Broward Behavioral Health Conference: Building Healthier Communities
May 10, 2016
Fort Lauderdale, Florida

Engaging Policy Makers To Advance Compassion and Eliminate Contempt in Behavioral Health Policy

Michael C. Barnes
Executive Director

Twitter: @claad_coalition, @mcbtweets

CLAAD Center for Lawful Access and Abuse Deterrence

Disclosure

- CLAAD's funders include pharmaceutical companies, treatment centers, and laboratories, and are disclosed on its website, www.claad.org.

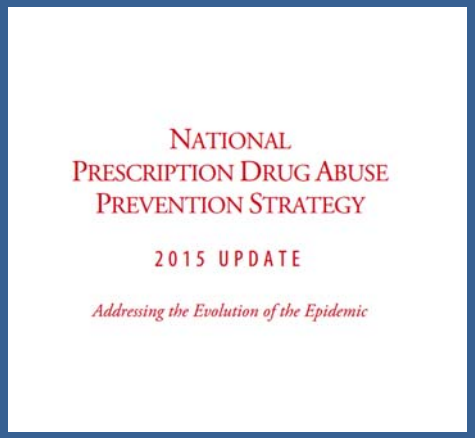
- CLAAD is managed by DCBA Law & Policy, which provides professional services to health care companies and professionals. To avoid conflicts of interest, DCBA adheres to the District of Columbia Rules of Professional Conduct §§ 1.7-1.9.

Preview

- Introduction
- Rx opioids & heroin
- Other substances
- ACA & Equity Act
- Challenges in the behavioral health system
- Recommendations for providers
- Professional leadership
- Policy recommendations
- 2016 elections
- Discussion

Introduction to CLAAD

- Access: High-quality treatment for pain, addiction, anxiety, ADHD, hepatitis C, HIV, and other conditions
- Abuse deterrence: Reducing fraud, diversion, misuse, and abuse



National Focus on Rx Opioids & Heroin

- > 29,000 Rx opioid- and heroin-related overdose deaths in 2014 (CDC, 2015)
- Heroin-related overdose deaths tripled between 2010 and 2014 (CDC 2016)
- 4.7 mill. Americans abuse Rx opioids or heroin per year (SAMHSA, 2015)
- 2.4 mill. Americans had opioid use disorders (SAMHSA, 2015)

Recognition of the Public Health Crisis

- Mental health, pain, and addiction are intertwined; in treating one, others must be considered
- Heavy focus on Rx opioid supply reduction and overdose reversal
- Growing focus on interventions & referrals to treatment
  - Law enforcement leadership
  - National discussion of criminal justice reform
  - Federal legislation

Partial Progress

- Decrease in prescription opioid-related deaths
  - CDC: 5% drop nationwide 2011 to 2012 (1st time in over a decade)
  - SAMHSA: 14% among adults ages 18 to 25 nationwide in 2011
  - 27% in FL between 2010 and 2012
  - 29% in Staten Island between 2011 to 2013
- Illicit fentanyl suspected cause of recent apparent increase in overdose deaths (RADARS, 2016)
  - 40 times as strong as pure heroin
  - 700+ fentanyl-related deaths from late 2013 through 2014

NIDA Report

- People who abuse Rx opioids rarely use heroin, and the transition to heroin use appears to occur at a low rate (NIDA 2016)
- Researchers suggest that the major drivers of the recent heroin use increases and related deaths are:
  - Increased accessibility
  - Lower market price
  - High purity

Problem Extends Beyond Rx Opioids & Heroin

- 47,055 drug overdose deaths per year (CDC, 2016)
- 21.5 mill. Americans had SUDs (SAMHSA, 2015)
- 80% go untreated (Johns Hopkins, 2015)
  - Risks of criminal activity, infectious disease, overdose, & death
  - Why? (SAMHSA, 2014)
    - No health coverage & could not afford cost (37.3%)
    - Not ready to stop using (24.5%)
    - Did not know where to go for treatment (9.0%)
    - **Health plan did not cover treatment or cost (8.2%)**
    - No transportation or inconvenient (8%)
- Miami-Dade and Broward County are the top two counties in the U.S. for new HIV cases; transmissions presumed to be associated w/ opioid abuse/heroin use (9/2015)

Abuse of Other Controlled Rx Medications

- Stimulants
  - 17% of college students abuse Rx ADHD medications
  - 20% of middle & high school students with Rx are asked by friends for medications; 50% give medications to friends
- Benzodiazepines
  - Overdose deaths quadrupled between 2001 and 2013
  - PA: Present in 50% of drug-related overdose deaths (40% involved alprazolam)
  - GA: Misuse of alprazolam leading cause of drug-related death (35%, 231 out of 644)
- Sedatives
  - Violence
    - "Ambien defense" to murder
    - Zolpidem sleep medication is most common date rape drug (DEA)
  - Impaired driving ("sleep-driving")

Affordable Care Act & Equity Act

- Affordable Care Act requires coverage of Essential Health Benefits (EHBs), which include MH & SUD
- Mental Health Parity & Addiction Equity Act (Equity Act)
  - Enacted in 2008; expanded under ACA; regs. in 2013
  - Must cover MH/SUD services at levels equivalent to coverage of medical/surgical services
  - Applies to the following plans:
    - Large group plans with MH/SUD benefits
    - Small group and individual market plans (ACA)
    - Medicaid Managed Care, CHIP, and Medicaid alternative benefit plans (CMS letter)
- Expanded access to behavioral health treatment
- Treatment providers are getting paid more often

Lack of Clarity

- Insurers appear unfamiliar with behavioral health care
- Coverage and reimbursement policies can be unclear and appear *ad hoc*
  - Prior approvals are withdrawn after patients and programs rely on them
  - Program standards necessary for reimbursement are announced after services are approved and provided
  - Refusal to assign benefits and send payment to provider
  - Documentation of patients' payments is required before paying provider claims
- Limit coverage to low-cost, outpatient "clinical pathways" model with restrictions (inconsistent with individualized care based on patient-provider relationship)

Waste, Fraud, & Abuse

- Residential treatment mills (in response to parity)
- Pop-up sober living homes
- Inappropriate referrals
  - Patient brokering
  - Non-disclosure of financial relationship (confusion as to patient's best interest vs. financial interest)
  - Payment of insurance premiums and travel
- Marketing
  - Deceptive Internet and call center practices
  - Promising a cure or X% success rate
  - Testimonials
- Testing for substance use
  - Self-referrals
  - Overutilization
- Buprenorphine pill mills

Recommendations for Behavioral Health Care Providers

- Ensure overall health care is coordinated, including, hepatitis C, HIV, etc. (segregation and isolation embrace stigma)
- Follow protocols that avoid over-utilizing services, which yields restrictions
- Engage insurers for greater transparency (if possible)
- Follow co-pay & pricing rules
- Appeal unreasonable conduct, parity violations & deceptive acts of insurers
- Report consumer exploitation to attorney general/insurance commissioner and prosecutors
- Cultivate “patient advocates” through alumni networks
- Monitor and be active in state & federal policy making
- Support professional leadership

Professional Leadership

- Research and report cost-effectiveness of treatment models in literature
- Educate industry members and their staff
  - Best practices
  - How to handle concerns of waste, fraud, or abuse
- Support litigation (challenges to policies and laws)
- Protect parity (ensure efficient use of payer resources)
- Support state legislation
  - Assignment of benefits
  - Patient-provider decision making and consumer choice, not government or insurer “pathway”
  - Overdose Death Prevention Act (NOPE Task Force)

Policy Must Reflect Core American Values

- Compassion
  - People with pain, addiction, mental health disorders, hepatitis C, HIV
  - Women and newborns (substance use during pregnancy deemed child abuse)
  - Access to care and medications w/o harassment (institutional stigma)
- Privacy of patients and providers
  - Law enforcement inspections and investigations
  - Prescription monitoring program data security
  - Insurer interference
- Role of government
  - Consistency in federal policy (CMS, CDC)
  - Federal supremacy (states' attempted medication bans)
  - State plenary police powers (states regulate the professions – not the federal gov't)

Criminal Justice Reform

- Pres. Obama made prison reform a high priority of final stage of his presidency
- In 2010, 2.7 mill. U.S. prison inmates (85%) abused controlled substances
- Only 11% with SUDs receive treatment in prison
- *Estelle v. Gamble* (Supreme Ct. case from 1976): inadequate medical care for inmates is unconstitutional
- Innovative sheriffs and police chiefs, *e.g.,* TN detention center & recovery center partnership
- Policy recommendations
  - Provide effective mental health and substance abuse treatment for incarcerated individuals
  - Re-entry and recovery support to reduce recidivism

Input on Federal Policy

- The Supporting Positive Outcomes After Release Act
  - Suspend (not terminate) Medicaid while incarcerated
  - Enable incarcerated individuals to access services more quickly upon re-entry
- Federal regulation to increase number of patients to whom DATA-waived physicians may prescribe buprenorphine
- Comprehensive Addiction and Recovery Act (CARA), S. 524 (passed Senate)
- Mental Health Reform Act, S. 2680

2016 Elections

- November election will determine who controls the White House and U.S. Congress, as well as the ideological leanings of the U.S. Supreme Court
- A repeal of the Affordable Care Act is possible
  - Return of pre-existing condition exclusions
  - Elimination of essential health benefits for behavioral health
  - No application of Equity Act under regulations, loss of parity
  - No clear plan to replace (beside purchasing across state lines)

Resources

- *A Call for Differential Diagnosis of Non-Specific Low Back Pain to Reduce Opioid Abuse*, 101 J. OF MED. REG. 39 (2015).
- *Abuse-Deterrent Formulations: Transitioning the Pharmaceutical Market to Improve Public Health and Safety*, 6 THERAPEUTIC ADVANCES IN DRUG SAFETY 67 (2015).
- *Active Verification and Vigilance: A Method To Avoid Civil and Criminal Liability When Prescribing Controlled Substances*, 15 DEPAUL J. HEALTH CARE L. 93 (2013).
- *The Best of Both Worlds: Applying Federal Commerce and State Police Powers To Reduce Prescription Drug Abuse*. 16 J. HEALTH CARE L. & POL'Y 271 (2013).

Conclusion

- Questions and discussion
- Contact
  - LinkedIn.com/in/michaelcbarnes
  - @claad_coalition, @mcbtweets
  - claad.org
- Thank you