

Parrent v. Angus



MR-UT-001-003

December 29, 1995

Meredith Alden, Director
Division of Mental Health
Utah State Department of Human Services
120 North 200 West
Salt Lake City, Utah 84103

Re: Mental Health Services for Individuals With Dual Diagnoses of Mental Illness
and Mental Retardation

Dear Ms. Alden:

For some time now this office has been concerned about the availability of mental health services for people with a dual diagnosis of mental illness and mental retardation. Initially, our focus was on crisis intervention. This problem was substantially remedied by the creation of the clinic for people with developmental disabilities operated by Scott Stiefel, M.D., and by the creation of crisis units by the Division of Services for People With Disabilities (hereinafter DSPD). Since that time, we have focused on the outpatient services available to this population through the local mental health agencies.

To the best of our ability, we have determined, through consultation with knowledgeable professionals and attendance at relevant conferences, that people with dual diagnoses can often benefit from mental health therapy such as medication management and counseling. Based upon this assumption, we have proceeded to survey providers in the state to determine the level of services available to this group. Our conclusion is that most of the services from which this population could benefit are not available to them.

We realize that this is a problem without a simple solution. There must be a short term and long term approach. The long term solution will likely require multi-agency/discipline solutions. These solutions may necessitate a completely new approach to service provision.

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More recently, I have reviewed the "Action Plan" developed by the Division of Mental Health as a part of the Department of Human Services Management Review. Issue #9 addresses improved mental health and mental retardation services for people with dual diagnoses. The strategies include joint training of DSPD and DMH of this group's service needs. DMH will direct public mental health agencies to provide "programmatic consultation", medication evaluation/management, and crisis evaluation services on a consistent basis. DSPD and DMH will collaborate on a pilot project to staff a mental health center with specialists on developmental disabilities. The reference to "programmatic consultation" is not clear. I assume that this does not include group and individual therapy for those who would benefit from those services.

While this plan is directed to addressing a number of holes in the service system, it fails to guarantee the provision of many essential services. During the past six months we have conducted a survey of all DSPD Home and Community Based Services Waiver providers to determine the services their clients with dual diagnoses receive from local mental health agencies. We also sought input from various DSPD regional case managers. From that survey, we have identified many inadequacies in the mental health services available.

The results of the survey indicate that there is a significant variation in the types and quality of mental health services offered between the various local mental health agencies. They indicate that some agencies show little, if any, interest in serving individuals with dual diagnoses. Some have made incomplete attempts. These agencies have demonstrated limited competence. Wasatch Mental Health comes closest to providing comprehensive services.

Most all evaluation services are done through Dr. Stiefel's clinic. This clinic cannot meet the need alone. At least two local mental health agencies will not even provide this service. Again, at least two local agencies seem unwilling to provide medication management. Others appear to be partially to fully available. At least three local agencies provide no counseling. Those that do are inconsistent and seem to lack the expertise necessary to provide competent services.

The results reflect a disagreement in professional judgment between the local mental health agencies about whether individuals with dual diagnoses can benefit from mental health services. In many instances, the level of services provided is dependent upon individuals in

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the agencies and with providers or DSPD. There is no consistency in the development of services. In some rural agencies, there are significant differences in the efforts made between various offices. With many offices, when professionals there cannot or will not provide mental health services to dually diagnosed individuals, they compound the problem by refusing to allocate state or federal funds (including Medicaid) so that these services can be obtained from private providers competent to serve this population. This problem is, again, exacerbated by the lack of competent private practitioners who can provide these mental health services. As a result, when the local mental health agency is unwilling or unable to provide the necessary services, there is no alternative for this population.

This denial of adequate mental health services by public agencies to people with dual diagnoses constitutes a violation of the state statutes which set out the authority and duties of the Division of Mental Health, the Americans with Disabilities Act, and Title XIX of the Social Security Act (Medicaid). Under state statute, the Division of Mental Health has the duty to ensure a comprehensive system of mental health treatment. It must also develop and monitor local mental health providers in their provision of a comprehensive system of services. By denying mental health services to individuals with dual diagnoses who could benefit from those services, a subclass of those with mental illness, the agencies, and DMH acts in violation of title II of the ADA.

The failure by local mental health agencies to make Medicaid funds for mental health services available to individuals with dual diagnoses violates the "Comparability of Services" provisions included in Title XIX. 42 U.S.C. §1396a(a)(10)(B). Where local private practitioners will not serve individuals with dual diagnoses, this may constitute a violation of the "Equal Access" provisions of 42 U.S.C. §1396a(a)(30). The Division of Health Care Financing would be primarily responsible for remedying any rate setting issues.

The efforts outlined in your action plan should provide short term and long term solutions to many of these problems. Strategies #1 and #3 could move toward a long term solution to the problem. On the other hand, they may only work toward an incomplete solution offering services through a mechanism ill equipped to competently and comprehensively provide them.

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The second strategy will not solve all short term problems. Through training and support from DSPD, the local mental health agencies could potentially provide enough services to provide short term minimally adequate services. This could be done in the agency itself, or through contracts with providers. Our concern is that the strategy does not include individual and group therapy, when appropriate.

The long term solutions to these problems are far too complex for our office to even begin to offer concrete solutions. However, we would like to be apprised by your agency of any ongoing efforts to develop a comprehensive, competent service system. As problems with the short term solutions arise, we plan to address these with you so that adequate solutions may be developed for individual clients. Again, we would like to be notified of the efforts the Division will take to provide short term solutions to inadequate mental health care. It is our hope that we do not need to turn to formal legal avenues to resolve short and long term problems.

We would be happy to meet with you to discuss these matters further if you feel that such a meeting would be helpful. Thank you for your consideration of this matter.

Sincerely,



Robert B. Denton
Attorney at Law

cc: J. Stephen Mikita
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Michael Diely
Douglas Springmeyer
Bear River Mental Health
Weber Mental Health
Davis Mental Health
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