenders who do not meet civil commitment criteria including planning with Community Services Boards or other community providers for post-release treatment services.

V. Recommendations

No specific statutory or regulatory recommendations are being made at this time. However, within the Department of Corrections, the following budget-related items are recommended:

1. In Community Corrections, Department of Corrections:

   Fill the vacant Mental Health Services Clinical Supervisor position. Responsibilities of this individual include: clinical oversight and monitoring of the contractual providers of mental health and sex offender services for Community Corrections; the direct provision of services to offenders on an emergency basis; assistance in the aftercare and discharge planning process, both with DOC mental health professionals and CSB or other community providers; and providing consultation and training to Community Corrections staff.

   $92,528 per year (mid-band salary and benefits)

2. In Community Corrections, Department of Corrections:

   Establish a Psychologist II position for each Region (total of three) to supplement and be under the supervision of the sole existing mental health position, i.e., the Clinical Supervisor. Individuals in these positions would coordinate and oversee the provision of mental health services to offenders in the community; work with Probation and Parole Officers to ensure that appropriate services are being provided; provide services directly to offenders; work with institutional treatment staff re: discharge planning and aftercare services; work with CSBs and other community service providers; and train Community Corrections staff on mental health issues.

   $49,967 x 3 = $149,901 (mid-band salary and benefits)

3. In Community Corrections, Department of Corrections:

Identify at least one Probation and Parole District in each of the three Regions to pilot specialized 'mental health' caseloads. Based on education, training and experience, identify at least one P.O. per selected District and designate as a 'mental health services specialist'. Reduce the number of offenders on that individual's caseload. Provide additional training as needed through the Academy for Staff Development (e.g., 'Basic Skills in Mental Health Issues' class) and other sites. Partner with institutional and/or Regional QMHP as a resource, for coordinating discharge and aftercare services planning, etc.

No additional funding required

4. Within institutions, Department of Corrections:

Distribute basic information on Federal Medicaid and disability programs to all mental health services professionals to aid in the discharge planning process. For example, utilize 'Finding the Key to Successful Transition from Jail to Community: An Explanation of Federal Medicaid and Disability Program Rules' published by the Bazelon Center for Mental Health Law in 2001.

No cost.

5. Within institutions, Department of Corrections:

With the Correctional Programs Director, develop a means whereby Case Management Counselors are provided information and application forms for offenders for all relevant Federal and state benefits programs, e.g., Medicaid, Federal SSI and SSDI benefits, 'Temporary Assistance to Needy Families' (TANF), veterans programs, etc.

No cost.

6. Senate Joint Resolution 97 and House Joint Resolution 142 state that the DOC and the DMHMRSAS shall include in their recommendations "the contents required in a memorandum of agreement to ensure continuity of care for offenders in post-incarceration status". The DOC and DMHMRSAS recommend the following elements as a foundation for such an agreement:

The Department of Corrections will:

a. Begin discharge planning for a mentally disordered offender upon his/her intake into the DOC;

b. Contact the designated Probation and Parole District at least 90 days prior to the offender's expected release date to review aftercare plans and services needs;

c. Notify the CSB or other local mental health services provider at least 60 days prior to an offender's expected release to arrange aftercare mental health services;

d. For acutely mentally ill offenders, initiate planning with the Forensic Unit at Central State Hospital for civil commitment to DMHMRSAS to be effective on the day the offender is to be released from the DOC;

e. If prescribed psychotropic medication, ensure that an adequate supply of medication and a back-up prescription (as allowed by DOC policy) are provided to the offender and/or to the Probation and Parole District; and

f. Forward a copy of the aftercare discharge plan to the Probation and Parole District and to the Community Services Board or other community mental health services provider.

The Department of Mental Health, Mental Retardation and Substance Abuse Services will:

a. Collaborate with the DOC to develop appropriate release plans for each offender civilly committed to DMHMRSAS;

b. Collaborate with DMHMRSAS and CSBs to support effective release planning for offenders to be released to the community and in need of services from the CSBs.

VI. Recommended Follow-Up Activities

DOC, DMHMRSAS and CSB representatives will meet to develop a draft interagency agreement between the DOC and DMHMRSAS, and to review and refine procedures for discharge planning for individuals released from DOC facilities who require mental health, mental retardation and/or substance abuse services from Community Services Boards.

Appendix I

Current Practice Within the Department of Corrections Regarding Psychotropic Medications and Other Mental Health Services for Offenders Released to the Community

Attachment to Report of the SJR 97/HJR 142 Workgroup Studying Offender Access to Psychotropic Medication

September 30, 2002

I. Provision Of Psychotropic Medications To Mentally Disordered Offenders

Psychotropic medication is provided to offenders being released from a DOC facility to the community under the following procedure:

A. Offenders who are prescribed psychotropic medications for a diagnosed mental disorder may be provided up to 31 days of medication providing the following conditions are met:

1. The date the offender is to be released from the institution is known and is given to the institution's medical department at least 48 hours in advance;

2. The offender has been compliant with taking his/her medication as prescribed;

3. An aftercare appointment with local community mental health services has been arranged (including for psychiatric services); and

4. The offender has not had any suicide attempts or incidents of self-harm for the past 12 months.

5. In the event that an appointment with community mental health cannot be scheduled within the first 30 days of the offender leaving the institution, a DOC psychiatrist may provide a 'back up' (i.e., written) prescription. This is in addition to the 31-day supply referenced above. The prescription may be for up to a 31-day supply and the offender must meet the four criteria listed above. The institutional Psychologist Senior contacts the Chief of the offender's Probation and Parole District and the prescription is mailed to him/her. A cover memo includes the following: the name and number of the offender; the name of the medication(s), dose, etc; and the name and phone number of the Psychologist Senior. The same information is placed in the mental health section of the offender's Health Record.

6. In the event that an offender does not meet the above criteria, the DOC will make special arrangements with the appropriate community provider (CSB or other provider) to manage the released offender's medication.

II. Civil Commitment of Acutely Mentally Disordered Offenders

Offenders who require inpatient mental health services and who are being released from a Department of Corrections (DOC) facility are civilly committed per the following procedure:

a. Commitable mentally disordered offenders (MDOs) will enter the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) through the Forensic Unit at Central State Hospital;

b. A designated DOC Qualified Mental Health Professional (QMHP) will contact the Forensic Unit's Admission Officer at least two weeks prior to the anticipated release date to plan for the transfer of the offender;

c. Commitment under Section 37.1-67.3, Code of Virginia is initiated by DOC prior to the transfer of the offender to the Forensic Unit. The local court is petitioned to hold a civil commitment proceeding for an offender who is still sentenced to the DOC and may make an appropriate order for civil commitment upon the offender's release. Per Code section 53.1-40.9, an offender whose release from the custody of the DOC is imminent and who may be mentally ill and in need of hospitalization may be the subject of a commitment proceeding under Section 37.1-67.3 within 15 days prior to the anticipated release date, and any commitment order entered in such proceedings shall be effective upon the release of the offender from the Department of Corrections;

d. A member of the offenders' Treatment Team will notify the Chief of the appropriate Parole District of the pending transfer and the DMHMRSAS will follow up with the District regarding treatment and discharge planning;

e. The DOC QMHP will contact the appropriate Community Services Board or other community provider regarding the pending commitment of the offender to the DMHMRSAS;

f. The Forensic Unit staff evaluates the transferred, committed MDO to determine the appropriate and least restrictive treatment setting. When clinically indicated, subsequent transfers to other regional hospitals or treatment settings are coordinated by the Forensic Unit staff.

g. The DOC QMHP provides a discharge summary and other relevant information to the Forensic Unit including: a copy of the conditions of parole, the name and phone number of the Parole District to which the offender is expected to ultimately return and any available information regarding the potential 'home plan' for the offender once s/he is discharged from the DMHMRSAS facility.

III. Release Planning For Mentally Disordered Offenders Who Do Not Meet Civil Commitment Criteria

a. Upon arrival of a new offender, a DOC Mental Health Services Social Worker, Qualified Mental Health Professional (QMHP) or Case

Management Counselor (CMC) determines the offender's expected release date.

b. A letter is sent to the responsible individual(s) at the proposed release placement to determine whether the release plan is viable. Other treatment staff are apprised of what the offender will need upon release, i.e., housing, aftercare services, financial resources, etc.

c. At least 60 days prior to release, the DOC Community Release Unit (CRU) is contacted to discuss housing needs, etc. The Social Worker/QMHP/CMC contacts the Parole District as to the offender's needs. The CRU and Parole District are alerted ASAP re: problems associated with finding a suitable placement.

d. Regarding SSI/SSDI: A consent form for release of information to the Social Security Administration is obtained from the offender. SSI/SSDI are applied for as a pre-release claim. An application with supporting psychiatric/mental health documentation can be submitted 30 - 60 days in advance of the offender's release date to obtain a decision prior to release. Pre-release claims are submitted to the appropriate local SSA office. A letter is sent to the SSA on the date of the offender's release to verify his/her release and to where the individual is scheduled to be released.

If the offender has SSDI (a lifetime benefit) the individual developing the aftercare plan sends a letter to the SSA as to the date that the offender is getting out and the benefits will go into effect. The timing of the release of the offender needs to be considered as the benefits do not begin until the first of the coming month.

e. If the offender has been incarcerated for more than one year, a new application for Supplemental Security Income must be completed. There is a prerelease program where the Social Security Administration has agreed to process the paper work for SSI prior to an offenders' release when s/he has to have the funding 'promised' in order to get a placement prior to release. The paperwork is standardized across the Commonwealth. This agreement/process must be discussed with the Branch Manager at the local Social Security Administration prior to sending in paperwork to ensure that the process goes smoothly. The process is typically initiated by the DOC at least three months prior to the offender's anticipated release date.

f. Telephone interviews with the offender and SSA can be held. They are set as appointments and usually take three weeks to schedule. The process may not go smoothly due to lockdowns, offender count times, etc. It is important that SSA does not merely process the application of the offender, denying him/her due to being incarcerated. If a decision is made ahead of time, SSA usually puts it in a 'Pending Status' until the offender's date of release.

g. An application by eligible offenders for Medicaid is necessary. The required forms may differ by locality and can be obtained at the local Social Services Department.

At this time it is not possible for an offender to be approved for Medicaid services when s/he is ready for discharge from a DOC facility. This is due to language in the Code of Federal Regulations, promulgated by the United States Department of Health and Human Services (Centers for Medicare and Medicaid Services).

h. Community Services Boards (CSBs) Referrals: At least 30-60 days in advance, the Social Worker/QMHP/CMC writes a letter to the CSB of origin requesting mental health aftercare services. In the event that the offender is not returning to that locality, the appropriate CSB is contacted to request services. A potential resource for assistance in this process is the hospital liaison of the CSB. If no response is received to the letter, the Intake Counselor at the CSB is contacted by telephone.

If housing is an issue, begin contact with the CSB up to six months in advance of the release date. If housing is unknown, explain the offender's needs. An appointment cannot be made and confirmed without an address of where offender will be living.

Mentally disordered offenders are not to leave the DOC facility without an aftercare appointment with the appropriate CSB or other mental health service provider in the community.

i. Communication with CSBs and Parole Districts: Release planning should always be coordinated with CSBs or other mental health services providers as well as with Probation and Parole Districts when applicable (this is not the case, e.g., when an offender is returning to the community and is not under supervision).

j. Discharge Summary: A copy of the QMHP's Discharge Summary is to be mailed to the CSB and to the Parole District or other provider.

k. If the offender is returning home or going to a private residence: Obtain consent from the offender to release information to the family member or other individual with whom s/he is going to live. The family/caregiver is contacted to discuss the offenders' needs. Once the aftercare appointment with the CSB or other provider is scheduled, this information is provided to the family/caregiver. Information regarding financial arrangements such as SSI/SSDI status is also provided.

IV. <u>Adult Care Residencies (ACRs)</u>

a. If an offender needs to go to an Adult Home, a Virginia Uniform Assessment Instrument (UAI) form needs to be completed to apply for auxiliary grant monies to help defray the costs. This process is typically initiated by DOC Mental Health Services Social Workers (who are only assigned to designated mental health units). Usually, a local Health Department Nurse and a Social Worker from Social Services

come to the correctional facility to conduct the assessment. This is required for all nursing homes and adult homes. It is important to note that Nursing homes also require a physical within 30 days and a chest x-ray. The purpose of the assessment is to determine which of the three levels of care is appropriate for the individual.

b. At the very few DOC facilities where there are Mental Health Services Social Workers, the paperwork will be initiated as the offenders' release date approaches with approval expected in 6-8 weeks. As the majority of DOC facilities do not have such social work positions, the application often is not initiated until after the offender leaves the institution. However, in June of this year, at the request of the DOC, VISSTA (Virginia Institute for Social Services Training Activities) trained 15 select staff (Probation and Parole, Social Work, Counseling, Psychology) so that the UAIs can be completed by the DOC.

c. With written consent obtained from the offender, the UAI forms are to be submitted to the county of origin (the county or city where the offender last lived outside of an institution). It is necessary to obtain a consent form from an offender for each ACR to be contacted. Contact with the ACR(s) is made and the Social Worker/QMHP/CMC provides information about the offender's mental health history, criminal history, medications, aftercare needs, etc.