A Dangerous Precedent for Behavioral Health Services under the Affordable Care Act

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Now that the Affordable Care Act of 2010 has made it possible to extend health insurance coverage to more than 15 million more Americans, it is important to focus on how states are actually carrying out reform. Administrative efforts can extend and improve care – but they can also restrict it. In New Mexico, for example, state officials have invoked provisions of Affordable Care about fraud to institute sweeping changes in the behavioral health system, making it harder for many residents to get access to necessary care. Developments in New Mexico show why advocates must pay careful attention to state-led implementation policies and be prepared to blow the whistle when those policies violate the spirit of health reform.

A Sudden Revamp of Behavioral Health Care in New Mexico

With little more than two million people, New Mexico is a mostly rural state that has some of the nation's highest rates of death due to suicide and alcohol and drug use. Although services have never been sufficient to meet demand, the public behavioral health system has been a vital safety net for people with serious mental illnesses, like depression, bipolar disorder, and schizophrenia.

In 2013, the New Mexico Human Services Department declared that it had commissioned an audit which found that 15 nonprofit behavioral health agencies were guilty of "egregious mismanagement," "fraud," and "corruption." The nonprofits in question, mostly decades-old community mental health centers, were delivering behavioral care to the 85% of New Mexico Medicaid recipients who need it. Payments to these nonprofits were suddenly suspended; their audit records were turned over to the state attorney for criminal investigation; and authorities planned to hand their facilities to five for-profit companies from the nearby state of Arizona.

Why did this sudden shift happen? During the ensuing media storm and hearings before state legislative committees, officials insisted that they had been required to act under a provision of "ObamaCare" calling for cessation of payments "when there is pending an investigation of a credible allegation of fraud against an individual or entity as determined by the state." But the audit findings used to justify this decision have never been shared with the accused nonprofits or state legislators, let alone the general public in New Mexico. Human services officials said they had been alerted to "aberrant billing practices" in November 2012 by a private managed care company, OptumHealth of the UnitedHealth Group, that had been given a state contract to administer all behavioral health dollars, including Medicaid funds, in the public sector.

There are indications of back-door dealings. Many of the nonprofits accused of fraud in 2013 had received high marks on prior audits undertaken by OptumHealth. But assessments suddenly shifted after New Mexico officials and consultants from the Boston-based Public Consulting Group traveled to Arizona to tour the very companies that were later given no-bid contracts to monitor and displace the New Mexico nonprofits. Was it coincidental that the Public Consulting Group and the Arizona companies have been involved in Republican fundraising efforts that channeled contributions to the election campaigns of New Mexico's GOP Governor Susana Martinez?

Cutbacks in Behavioral Health Care

After months of controversy, the 15 nonprofits that have long been central to behavioral health care provision in New Mexico lost $13.5 million by November 2014 due to "pay holds." Following negotiations with the state, one nonprofit agreed to repay $4 million for alleged overpayments and a second paid $240,000 to get their Medicaid funding restored. The other 13 faced dwindling cash reserves and, with no additional funding in sight, were forced to submit to the takeover by the Arizona companies. The nonprofit owners and employees were never allowed to see the evidence against them and had no appeal rights to mount a viable defense against accusations state officials spread through the press.

State officials paid the newly installed Arizona companies $24 million for administrative and service costs and promised to pay them more than the going Medicaid rate. As the companies took over the nonprofit-run facilities and revamped the staffs, a lobbying group blanketed the radio and television waves with ads extolling the Governor's crackdown on "Medicaid fraud."

The transition led to turnover among clinicians who have provided care to vulnerable clients, many of whom lost their caseworkers or psychiatrists and had problems getting prescriptions and therapy. Other clients stopped getting any services. When worried New Mexico legislators asked the U.S. Centers for Medicare and Medicaid services to do on-site inspections, it turned out that most of the newly installed Arizona companies were deploying smaller staffs and had instituted new procedures and requirements to redo treatment assessments. As a result, clinical caregivers had less time to serve patients, who had to wait longer for care. After the for-profit takeovers, the New Mexico state legislature also documented alarming spikes in calls to the statewide crisis hotline, as well as increases in expensive hospitalizations for mental health patients.

Cautionary Lessons

Health reform advocates in other states should stand forewarned by these developments in New Mexico. In this case, insufficiently well-defined language in the Affordable Care Act of 2010 was invoked by state officials to cut off longstanding support to nonprofit behavioral health facilities. Leaders and caregivers working for the nonprofits discovered that they lacked due process protections and had no way of preventing state administrators from suddenly handing behavioral care services to out-of-state businesses that displaced established providers and reducing services for thousands of highly vulnerable New Mexicans.

New Mexico's experience also shows that it is hard to reverse such administratively arbitrary changes, even when public controversy and pushback ensues. A year after it used a supposed crisis to hand behavioral services over to the Arizona companies, the New Mexico Human Services Department insists that all is going well, and that recent lay-offs of clinicians by those companies are justified. Yet no one – not even the state legislature – has seen real data documenting such rosy claims. State officials are not being held accountable and the quality of essential services under the new regime remains murky.