Summary of MOSES Recommendations for the 2016 Dane County Diversions Workgroup
July 22, 2016

Context

During a period spanning 2014 – present, MOSES has worked to advise the Dane County Board of Supervisors on a process for improving the county's criminal justice system. This was originally done through the **MOSES Jail Task Force** which was created in response to the Mead and Hunt June 2014 "Needs Assessment and Master Plan Jail Report" which called for a new jail. It has since been renamed the **MOSES Justice System Reform Initiative** to reflect a much broader scope than just the jail.

In May, 2015 the Dane County Board unanimously passed and the County Exec signed Resolution #556, "Investigating Alternatives to Incarceration, Solutions to Racial Disparities and Mental Health Challenges in the Dane County Jail and Throughout Dane County's Criminal Justice System."

Resolution #556 calls for a reform of Dane County's criminal justice system. With input from MOSES and other community groups, it was written in response to the June 2014 Needs Assessment and Master Plan Jail Report.

Many of the MOSES recommendations were incorporated into Resolution #556. The resolution created three community-based workgroups, named "Length of Stay," "Alternatives to Arrest and Incarceration," and "Mental Health, Solitary Confinement and Incarceration." Each group was asked to provide 10 recommendations for improving the criminal justice system. A member of MOSES was appointed to two of the workgroups. In addition, MOSES set up three Support Teams to correspond to the three Workgroups. The Support Teams attended the workgroup meetings, did research, supported the MOSES members on the workgroups, and developed a set of recommendations for the Workgroups. The Workgroups incorporated much from the MOSES materials, and provided their recommendations to the Board in September 2015.

The resolution also required an updated jail study to focus on "emergency and life safety issues," and on "reducing incarceration and integrating workgroup recommendations." The three workgroups met during the summer of 2015. A preliminary report of the updated jail study was issued in May, 2016 with the final report expected later in the year.

One of the adopted recommendations from the three workgroups was for the County to convene a fourth workgroup to explore in more detail opportunities for the expansion and/or development of jail diversion programs in Dane County. MOSES requested to have a representative on that Workgroup, and Paul Saeman was appointed to this role, He has been participating in meetings since February. In addition, a MOSES support team met several times to provide input to the Diversion Workgroup. The Workgroup will complete its work at the end of July and will submit recommendations to the County Board.

With representation on the Diversion Workgroup, MOSES had an opportunity to continue to provide input to Dane County's Justice System reform. Paul participated in this workgroup's discussions and submitted 12 written recommendations for its consideration. These

recommendations are consistent with MOSES concerns and positions. It is hoped that many of them will be adopted by the Diversion Workgroup and submitted to the County Board. It is important to note that there are additional MOSES-supported recommendations that have been discussed by the Diversion Workgroup that also may be submitted to the County Board.

About this Document. Paul summarized these recommendation documents at the June 2016 MOSES Monthly meeting and, with assistance from Susan Millar, produced this summary for distribution. The summary first presents a statement of the most pressing problems to be addressed, and provides brief descriptions of the solutions proposed in the submitted recommendations. For those who want to read more, the submitted recommendations are included in full, below, in the order listed on page 4. In the summary, the names of the relevant recommendation documents appear in italics within parentheses.

Pressing Problems to Be Addressed

1. People with untreated mental illness are being incarcerated unnecessarily, are not receiving the help they need to return to the community and live productive lives, and instead remain in a cycle of crisis and reincarceration

2. Too many people are needlessly incarcerated and re-incarcerated
    - Many people could be assigned to complete community service rather than jail time, thus improving their integration into the community and making better use of jail resources.
    - "Warn, cite, and arrest" practices may have greater negative impact on people of color
    - For the Huber program, the plan to use jail as an alternative to the Ferris Center will not be cost-effective and will not enable effective transition to community life

3. While the County already has many services that can help prevent unnecessary incarceration, especially of people with mental illness and substance abuse problems, these services are meeting the needs of too few people due to lack of coordination and need for other types of optimization.
    - Ineffective use of myriad, uncoordinated community service
    - Insufficient coordination between the County Department of Human Services and the justice system
    - Need for a more coordinated system of mental health and substance abuse funding and treatment system
    - Improved use of data on jail use is needed in order to identify system strengths and weaknesses

MOSES-proposed Solutions to these Problems

To address Problems 1 and 2 and reduce incarceration

a. Some of the people with mental illness should receive treatment, instead of jail, because treatment can break the incarceration cycle, and allow for better use of "justice system" resources *(Crisis/Restoration Center;, Comprehensive Community Services (CCS)*
b. Expand capacity of the Community Treatment Alternatives (CTA) program, especially for "high fliers" (*Community Treatment Alternatives (CTA)*)
c. Expand Community Service and, by using FSET for funding and operations, this can be done with no new cost to the county *(Community Work Experience)*
d. Establish new priorities and practices (including better use of existing governmental funding sources) within the Department of Human Services, with special focus on the CCS program. In particular, the County should make the CCS program a priority for individuals involved with the criminal justice system and provide enough trained staff to quickly get people into the programs. *(Human Services Coordination and Treatment for Individuals in the Criminal Justice System ; Comprehensive Community Services (CCS))*
e. Support a joint resolution calling for City and County leaders to come together to commit to the principles of the national Stepping Up initiative, thus providing the ongoing leadership needed to make the changes needed to keep more people with mental illness out of the jail. *(Joint City/County Resolution)*
f. Establish a "restoration" or "alternative to incarceration" center, a short-term facility that where people in a mental health and/or substance abuse crisis can get stabilized *(Crisis/Restoration Center)*
g. Maintain funding for successful Deferred Prosecution Unit and Drug Court diversion programs *(Maintain funding for DPU and Drug Court Programs)*
h. The CJC should have an ongoing Diversions Subcommittee to keep the focus on diversion efforts. *(Ongoing Diversions Subcommittee)*

To address Problem 3 by improving system efficiency

a. Use of Jail Data – provide the new data analyst with community input. (*Data Analyst*)
b. Hire a Resource Ombudsman who, by providing "1-stop shopping" for members of the justice system, would increase the efficiency of, and reduce cost for, the system. (*Ombudsman*)
c. Develop a set of uniform written "warn, cite and arrest policies" for all Dane County police agencies that is designed to limit the use of arrest to cases required by law or necessary for protection of the public or suspect. Keep and maintain data to track the effects of warn, cite and arrest policies. *(Warn, Cite and Arrest Policies of Dane County Police Agencies)*
d. For Huber program participants, use the group home system, with participants covered by Medicaid and other existing public resources. (*Huber*)

List of Submitted Recommendations

Crisis/Restoration Center – County should take immediate steps while considering development of a crisis/restoration center.

Comprehensive Community Services (CCS) – County should make this program a priority for individuals involved with the criminal justice system and to take actions to ensure that there enough trained staff to get people quickly into the programs. Community Service_&_FSET

Community Work Experience – If there are no statutory prohibitions, the Diversions Workgroup should support the use o f Community Service as an alternative to jail.

Huber – County should explore using group homes/electronic monitoring for individuals who are released during the day with Huber privileges but who are in the Ferris Center or jail at night.

Community Treatment Alternatives (CTA) – County should fund expansion of the CTA program to be able to remove another 20 individuals who are in the jail and have serious long-term mental illness.

Data Analyst – County should incorporate the community concerns about the data analyst position as the data will be needed to show the impact of the various diversion programs.

Ombudsman – County should create a position of Resource Ombudsman to coordinate the delivery of services.

Warn, Cite and Arrest Policies of Dane County Police Agencies – County should review and develop uniform written warn, cite and arrest policies for all Dane County police agencies to limit the use of arrest to cases in which it is required by law or necessary for protection of the public or suspect.

Human Services Coordination and Treatment for Individuals in the Criminal Justice System – County should direct the Dane County Department of Human Services to develop three alternatives that are outside of the normal budget process that would increase the use of benefit programs, treatment, and services for the individuals who are impacted by the Dane County criminal justice system.

J**oint City/County Resolution** – Proposal to formally commit Dane County to the principles and actions of the Stepping Up program, thereby strongly encouraging the leadership to come together to show commitment for, and to manage, this initiative.

Maintain funding for DPU and Drug Court Programs even if TAD funding grants are decreased.

Ongoing Diversions Subcommittee (of the CJC) – This would keep the focus on diversion.

JAIL DIVERSION IMPLEMENTATION MODEL

(5/3/16)

Context

For too many years, thousands of people have been jailed because of behaviors resulting from untreated mental illness. Most of these people could have and should have been treated in appropriate settings instead of in jails. This is a national tragedy that is now beginning to get attention and is being addressed at local, state, and national levels. Throughout the country, jail diversion programs appear to be getting widespread support.

Research data have shown that approximately half of all prison and jail inmates have a mental health problem. People with mental illnesses serve longer sentences than other offenders convicted of equivalent crimes. Many offenders with mental illnesses have committed an offense that is often a manifestation of their illness rather than the result of criminal intent. For each individual who receives treatment for a psychiatric illness in a hospital, about five others with mental health conditions are treated, or confined without treatment, in penal facilities. Hospitals report that 6 in 10 emergency physicians surveyed indicate that the increase in psychiatric patients is negatively affecting access to emergency medical care for all patients, causing longer wait times, fueling patient frustration, limiting the availability of hospital staff, and decreasing the number of available emergency area beds. Studies also show that it costs approximately 75% more to incarcerate individuals with mental illness than other inmates who have been convicted of similar offenses.

What Is Jail Diversion?

Jail diversion seeks to use resources efficiently and to help provide appropriate treatment to those who need it. Jail resources are known to be stretched, and people with mental illness are known to be high resource users when involved in the criminal justice system. Thus, treating people with mental illness in the community instead of in jail is likely to have two benefits: (1) the person will have access to the appropriate treatment, and (2) the jail can make better use of scarce resources.

The primary goal of jail diversion is to both *divert people from* the criminal justice system and *divert them to* treatment. Diverting from the criminal justice system may mean averting the arrest. If a booking occurs, diversion may mean reducing time detained in jail or reducing or eliminating charges upon meeting certain conditions. Instead, the person is diverted to the appropriate treatment in the community.

There are two basic types of jail diversion: pre-booking and post-booking. Pre-booking diversion diverts people before they are formally booked, either on the street or at a police station. Pre-booking diversion has been implemented through a number of models

(Steadman et al., 2001). The “Memphis model” has been used widely (Cowell et al., 2004) and has been adapted by Bexar County; it involves the use of Crisis Intervention Teams (CITs) of specially trained police officers.

Post-booking diversion diverts people after formal booking and before sentencing. The models of post-booking vary by point in the adjudication process at which diversion occurs and the role and intensity of specific resources (Broner et al., 2004; Munetz and Griffin, 2006).

Aside from the two types of diversion, specific programs are defined by characteristics of the target population and the activities used to conduct the diversion. The target population depends on a combination of the severity of the offense, criminal record, presenting behavioral symptoms, and medical history (Broner et al., 2004; Broner, Mayrl, and Landsberg, 2005; Steadman, Cocozza, and Veysey, 1999). Programs most commonly target people with serious mental illness (often comprising schizophrenia, major depression, and bipolar disorder) and a low-level nonviolent offense (e.g., a misdemeanor). The literature documents considerable variations in the program eligibility conditions and the characteristics of the population actually served. For a nationwide select sample of programs, Lattimore et al. (2003) found poorer functioning and more severe substance use among people served by post-booking programs than among people served by pre-booking programs. Moreover, recent research suggests that the demographic and criminal characteristics of the diverted population differ from the general detainee population. Naples et al. (2007) argue that the decision process for jail diversion programs may lead to the acceptance of a disproportionate number of women, whites, those who are older, and those with nonviolent and nonfelony offenses compared with the general detainee population.

Three activities are common to most programs: screening, assessment, and negotiation between criminal justice and the treatment systems for a diversion disposition (Steadman, Barbera, and Dennis, 1994). These activities have evolved over time to distinguish diversion from standard criminal justice processes; examples include a centralized drop-off location for police diversion and a mental health docket for a court program (Broner, Borum, and Gawley, 2002; Lattimore et al., 2003). Programs have also expanded to target felony-level offenders and have adapted drug court and supervision models to address those with co-occurring mental and addictive disorders (Broner et al., 2003). Steadman et al. (1995) defined the specific practices required for a successful diversion program as integrated services, key agency meetings, boundary spanners, strong leadership, early identification, and appropriately qualified case management.

The Importance of Examining Resource Use

Figure 1 shows that, in the absence of a diversion program, persons with mental illness cycle into and out of the criminal justice system. Someone with untreated mental illness in the community may well use fewer public resources until the illness reaches a crisis state. This worsening of behavioral symptoms may then precipitate interactions with law enforcement officers. For example, a person shouting incoherently near a storefront may be arrested for misdemeanor trespass. At that point, considerable criminal justice system resources are needed.

The person is arrested, requiring peace officer resources; arraigned and adjudicated, requiring court resources; frequently detained before and after judgment, requiring jail resources; and interacting with numerous other agencies that provide supervision and care. Importantly, people who do not receive the necessary mental health treatment may cycle back through the criminal justice system after being released into the community.

Figure 1. How Resources Are Spent Without Jail Diversion

In the absence of diversion, people often cycle between the criminal justice system and the community.

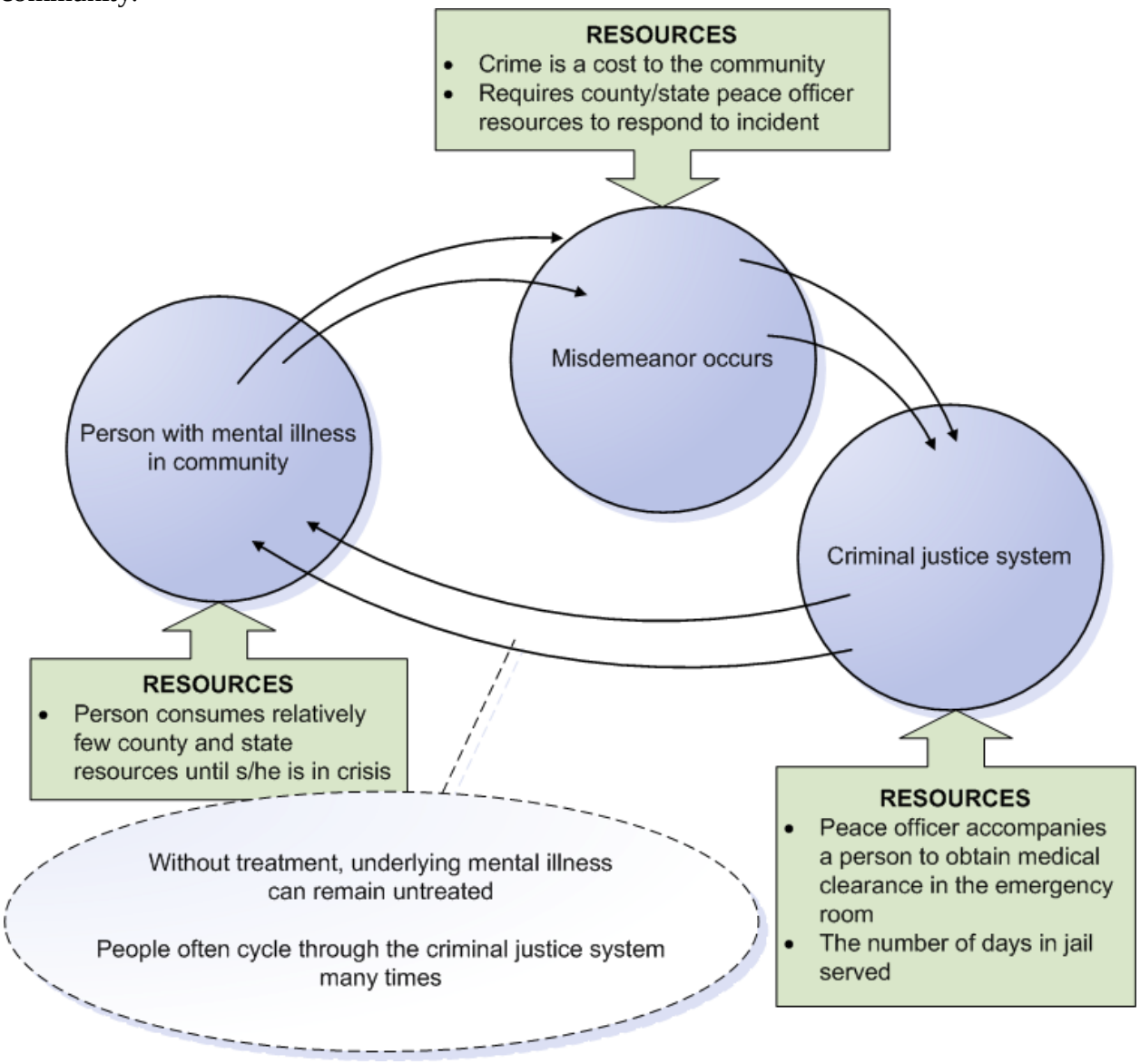
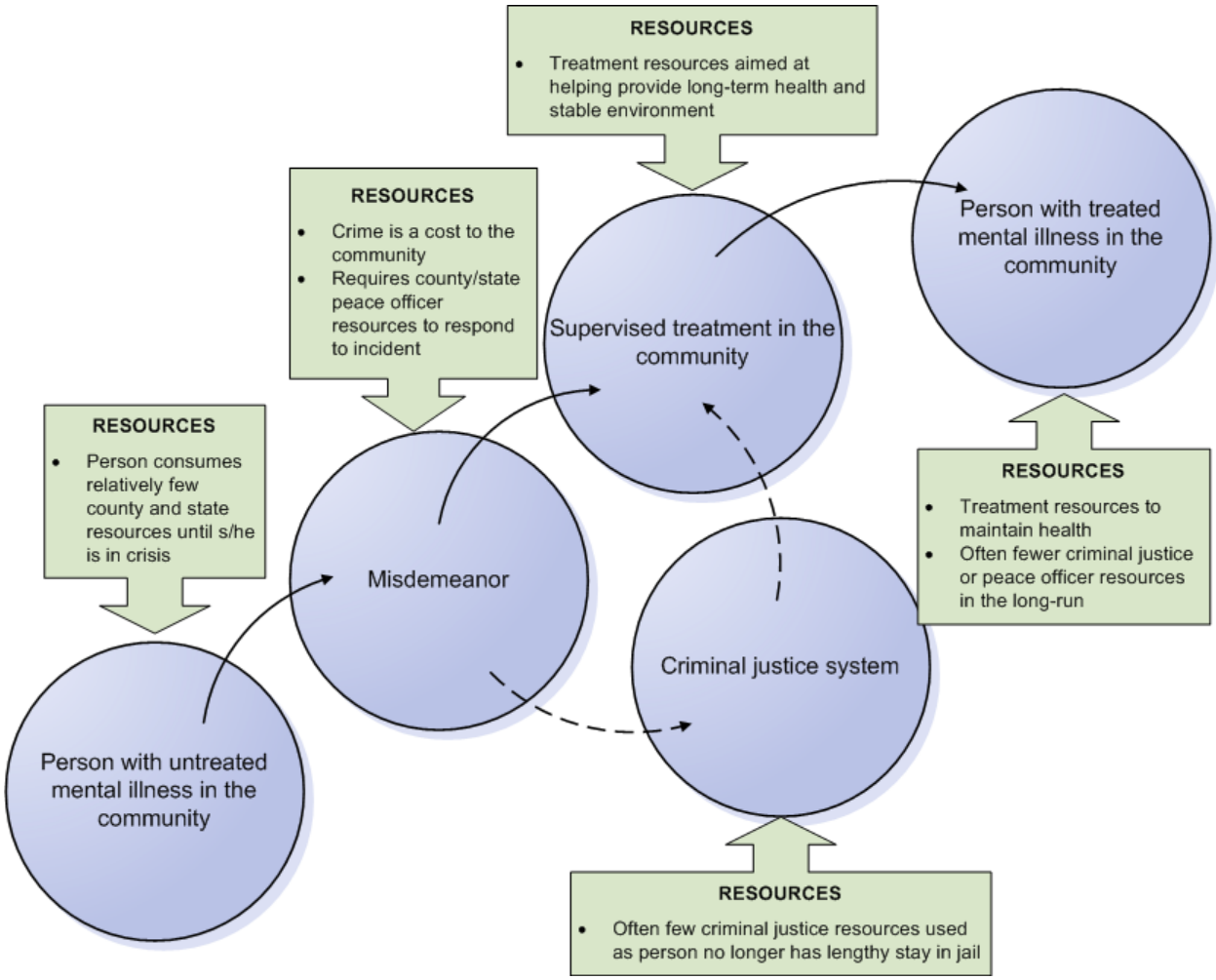


Figure 2 shows that, by providing access to needed mental health care, diversion can break the repeating cycle of a person with mental illness moving between the community and the criminal justice system. In Bexar County, efforts are made to focus diversion treatment resources on a person up front. Diversion is intended to intercept a person at the point of arrest or at booking and divert that person into treatment; thus, many scarce criminal justice resources are conserved for other uses. By treating the person's illness appropriately, the chances of the person cycling back through the criminal justice system and requiring further criminal justice resources may be reduced.

Figure 2. How Resources Are Spent With Jail Diversion

With diversion, fewer people may cycle between the criminal justice system and the community. The rest



Cost Implications

In pre-booking diversion, a person is very quickly directed away from the possibility of being booked into jail and then adjudicated, and instead is referred to community treatment. Thus, it makes sense that short-term criminal justice and overall costs are reduced. Although one might reasonably expect treatment costs to increase in step with the reductions in criminal justice costs, no reliable differences were found. It is also noteworthy that there was no evidence of any overall cost differences beyond 6 months. This indicates that pre-booking diversion may not cost the taxpayer any additional long-run resources.

In post-booking diversion, the act of diversion itself may take some considerable time, because most clients must be screened, assessed, and then required to attend treatment, often as part of the terms of supervision. Thus, for the first 12 to 18 months after entry into diversion, many of those in the program are under court conditions to attend treatment and many are under criminal justice community supervision. The results suggest that reduced criminal justice costs were apparent after the typical 12- to 18-month period of time it takes to graduate from the program.

Recommended Implementation Actions

The impact of implementing a diversion initiative in Dane County would impact the special needs population now entering the Dane County Jail. The Mead and Hunt Needs Assessment and Master Plan Final Report (June 2014) stated on page #6:

> ***Special Needs Jail Population***
>
> *The Dane County Sheriff's Office estimates that special needs offenders housed in the Jail (mental health, medical cases, etc.) average a length of stay in the jail of 43 days. Special needs cases are currently assigned to jail disciplinary beds rather than the general population. The Sheriff's Office estimates that the average daily number of special needs cases housed is about 40.*
>
> *Intake processing issues associated with special needs offenders can increase jail time. Recently, new staff were contracted to screen for mental health needs for Jail intakes. This new staff does not have access to confidential records held by the Dane County Mental Health Agency. Lack of access to this information causes delays in assessments.*

Since there are new staff who now have access to the information (per a recent meeting with Kurt Pierce) it would be ideal to implement diversion prior to booking. Individuals taken directly to the Detox Center could be triaged (assessed) and if appropriate, taken directly to treatment. In addition, the Bail Monitoring program could divert people to treatment as part of the evaluation including using the new risk assessment tool which is being implemented (as is done in New Jersey – see 10-4-15 Star Ledger Story sent to Carlo Esqueda below).

> *From The Star Ledger 10-4-15*
> *DONNA SIMON / N.J. Assembly*

Drug penalty reform can help save lives

Every year, 650,000 inmates are released from American prisons. Within three years, roughly two-thirds of them will end up behind bars again. The failures of our country's correctional system overburdens government, overworks our police and law enforcement officers, and places too many lives within our communities at risk.

Nearly half of these inmates are nonviolent drug offenders who deserve a better chance at rebuilding their lives and becoming more productive members of society. Too often they are sent to prison without any help or rehabilitation. They come out of prison with the same addiction and repeat the cycle of crime.

By addressing these issues, we can improve the lives of those suffering from addiction and help them become more productive members of society, and we can also improve the well-being of our towns. Addiction can and often does affect those we love.

It is time that the lessons we learned here in New Jersey are carried across the country, and become the new federal model. It costs New Jersey $25,000 less to provide drug rehabilitation treatment than to place the nonviolent drug offender in prison.

In 2013, Gov. Chris Christie expanded the state's drug courts to provide mandatory treatment to first-time, nonviolent drug offenders. Instead of prison sentences, drug courts demand treatment programs designed to break the cycle of addiction by addressing the underlying cause of repeated criminal behavior. Every dollar spent on treatment leads to a $7.47 reduction in crime-related spending and lost productivity, according to a study conducted for the Office of National Drug Control Policy.

This simple measure not only reduced the state's long-term cost, but saved the lives of countless individuals. The New Jersey Drug Court program has seen positive results with successful participants who improved their education, obtained useful job skills, maintained employment and supported their families.

In 2014, the governor led the charge by signing bipartisan legislation to reform New Jersey's bail system. These reforms allow people charged with the most serious violent crimes to be held without bail, keeping dangerous people off the streets.

In addition, the reforms addressed the unfair practice of imprisoning people who commit minor, nonviolent offenses and sit in our jails because they cannot afford even low amounts of bail. By granting release under nonmonetary conditions, such as required addiction treatment services, the bail reforms reduced the cycle of nonviolent crimes in local communities and enhanced public safety throughout the state.

The governor's expansion of programs designed to combat recidivism, through treatment of drug and alcohol addiction and job training to assist offenders' transition back into society, represents action that can be modeled across the country.

The importance of justice does not begin and end with jail or a quick fix of simply incarcerating those who violate the law, but must continue with substantive measures to

address recidivism and the root causes of addiction that leads to crime. It is imperative that we approach this issue, not only on an economical basis, but also giving individuals every chance to succeed in getting healthy and ending the cycle of addiction and crime.

Donna Simon is a Republican representing the 16th Legislative District in the New Jersey Assembly.

These implementation actions could be put in place now while an expansion plan of the detox program to develop a comprehensive center that would not only stabilize and detox individuals but also triage the individuals to treatment rather than to the Dane County Jail could be developed to be presented for the 2017 County budget. All diversions would be treated as voluntary with a formal agreement as an alternative to incarceration. Failure to comply with the agreed upon diversion and plan of treatment would result in return to the post booking docket system.

This is as conceptual diversion plan for pre-booking implementation. The funding for operations would be mainly supported by use of existing programs including Comprehensive Community Services (CCS), BadgerCare, and private insurance.

The immediate impact is estimated to be a reduction of 50% of the special needs cases (20 individuals on a daily basis). Once the full program is in place, a 75% reduction should be achievable (30 individual beds on a daily basis).

Comprehensive Community Services (CCS) Recommendation

Hi,

We arranged a meeting last week with Julie Meister (CCS program manager), Mary Garbot and Pat Hrubesky (Deferred Prosecution- DPU), Brad Schlough (Journey Mental Health) and several members of the Hoover Family Foundation/MOSES to talk about how the DPU could access the Comprehensive Community Services (CCS) program for its participants. The meeting was held at the same time as our workgroup meeting. Mark Hoover gave me an update. Several items of interest were raised/discussed:

1. There is no clear direction that people involved with the criminal justice system should be a priority group for the CCS program.
2. About 50 percent of the individuals on CCS had previously been receiving county funded services. (This frees up County dollars.)
3. There is a bit of a bottleneck with CCS as there are only two County staff who do the initial eligibility determination for CCS. Pat Hrubesky had an idea. She suggested that her staff, who are County Employees and social workers, could be trained to do the initial eligibility. This seemed to us to be a creative approach. There might also be other points in the criminal justice system where this could be used: at the Dane County Jail for the people who do the mental health screening, at the Bail Monitoring program for the worker who sets up the Bail Monitoring plan, and at the Dane County Jail for the individual who does the health planning for sentenced individuals prior to their release.

It seems to me that the Diversion Workgroup could consider the following recommendations:

1. CCS should be a priority for individuals who are involved with the criminal justice system. There are many positive reasons for doing this (fiscal, reduce incarceration, improve lives) and this could be done in a way that does not limit access to other people who are not involved with the criminal justice system. What it really means is that CCS should be expanded.
2. Some of the savings of County dollars due to the CCS program should be reinvested into diversion programs. The County should also review all of its mental health/substance abuse programs that are used by individuals involved with the criminal justice system to identify areas where CCS could be used to save county dollars and expand services. For instance, the write-up about Journey Mental Health's Comprehensive Treatment Alternatives (CTA) program, the answer to question #47 stated: "It is our hope that Comprehensive Community Services or CCS will be able to provide the intermediate level of care between CSP services and less intensive outpatient services that until now has been missing from our system of mental health."
3. CCS program managers should explore Pat Hrubesky's idea as a way to reduce the front-end bottleneck. This is particularly important for individuals involved with the criminal justice system because extensive delays can be detrimental to their success.

Thank you,

Paul Saeman
melodygab@aol.com
274-4948
215-4843 (Cell)

Community Service and FoodShare Employment & Training Recommendation

(5/11/16)

Alternative to Jail

Community Service as an alternative to jail was discussed in several of the County Workgroup's from last summer. It became one of the 31 recommendations.

Community Service had previously been an alternative that judges could use. It was discontinued due to lack of resources.

In the Alternatives to Arrest Workgroup, Judge Ellen Berz, Dane County Circuit Court Branch 11, discussed Community Service at length. She said that she would like to have this alternative. She said that she saw many people (with non-violent offenses) and did not have good options for them. As putting them on probation was excessive, they were usually sentenced to time in jail. She said that for many of these individuals she would welcome a community service option and would use it.

On May 2, 2016, a meeting was held with Judge Colas, DA Ozanne, Dee Dee Watson, Carlo Esqueda, and members of the Hoover Family Foundation to discuss a proposal to use the FoodShare Employment and Training Program (FSET) to operate and fund a Community Service program for use as an alternative to jail. Several key items were discussed:

- The need to verify whether there are any statutory prohibitions to using Community Service as an alternative to jail.
- There was a discussion of the use of Community Service within the context of the FSET program. Normally it is used as one of the strategies to help individuals to obtain employment and not as an end in and of itself. The option was discussed of also allowing work to count if the Community Service led to the employment.

If there are no statutory prohibitions, the next step will be to have another discussion with all of the criminal judges.

Recommendation

If there are no statutory prohibitions, the Diversions Workgroup should support the use of Community Service as an alternative to jail.

Because employment is such an important activity, the Diversions Workgroup should also support the expanded use of the FSET program. Forward Service is the FSET provider that serves the majority of participants and is funded with State funding that draws the federal dollars. It is important to note that additional County funding is not needed.

Most FSET services and case managers are located at the Dane County Job Center. This location is difficult for some. Since FSET could be used by multiple programs, the FSET case managers should be located close to the programs (for instance at the City County Building) to directly engage the participants.

Because there are multiple programs related to the criminal justice system (Drug Courts, Deferred Prosecution, etc.) there should also be one designated coordinator who would work closely with the FSET program. This would help with implementation, consistency, and problem resolution.

Alternative Placement – Huber Program Participants

Presently, the Ferris Center houses sentenced individuals who are participants in the Huber program. All women are housed at the Dane County Jail. Individuals with significant medical needs are also housed at the Dane County jail. There are selected individuals on electronic monitoring at the Farley House which is a group home program. In proposals for a new jail, it was put forward that all Huber program participants be housed at the jail.

The Department of Corrections has an extensive system of halfway houses that it uses for some of the individuals who are under supervision. There is pressure to move the Huber program from the Ferris Center as there are plans to have a major investment to upgrade the Dane County Expo Center. The County could save money by using the group home system for serving these individuals rather than using more expensive jail space. It is also felt it helps the individuals to better transition back into the community. DOC halfway house providers may expedite the change. Electronic monitoring could be used as is now done by the jail for those people placed at the Farley House. The federal government recently has opened up the use of Medicaid for halfway houses which could reduce the County's cost of providing health care and provide seamless continuity of health care where the individuals are released to the community.

The attached letter and Q&A document from the federal Centers for Medicare and Medicaid Services provides states guidance on facilitating access to covered Medicaid services for eligible individuals prior to and after a stay in a correctional institution. It specifically addresses residence in a halfway house when Federal Financial Participation (FFP) is available for Medicaid-covered services to individuals residing in state or local private or publicly operated corrections-related "supervised community residential facilities."

<u>Recommendation</u>

The Huber program should encourage people to work. The Sheriff has raised that many people are not willing to take a job and go to work under the current conditions of the Huber program.

A serious consideration and cost analysis should be done to evaluate the option of moving Huber participants to halfway houses instead of housing them at the Ferris Center and the Dane County Jail. The analysis should include the use of Medicaid for some of the individuals.

The analysis should also evaluate the charges that are assessed to the individuals so that there is an incentive to work. Perhaps some of the earnings could be set aside for the first several month's rent instead of using it to offset the cost of incarceration.

Being able to have a job and housing are critical to reducing recidivisim.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

SHO # 16-007

RE: To Facilitate successful re-entry for individuals transitioning from incarceration to their communities

April 28, 2016

Dear State Health Official:

The purpose of this letter and its attachment is to provide guidance on facilitating access to covered Medicaid services for eligible individuals prior to and after a stay in a correctional institution. This State Health Official Letter with attached Questions and Answers (Qs & As) describes how states can better facilitate access to Medicaid services for individuals transitioning from incarceration to their communities.

As a result of changes states are adopting in their Medicaid programs, individuals in many states who were previously uninsured now are eligible for Medicaid coverage, including a significant numbers of justice-involved individuals. While the Medicaid statute limits payment for services for individuals while residing in correctional institutions, Medicaid coverage can be crucial to ensuring a successful transition following incarceration. Many individuals in the justice-involved population have a high prevalence of long-untreated, chronic health care conditions as well as a high incidence of substance use and mental health disorders. Facilitating enrollment in Medicaid and supporting access to services following incarceration has the potential to make a significant difference in the health of this population and in eligible individuals' ability to obtain health services that can promote their well-being. Such enrollment will also help individuals with disabilities obtain critical community services to avoid crises and unnecessary institutionalization.

As states consider eligibility and coverage issues, many have asked questions about the longstanding provision of the Medicaid statute that excludes Medicaid payment for services provided to inmates of public institutions, including correctional institutions, except for services provided as "a patient in a medical institution". We address them in the following Qs & As. The Centers for Medicare & Medicaid Services (CMS) Center for Medicaid and CHIP Services (CMCS) welcomes the opportunity to work closely with states to identify ways to improve access to needed health care for individuals returning to the community following incarceration.

If you have any questions regarding the information in the Qs & As, please send questions to CMCSMedicaidQAInmates@cms.hhs.gov.

Sincerely,

/s/

Vikki Wachino
Director

cc:

National Association of Medicaid Directors
National Academy for State Health Policy
National Governors Association
American Public Human Services Association
Association of State Territorial Health Officials
Council of State Governments
National Conference of State Legislatures

Enclosure:

Questions & Answers

Section 1: Inmate Definition

Inmates of a public institution who are held involuntarily may be enrolled in Medicaid, but may not receive Medicaid covered services. The inmate coverage exclusion applies to Medicaid services to inmates, except as inpatients in a medical institution as provided in statute and described in Section 3 of this document.

Q1. Inmate Defined: ***Who is an inmate of a public institution?***

A1. Medicaid regulations at 42 Code of Federal Regulations (CFR) 435.1010 define an inmate of a public institution as "a person living in a public institution" and define a public institution as "an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control." A public institution includes a correctional institution. There are separate definitions for "child care institutions" and "publicly operated community residences," and we interpret such institutions to be in a separate category and therefore not included as public institutions for the purposes of identifying who is in an inmate in this guidance.

CMS considers an individual of any age to be an inmate if the individual is in custody and held involuntarily through operation of law enforcement authorities in a public institution, other than a child care institution, publicly operated community residence that serves no more than 16 residents, or a public educational or vocational training institution for purposes of securing educational or vocational training. Correctional institutions include facilities operated by, or under contract with, the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held involuntarily in lawful custody through operation of law enforcement authorities. Correctional institutions include state or federal prisons, local jails, detention facilities, or other penal settings (e.g., boot camps, wilderness camps). While correctional institutions may provide medical and related services, they are organized for the primary purpose of involuntary confinement. Thus, correctional institutions are never considered to be medical institutions (which are defined in 42 CFR 435.1010 to be organized to provide medical care).

We recognize that federal, state, local, and tribal authorities attach different names, conditions, and requirements to individuals in various custody arrangements. Regardless of the label attached to any particular custody status, an important consideration of whether an individual is an "inmate" is his or her legal ability to exercise personal freedom.

Q2. **Individuals on Parole or Probation**: ***Is Federal Financial Participation (FFP) available for eligible individuals who are in the community on parole or probation, or have been released to the community pending trial (including those under pre-trial supervision)?***

A2. Yes. Individuals who are on parole, probation, or have been released to the community pending trial (including those under pre-trial supervision) are not considered inmates, and thus are not subject to the prohibition on providing Medicaid covered services to inmates. If they are otherwise eligible for Medicaid, FFP is available for covered services provided to such individuals.

Q3. **Residence in a Halfway House:** ***When is FFP available for Medicaid-covered services to individuals residing in state or local private or publicly operated corrections-related "supervised community residential facilities"?***

A3. FFP is available for covered services for Medicaid-eligible individuals living in state or local corrections-related supervised community residential facilities (whether operated by a governmental entity or a private entity) unless the individual does not have freedom of movement and association while residing at the facility. In order for FFP to be available for covered services for Medicaid-eligible individuals living in such a facility, the facility would have to operate in such a way as to ensure that individuals living there have freedom of movement and association according to the following tenets: (1) residents are not precluded from working outside the facility in employment available to individuals who are not under justice system supervision; (2) residents can use community resources (libraries, grocery stores, recreation, education, etc.) at will; and (3) residents can seek health care treatment in the broader community to the same or similar extent as other Medicaid enrollees in the state. For this purpose, "at will" includes and is consistent with requirements related to operational "house rules" where, for example, the residence may be closed or locked during certain hours or where residents are required to report during certain times and sign in and out. Similarly, an individual's supervisory requirements may restrict travelling to or frequenting certain locations that may be associated with high criminal activity. To claim FFP for Medicaid-covered services furnished to Medicaid-eligible individuals while they are living in a supervised community residential facility, the state Medicaid agency must ensure that the facility meets the requirements described above.

Q4. **Residential Reentry Centers:** ***Is FFP available for Medicaid-covered services to individuals residing in federal "Residential Reentry Centers"?***

A4. No. The Department of Justice, Bureau of Prisons (BOP) retains responsibility for payment of health care services rendered to individuals in Residential Re-entry Centers (RRCs). RRC residents previously enrolled in their state Medicaid program would have benefits suspended while serving a duly adjudicated term of incarceration in a federal facility or RRC.

RRC residents not previously enrolled in their state Medicaid program would be able to apply to their intended release state of residency for eligibility determination while incarcerated, but would not be eligible to receive Medicaid benefits until their status changed to home confinement, parole, probation, or full-term release.

Q5. Free Choice of Provider: ***Must individuals in transitional or supervisory arrangements have the ability to freely choose their Medicaid providers, as required in Federal law at Section 1902 (a)(23) of the Act?***

A5. Yes. Eligible individuals who are not inmates but rather who are in transitional or supervisory arrangements, as beneficiaries of the Medicaid program, have the same ability to choose their providers of health care services as afforded to other Medicaid beneficiaries in their states.

Q6. Individuals on Home Confinement: ***Is FFP available if an individual is on home confinement?***

A6. Yes. An individual's private place of residence generally would not meet the definition of a "public institution", which is a component of the coverage exclusion, despite the involuntary nature of the home confinement scenario. FFP is available for expenditures under the approved state plan for covered Medicaid benefits furnished to eligible individuals living at home under home confinement.

Q7. Voluntary and Temporary Residence in a Public Institution: ***Is an individual considered an inmate of a public institution if residing there voluntarily for a temporary period?***

A7. No. An individual is not considered an inmate when residing in a public institution voluntarily and the coverage exclusion does not apply. For example, FFP is available for services when an individual (if eligible and enrolled in Medicaid) is living voluntarily in a detention center for a temporary period of time after his case has been adjudicated and arrangements are being made for his transfer to a community residence. The voluntary nature of the residence is critical; an individual would be considered an inmate during temporary involuntary residence in a public institution imposed by the justice system (for example when confined pending trial) but not when the individual is free to leave, but is "residing in a public institution for a temporary period pending other arrangements appropriate to his needs" consistent with 42 CFR 435.1010.

Q8. Residence in Facilities for Treating Mental Health and Substance Use Disorders: ***Is FFP available for mental health or substance use disorder services, furnished exclusively to inmates, in a residential treatment facility?***

A8. No. FFP is not available for services in a residential treatment facility for inmates who are involuntarily residing in the facility by operation of law enforcement authorities, since this facility would be a correctional institution (even if it were operated by a private entity under contract).

In addition to the inmate exclusion, the Medicaid statute also includes a coverage exclusion related to services for patients in Institutions for Mental Diseases (IMDs), which include residential treatment facilities of over sixteen beds that are primarily engaged in the diagnosis, treatment, or care of persons with mental diseases.[1]

Q9. Applicability of other Medicaid Requirements: ***Will services provided to individuals who have been released to the community be subject to any other requirements before being qualified for Medicaid reimbursement?***

A9. Yes. All Medicaid rules apply in determining the circumstances in which reimbursement is available, including the coverage exclusion for services provided to individuals who are in an IMD and the Home and Community Based Services (HCBS) requirements relating to the provision of services authorized under 1915(c) HCBS waivers, 1915(i) HCBS state plan options, and 1915(k) Community First Choice programs.[2]

Section 2: Eligibility and Enrollment

Q10. Medicaid Eligibility While Incarcerated: ***Does being incarcerated prevent an inmate from being determined eligible for or maintaining eligibility for Medicaid?***

A10. No. The inmate exclusion is a general coverage exclusion; it is not an eligibility exclusion. Incarceration does not preclude an inmate from being determined Medicaid-eligible. The state Medicaid agency must accept applications from inmates to enroll in Medicaid or renew Medicaid enrollment during the time of their incarceration. If the individual meets all applicable Medicaid eligibility requirements, the state must enroll or renew the enrollment of the individual effective before, during, and after the period of time spent in the correctional facility. Once enrolled, however, the state may place the inmate in a suspended eligibility status during the period of incarceration, or it may suspend coverage by establishing markers and edits in the claims processing system to deny claims for excluded services, as discussed below.

It should be noted that, due to Medicaid retroactive eligibility provisions at section 1902(a)(34) of the Social Security Act, FFP is available for Medicaid-covered inpatient services provided in

[1] The exclusion for services provided to individuals who are in an Institution for Mental Disease can be found at section 1905(a)(29)(B) of the Act.

[2] The exclusion for services provided to individuals who are in an Institution for Mental Disease can be found at section 1905(a)(29)(B) of the Act; qualities of a home and community based setting are outlined in 42 CFR 441.301(c)(4).

a medical institution to an inmate in the 3-month period prior to application, if the individual would have been Medicaid-eligible.

We strongly encourage correctional institutions and other state, local, or tribal agencies to take an active role in preparing inmates for release by assisting or facilitating the application process prior to release. Individuals can apply for Medicaid online at www.HealthCare.gov or through their state Medicaid agency or state-based Marketplace. If restrictions on internet access make it impossible or impractical for an inmate to file an online application, then a paper application may be used. A telephone application is another option; individuals may call the Marketplace call center at 1-800-318-2596 to apply 24 hours a day, 7 days a week. Correctional institutions and other entities should coordinate with their state Medicaid agencies in order to receive paper copies of forms. In accordance with federal regulations governing Medicaid applications at 42 CFR 435.907, state Medicaid agencies must accept applications that are submitted online, through the mail, or by phone.

We also support correctional institutions' efforts to transfer medical records to new primary care, mental health providers, substance use treatment providers, other specialists, and other providers to ensure continuity of care, including electronic means of maintaining and transferring such records. Various types of financial match are available for states to support these activities. In addition, federal Medicaid matching funds are available for application assistance and eligibility determination, assuming all other qualifications are met.

Q11. Financial Eligibility: ***How does incarceration affect a Medicaid-enrolled individual's household income?***

A11. The effect of incarceration on an individual's financial eligibility for Medicaid depends on the individual's circumstances. For most individuals, financial eligibility is determined using modified adjusted gross income (MAGI), which is generally based on tax filing relationships and taxable income. There are no special rules or exceptions for incarcerated individuals. If the incarcerated individual does not expect to file taxes, then Medicaid financial eligibility would be based solely on the income of the individual.

Q12. Suspended Status: ***How should states handle the situation when a Medicaid-enrolled individual is or becomes incarcerated?***

A12. To ensure that FFP is only claimed for Medicaid-covered inpatient services delivered to inmates in a medical institution, states should consider placing the eligibility of a Medicaid-enrolled inmate in a suspended status upon incarceration and/or setting up claims processing markers and edits to ensure that services are limited to only inpatient services. Other methods may also be used to accomplish the same result (suspending coverage instead of eligibility). A temporary suspension process maintains the individual's eligibility for Medicaid and provides for continuity of care so that the individual can immediately access Medicaid-covered services

upon release from the facility. Whatever approach is used, the suspension must be promptly lifted when the inmate exclusion no longer applies (e.g., upon release, or when the individual is admitted as a patient for inpatient treatment in a medical institution). Establishing proactive communication processes between the state Medicaid agency and state and local correctional facilities can help to ensure prompt notification of release and timely access to coverage.

Q13. Feasibility of Suspended Status: ***Is it feasible for states' eligibility determination systems to accommodate a suspension process when a Medicaid-eligible individual is incarcerated? Are there resources available to support modernizing states' eligibility systems, to allow for suspended enrollment status?***

A13. Yes for both. While some states have a history of suspending eligibility for incarcerated individuals, others have faced challenges with their legacy eligibility and enrollment systems when placing Medicaid-eligible inmates in a suspended status. Addressing these challenges should be possible with the availability of enhanced federal funding for new or improved eligibility systems, as specified in the final rule, codified at 42 CFR 433.112, "Federal Funding for Medicaid Eligibility Determination and Enrollment Activities, FR 2011-09340," published in April 2011.

Q14. Promoting Enrollment to Ensure Continuity of Care: ***What can states do in order to promote enrollment for Medicaid-eligible individuals who are incarcerated?***

A14. State Medicaid agencies can work with their local departments of corrections, prisons, and jails to assist incarcerated individuals, who may not have been enrolled in Medicaid at the time of their incarceration, to apply and receive an eligibility determination for Medicaid. Once enrolled, states may employ various approaches to suspend eligibility, such as implementing a claims processing edit, instead of terminating the Medicaid eligibility of an incarcerated individual. Suspension of eligibility or claims processing edits allow for individuals to retain eligibility for Medicaid-covered inpatient services provided in a medical institution while incarcerated. States and local jurisdictions, or their contractors, need to be proactive in notifying the state Medicaid agency of an inmate's release, to ensure timely removal of suspension or claims processing edits. This will ensure active Medicaid coverage at re-entry and timely access to the full array of Medicaid-covered services upon release. To further assist individuals exiting incarceration, states can encourage or require their Medicaid managed care entities to work with state and local correctional agencies to connect such individuals to needed health services upon release.

Q15. Eligibility and Transfers to Another State: ***When an inmate is involuntarily transferred to a correctional institution out of the individual's home state, how does that affect the individual's eligibility for Medicaid and a state's ability to maintain, suspend, or terminate existing coverage?***

A15. If the inmate was incarcerated by a home state but sent to an out-of-state institution meeting the definition of "a public institution" under 42 CFR 435.1010, for any reason, including the home state not having capacity to house the individual, the home state remains the state of residence (see 42 CFR 435.403(b) and(e)). Therefore, in this scenario, the inmate would retain residency for purposes of Medicaid eligibility in the home state. The inmate would have Medicaid coverage from the home state for incurred costs for inpatient services provided within the exception to the inmate exclusion, even if such services were provided outside the home state.

Individuals who have committed a crime outside of their home state and are placed in a correctional institution in and by the state in which the crime was committed would be considered to be residents of that state while incarcerated, as provided at 42 CFR 435.403(h)(5). In these circumstances, it is, therefore, the responsibility of the state in which the individual is incarcerated to determine how eligibility is established and how inpatient costs incurred for the inmate would be reimbursed (e.g., claimed by the Medicaid agency under the exception to the coverage exclusion, if the individual is eligible for Medicaid in that state, or borne by the Department of Corrections in that state).

Q16. **Home Addresses:** ***Can an individual incarcerated in a correctional institution be determined eligible for Medicaid in the state of incarceration using the correctional institution as the home address?***

A16. Yes. The correctional institution could be used as the home address for establishing residency for purposes of Medicaid eligibility, except in the scenario described in the preceding question, when the individual is placed in an out-of-state facility by their home state.

Q17. **Avoiding Simultaneous Eligibility:** ***If an inmate is enrolled in Medicaid in the state in which he/she is incarcerated, does that Medicaid coverage need to be terminated before he/she can begin the process of enrolling in Medicaid in the home state to which he/she will be returning upon release from the correctional institution?***

A17. There should not be simultaneous Medicaid coverage in multiple states. However, it would be possible to initiate an application for benefits in a second state prior to termination in the first state. In this situation, there should be communication between the respective state agencies to ensure there are no overlapping coverage periods.

Q18. **Applying for Medicaid in a Different State:** ***Prior to release, can an individual incarcerated in a correctional institution apply for Medicaid in a different state in which the individual intends to reside upon release?***

A18. Yes. States can process applications of incarcerated individuals prior to the individual's release, regardless of whether the individual intends to reside in the same state or a different

state upon release. In the case of individuals who intend to reside in a different state, the address where the individual being released intends to live or the address of a probation or parole office or community residential facility may be used. We note that, in accordance with 1902(b)(2) of the Act and 42 CFR 435.403(h) and (i), Medicaid does not require an individual to have a fixed or home address in the state, but in that situation an address through which the state can contact the individual after release is needed. The effective date of eligibility would be the date the individual arrives in their new state of residence. Alternatively, if, for operational reasons, a state preferred to make eligibility effective prior to the date of release or arrival, the state could cover these individuals as non-residents, if these individuals otherwise meet the eligibility criteria in the state.

Q19. Filing an Application for a Different State: ***How does the application process work for an individual who is incarcerated and is preparing for release, but is not yet living in the state to which he or she is applying and intending to reside?***

A19. Individuals who are incarcerated are permitted to file applications through modalities generally available to applicants in accordance with §435.907– i.e., online, by telephone and by mail. However, as a practical matter, states may need to employ a variety of approaches to assist with the determinations of eligibility and enrollment for individuals in this situation, depending on the systems' capability and operations in the state. We encourage states to work cooperatively with corrections facilities operated in their own and other states, as well as with the Federal Bureau of Prisons, to achieve as coordinated and seamless a process for these individuals as possible. CMS is available for technical assistance.

Q20. Agreements with Medicaid Managed Care Plans: ***How can states that use Medicaid managed care plans prevent capitated payments from being made on behalf of individuals who are incarcerated?***

A20. States should establish agreements with their Medicaid managed care plans to ensure timely reporting in order to prevent capitated payments being made on behalf of individuals who are incarcerated. Contracts should exclude individuals who are incarcerated from the managed care plan, or provide for disenrollment from the plan when an enrollee becomes incarcerated. States should establish in their contracts that the state will recoup a capitated payment made on behalf of an enrollee who is incarcerated or a portion of a capitation payment for an individual who becomes incarcerated mid-month.

Q21. Eligibility under Alternative Benefit Plans: ***Is FFP available for inmates eligible under the new adult group for inpatient services covered under Medicaid Alternative Benefit Plans (ABPs)?***

A21. The coverage exclusion applies generally to medical assistance, whether provided through an ABP or other coverage. FFP is available for services received during an inpatient

stay only pursuant to the inmate payment exclusion exception provided in statute and described in Section 3 of this document. States are not eligible for federal payments for services inconsistent with the exclusion.

Section 3: Services Covered Under the Exception to the General Coverage

Exclusion for Inmates

Q22. Services, Settings, and Conditions: ***For which services and settings is FFP generally available under the inpatient exception to the general coverage exclusion for inmates?***

A22. To qualify for the inpatient exception, services must be covered under the state's Medicaid Plan, delivered in a prescribed setting in a way that is consistent with other terms of the state's Medicaid Plan, and provided by a certified or enrolled provider that maintains compliance with federal requirements. In this document, we use the term "federal requirements" to refer to all federal requirements, including the CMS Conditions of Participation (CoPs).

Under the law at section 1905(a)(29)(A) of the Act, FFP is only available for inpatient services furnished to patients in a medical institution (including services furnished by such providers during the inpatient stay, which is defined in CFR 435.1010 as a stay of 24 hours or more in which there is an admission of the individual to the facility as an inpatient on the orders of the practitioner responsible for the care of the patient).

Additional information about federal requirements for medical institutions is available through the Center for Clinical Standards and Quality, Survey & Certification Group and CMS interpretive guidelines for surveyors at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions.html

Q23. Services Not Available to Others: ***Is FFP available for inpatient services to inmates for conditions that Medicaid would otherwise not reimburse in an inpatient setting?***

A23. No. Covered Medicaid inpatient services are the same for all Medicaid eligible individuals, including individuals who are in a medical institution but who would otherwise be in a correctional institution. FFP is not available for services that are not otherwise covered under the state plan in that setting.

Q24. Third Party Resource: ***Do state, local, and correctional entities meet the definition of a third party resource, for purposes of inpatient care provided to inmates of public institutions?***

A24. We do not require states to treat state, local, and tribal correctional entities as legally liable third parties, and Medicaid may pay primary to such entities for covered inpatient

services, unless the state has elected under state law to consider these entities as legally liable third parties.

CMS maintains its policy that state and local correctional entities are considered a source of third party coverage for purposes of the hospital-specific limit on disproportionate share hospital (DSH) payments when they, in fact, are obligated to pay for the services because Medicaid payment is not available. To the extent that services are under the exception to the inmate coverage exclusion, and Medicaid pays primary, uncompensated costs not paid by state and local correctional entities would be part of the Medicaid shortfall and could support DSH payments.

Q25. Outpatient Services: ***Is FFP available, under the inmate coverage exclusion exception, for outpatient services furnished by or in a local hospital emergency department, an urgent care center, a clinic, or a Federally Qualified Health Center/Rural Health Clinic?***

A25. No. FFP is not available for outpatient services for inmates, including but not limited to services in a local hospital emergency department, an urgent care center, a clinic, or a Federally Qualified Health Center/Rural Health Clinic.

Q26. Contracts with Health Care Management Entities: ***Some state and local correctional entities contract with a health care management entity to provide medical services to inmates. Is FFP available for services to inmates provided by the health care management entity?***

A26. No. FFP is not available for services furnished in a correctional institution to an inmate regardless of whether those services are provided through a health care management entity under contract with a correctional institution or between the health care management entity and the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe. FFP is available for inpatient services in a medical institution furnished by qualified providers with a provider agreement with the State Medicaid Agency under the circumstances described above. To the extent that state or local entities contract with a health care management entity to provide medical services to inmates, that health care management entity would be a liable third party for services under its contract. To the extent that services furnished during an inpatient stay in a medical institution affiliated with a health care management entity under contract with state or local entities are not included in the contract, the Medicaid program can pay for such services when within the scope of Medicaid coverage and provided to eligible individuals by a provider meeting federal and state requirements and Conditions of Participation.

Q27. Correctional Hospitals or Nursing Facilities: ***Can hospitals or nursing homes that exclusively serve inmates qualify for FFP?***

A27. No. Hospitals, nursing facilities, or other medical institutions operated primarily or exclusively to serve inmates are considered correctional institutions and FFP would not be available for services. Nursing facilities and all medical institutions under this exception to the general exclusion must be operated as medical institutions generally available to the public, organized primarily for the provision of medical care, meet federal requirements discussed in A21, and meet the additional requirements of the definition of medical institution at 42 CFR 435.1010.

Q28. <u>Additional Considerations</u>: ***In addition to the considerations included under the previous Qs & As, what other criteria must be applied when determining whether FFP would be available for costs of inpatient care provided to individuals otherwise in a correctional institution?***

A28. FFP is available for such inpatient care when the other factors identified in federal guidance are met and when:

- The overall nature of the medical institution is one of community interaction such that members of the general public may be admitted to receive services and admission into the medical institution or into specific beds within the institution is not limited to individuals under the responsibility of the correctional facility.
    - For nursing facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID, the same staff (i.e., physicians, nurses, aides) are generally available between any unit or wing and the remainder of the medical institution (Note: this does not preclude the deployment of staff with specialized expertise or experience working with individuals under the jurisdiction of the correctional system);
    - For nursing facilities and ICFs/IID, the same services are provided between the units, departments or other locations and the remainder of the medical institution;
    - For hospitals, the individuals are admitted to specific medical units based not on their status as inmates of a correctional institution, but rather based on their treatment needs and plan of care and generally are placed in units also serving other individuals with similar treatment needs and plans of care; and
- Allowable medical services are those provided under the state Medicaid Plan, at approved rates, as would be the case for any other similarly situated Medicaid beneficiary.

Q29. Hospital Conditions of Participation: ***What requirements pertain to hospitals and other medical institutions serving inpatients who otherwise would be in correctional institutions? To which Conditions of Participation should hospitals pay special attention?***

A29. Hospitals and other medical institutions must meet all Medicaid requirements when serving patients who would otherwise be in correctional institutions as described above. This will be discussed in more detail in an upcoming companion CMS Survey and Certification memorandum.

Q30. Compliance: ***Will states be able to take time to bring their claiming into compliance based on this guidance?***

A30. This guidance is intended to provide further clarification of policy. States that find that they are out of compliance with this guidance should contact their regional offices, including Medicaid Survey and Certification contacts, as soon as they are aware so that agreement can be reached on a path forward.

Community Treatment Alternatives – CTA
(6/20/16)

CTA is a certified State of Wisconsin Community Support program (CSP) serving people with severe mental illnesses (e.g. – schizophrenia, schizoaffective disorder and bipolar disorder). CTA is one of many programs operated by Journey Mental Health Center. Primary sources for referrals are: State Public Defender's office, Jail Mental Health Team, private defense attorneys, District Attorney's Office, Dane County human services, and Journey's Crisis Intervention Team..

The program has been very successful in diverting people with severe mental illness from the Dane County Jail with a track record of low recidivism. The CTA provides treatment even after participants successfully complete their legal obligation to be involved in the program. Treatment is long-term, measured in years as opposed to days or months. CTA has a total capacity for 61 jail diversion participants, while as of 12/31/2015 the program was working with 65 jail diversion consumers. The total capacity, i.e. jail diversions and conditional release consumers combined is 81. However as of 12/31/2015, the program was also serving 21 conditional release consumers bringing the total to 86 being served, 5 over the program's capacity of 81.

Because of the long term treatment needs of the clients, there is not high turnover in the program which results in at least 20 chronically mentally ill consumers who could be diverted that are not being diverted and treated in Dane County. This is the "high flier" population which if not treated repeatedly ends up in the jail. This is why the very program was initiated. It has a track record of clear success. These individuals frequently need separate managed living arrangements if in the jail and due to the complex nature of their treatment needs, would be much better served in the community. The treatment needs cannot be provided in the jail and the individuals need to be diverted to the community. This should reduce the number of special needs beds in any plan for a partial replacement of the current jail beds in the City County building.

Recommendation

By adding two additional staff, this program would be able to divert 20 additional people from incarceration. The cost should be less than $100,000 of county funds since Federal Medicaid dollars will pay for CSP services. The Comprehensive Community Services (CCS) program which has just been introduced should also be available to provide services for people diverted from the Dane County Jail who can manage with slightly less intensive services.

Data Needs

Ideas from the Community for the new Criminal Justice Data Analyst

June 4, 2016

General Comments

We are excited about the new data position. We understand that the effort going on now is to have the various stakeholders to be able to identify what is most useful for them. We think that it is also important for the community to have a way to have data that is available. Transparency requires data to show who and why are people being affected by the criminal justice system. Below is information that has come up in other county workgroups. MOSES would be happy to set up and invite other community groups to participate in a discussion about data that is needed for transparency. When the analyst is appointed to be able to sit down and have a discussion. Also, it is important to acknowledge that the community is a stakeholder.

- ❖ Data needs to have both Point In Time (monthly) and Longitudinal (YTD) views.

Race/Ethnic

- Show racial/ethnic disparities at every point in the system
- Identify racial/ethnic disparities when they occur and by whom:
    - Law enforcement are dispatched to respond to a complaint. At that point, one of three actions occur:
        - No arrest
        - Issues a citation
        - Taken to jail and booked

      (Sorted by criminal citation by race/ethnicity by officer by jurisdiction)
- Of the citations, how many does the DA convert to a criminal complaint? (by citation, by race/ethnicity, by DA prosecutor
- Booked in the jail
    - How many pay cash bail
    - How many after the IA hearing are offered a signature bond
    - How many end up on bail monitoring
    - How many are offered and accept going into the DPU
    - How many are offered and accept going into Drug or Veterans court?
    - How many have
    - all charges dropped
    - How many with a final conviction

      (Sorted by race/ethnicity, by offense, by jurisdiction, by prosecutor)

Transparency and Access to Data

- Make monthly extract files available to the public
    - These need to contain unique identifiers (Case #, Individual ID, etc.)
    - Extracts from CCAP, Jail Database, DA PROTECT, and DOC

Public Needs and Wants (All needs to be broken out by race/ethnicity)

- Arrested and put in jail with Mental Health/Substance Abuse Issues
    - Description of different levels of severity
    - When released, how many are connected to ongoing treatment

- Longitudinal data to identify individuals who have been jailed multiple times (1, 2, 3,….)

- Correctional Holds
    - Length of time in the jail before disposition
    - Number of holds released to the community (with no further action)
    - Number of holds over the course of a year
    - Number of holds that result in a return to Prison
    - Number in the jail who are convicted and serve their sentence in the Dane County Jail
    - Number in the jail who are convicted and go to Prison
        - How long does it take to be transferred to Prison
        - What percent of the sentence is served awaiting sentencing

DRAFT 7/25/15

Resource Ombudsman - Justice System

Summary of Recommendation

Create a position of Resource Ombudsman to coordinate the delivery of services.

Relevant Guiding Principles[1]

#4, #7

Background

Dane County has a wide array of community services, more than many communities. Some are private, others public, some have existed for long periods and others are more short-lived. They target different problems, different populations, and provide different interventions. It is no small challenge to identify all the various programs that might help an offender or victim in a particular case.

Similar to a "one stop shopping" entity, a Resource Ombudsman could help police, prosecutors, defense counsel, courts, offenders, and victims know what programming and services are available for specific persons with specific problems.

Cost of Recommendation

This is a new position generating staffing costs and some capital costs. It would likely generate savings in increased efficiencies in connecting those in need to available resources reducing the net cost to the taxpayer.

Expected Benefits from Recommendation

Dane County's Criminal Justice System is complex and difficult to understand. There are a large number of public and private shareholders involved. It is difficult if not impossible for any one person to understand all of the system pieces and the opportunities that may be available to address the needs of offenders or victims. A Resource Ombudsman would be responsible to catalog existing resources and assist other system partners in efficiency locating relevant options for those involved in the system.

Description of Recommendation

1. Develop a position description for a Resource Ombudsman drawing on the experiences of other jurisdictions.

---

[1] *The 12 Guiding Principles from County Resolution 556 are: 1. Racial equity 2. Data Driven 3. Solitary confinement reduced. 4. Coordinated system 5. Diversion prior to jail booking. 6. Reduce sentences, increase rehabilitation 7. Resources to reduce recidivism. 8. Jail is not a profit center. 9. Least restrictive setting 10. Supports after release from jail 11. Use resources from state, and federal governments 12a. Build from existing. 12b. Evidence-based 13. Immediate action 14. Safe and secure*

2. Include in the position description the ability to identify and catalog the array of available programming and services and a basic level of knowledge of the purposes and procedures related to local human service programs.
3. Recruit and hire a person.
4. Develop the capacity to collect data and evaluate the effectiveness of the position in improving the delivery of services to target populations.
5. Assess the effectiveness of the position after six months and one year.

DRAFT 7/26/15

Warn, Cite and Arrest Policies of Dane County Police Agencies

Summary of Recommendation

Review and develop uniform written warn, cite and arrest policies for all Dane County police agencies to limit the use of arrest to cases in which it is required by law or necessary for protection of the public or suspect. Keep and maintain data to track the effects of warn, cite and arrest policies.

Relevant Guiding Principles[1]

#1, #2, #4, #5

Background

Arrestees for new law violations represent a significant portion of the population of the Dane County Jail. A substantial number are released without bail at their initial court appearance and many who are ultimately convicted are not sentenced to jail, but remain in the community. There is reason to believe current practices have a disproportionate impact on persons of color. These considerations raise the question of whether arrest is a necessary and cost effective response in the first instance.

Except for domestic violence cases the arrest decision lies wholly within the discretion of the police. In some instances there are agencies wide policies; in others the decision is left to the individual officer.

Sharing, reviewing, discussing, and developing written police warn, cite, and arrest policies have the potential to generate cost savings for the county and police agencies and result in the fairer treatment of those offenders involved.

Cost of Recommendation

There are no staffing or capital costs connected to this recommendation.

Expected Benefits from Recommendation

[1] *1. Racial equity 2. Data Driven 3. Solitary reduced. 4. Coordinated system 5. Diversion prior to booking. 6. Reduce sentences, increase rehab 7. Resources to reduce recidivism. 8. Jail not profit center. 9. least restrictive setting 10. Supports post jail 11. Use resources from state, feds 12a. Build from existing. 12b. evidence-based 13. immediate action 14. safe and secure*

Transparency – If policies are subject to open discussion and committed to written form the entire community will better understand how police authority is used. And, to the extent that uncertainty may create unfounded criticism of police policies transparency has the potential to improve police community relations.

Consistency – Adoption of county-wide policies will result in similar treatment of similar behaviors and reduce the risk that disparity in based on differences in police practices rather than differences in culpability.

Cost Savings – The County may realize bed day savings from reduced arrests. Police agencies may enjoy savings by reducing the man hours necessary to transport an arrestee to the county jail for processing which removes the officer from service for a significant period of time reducing coverage in his or her home community.

Details of Recommendation

1. Obtain policies and practices information from all county police agencies regarding warn, cite, and arrest practices.
2. Obtain data from all county police agencies and the Sheriff to calculate how existing practices are implemented and the cost consequences both to the Sheriff and respective agencies
3. Discuss what, if any, reduction in arrest practices could be implemented without compromising public safety or any statutory requirements.
4. Develop and disclose revised warn, cite, and arrest policies.
5. Commit to continuing review of any revised policies, and, if necessary make appropriate adjustments to maintain fidelity to the goal of fair cost effective public safety.

Human Services Coordination and Treatment

For Individuals in the Criminal Justice System

(6/8/16)

Many of the diversion programs and efforts have one or more components which involve human services. Examples include: benefit programs such as BadgerCare, FoodShare, and SSI; treatment for mental illness and substance abuse; and many other services from employment & training to anger management.

It is clear in Dane County and nationally that providing access to programs, treatment and services can have a very positive impact on the individuals and families involved. It is also clear that there are individuals in the Dane County Jail who should not be there.

The most recent Mead & Hunt draft study projected a stable, on-going population of 250 individuals in the Dane County Jail who have mental illness and who are receiving psychotropic drugs. The data showed that this group is blacker, older and has a longer average length of stay (ALOS) in the jail. Their analysis indicated that reducing ALOS could have a significant impact on the population and, based on charge type and severity, that there are diversion opportunities.

Dane County has participated in the National Stepping Up program to "reduce the number of people with mental illness in jails" by sending Dane County staff to the national conference. This program is sponsored by the American Psychiatric Association, the National Association of Counties, the Justice Center of the Council of State Governments, and Bureau of Justice Assistance of the U.S. Department of Justice. The Stepping Up program encourages Counties to take a series of steps that have shown to be effective in reducing the number of persons with mental illness who are in county jails.

It has become clear from our discussions in the County Diversion Workgroup that there are many human service programs, treatments and services available in Dane County. It has also become clear that most citizens and most individuals who work within the Dane County criminal justice system are not aware of the opportunities that are available and how to access them. It has also become clear that the funding and the coordination needed to place an individual into a treatment or service is very complicated and that there is little help to guide citizens. This is not meant as a criticism of the Dane County Human Services system. But rather, it is a challenge that is critical to address because of the intersection of the human services system with the criminal justice system.

Recommendation

The County Board and the County Executive should direct the Dane County Department of Human Services to develop three alternatives that are outside of the normal budget process that are geared to address the following:

1. That serving individuals impacted by the criminal justice system should be deemed a high priority. (This includes individuals diverted or at any other stage of the criminal justice systems including those being released from jail, or individuals who are on Department of Corrections Probation or Parole.) It is a high priority because of the potential to limit the harmful impacts of the criminal justice system. If done effectively, more individuals will be diverted from the criminal justice system and fewer individuals will recidivate after release from jail or prison.

2. Identify all of the points where help is needed. (Diversion, booking, deferred prosecution, bail monitoring, drug/veterans court, continuity for individuals in jail, post release from jail or prison, etc.)

3. It should address how to take advantage of all available funding sources including: Medicaid, Affordable Care Act, Comprehensive Community Services (CCS), Community Support Program (CSP) and FoodShare Employment & Training. It should also address how to connect citizens to other non-county programs such as SSI, SSDI, Veterans, Medicare, Energy Assistance, free clinics, and others.

4. Develop a strategy for working with the providers and HMO's.

5. Identify additional training and staffing that are needed.

6. Maximize the use of volunteers and other groups such as AmeriCorps and Second Harvest to assist with efforts such as the application process for benefit programs, and other efforts as they are developed.

7. Project savings due to a reduction in incarceration.

8. Project benefits to individuals, families, and the community.

Joint Resolution to Support "Stepping Up" and to Implement it In Dane County

(6/10/16)

STEPPING UP is a national initiative to reduce the number of people with mental illnesses in jails.

Despite counties' tremendous efforts to address this problem, they are often thwarted by significant obstacles, such as coordinating multiple systems and operating with minimal resources. Without change, large numbers of people with mental illnesses will continue to cycle through the criminal justice system, often resulting in missed opportunities to link them to treatment, tragic outcomes, inefficient use of funding, and failure to improve public safety.

Recognizing the critical role local and state officials play in supporting change, the National Association of Counties (NACo), the Council of State Governments (CSG) Justice Center, and the American Psychiatric Foundation (APF) have come together to lead a national initiative to help advance counties' efforts to reduce the number of adults with mental and co-occurring substance use disorders in jails. With support from the U.S. Justice Department's Bureau of Justice Assistance, the initiative will build on the many innovative and proven practices being implemented across the country.

Across multiple levels of Dane County government there is a growing awareness of this issue and a growing interest in addressing it. The criminal justice system is highly complex with no single point of leadership. No single point or governmental unit (county exec, mayor, police, jail, district attorney, judiciary, public defender, human services, etc.) can solve this issue because it cuts across all of them. This has caused great frustration at all levels.

It is apparent that this critical issue of reducing the number of people with mental illness in the jail cannot be solved without a commitment from the leadership of the major governmental units and a willingness on the part of that leadership to come together on a routine basis to actively manage the effort to address this problem.

Solving this will require a more coordinated system of mental health and substance abuse funding and treatment system so that at multiple points in the criminal justice system, individuals can be identified who would be better served in the community than in the jail. The system would need to be able to immediately serve these individuals. The points could include at the point law enforcement is called, at the time of arrest, at jail booking, at various points in jail, at drug court and other diversion programs, and at release from jail or prison.

Recommendation

A joint resolution has been proposed. This resolution would involve at minimum the Dane County Board of Supervisors and the Madison City Council. It could potentially involve other municipalities. It would formally commit Dane County to the principles and actions of the

Stepping Up program. It would strongly encourage the leadership to come together to show commitment for this initiative and to manage it.

The County Diversion Workgroup should encourage the County Board to adopt this type of resolution.

Maintain and Expand Funding For DPU and Drug Court

(6/24/16)

Two critical programs are diverting substantial numbers of individuals from jail. One is the District Attorney's Deferred Prosecution Unit (DPU) program and the other is Drug Court. Both have been somewhat dependent on funding from grants.

Both programs are applying for State Treatment Alternatives and Diversion Program (TAD) funding grants. The DPU previously used a different grant to fund their Opiate Program case managers. That grant is ending and they are hoping to replace it with TAD funding. Drug Court has been using a TAD grant and is reapplying to receive another grant.

The rules for the TAD grants have changed. Even though State funding has changed from $4 million to $6 million, the grant process is now competitive. Programs that have received grants in the past won't be as likely to receive grants in the future. In addition, the state has changed its criteria. It is now more interested in innovation and is not as interested in funding approaches that were funded before. These changes may put Dane County's TAD applications at a disadvantage.

Since both of these programs are effective at diverting people from jail, it is important that current funding levels be maintained.

Recommendation

The Dane County Board should make up the difference to maintain current funding levels if grant funding for the Deferred Prosecution Unit and for Drug Court is reduced or eliminated. If possible, the Dane County Board should consider expanding funding to these programs.