

## **Role of Federal Government's Attempts to Improve Services for Individuals with Serious Mental Illness**

E. Fuller Torrey, MD

**1963, Community Mental Health Centers (CMHC) Act:** The passage of this legislation effectively shifted responsibility for funding public mental illness services from the states to the federal government, thus reversing a policy that had existed for more than a century. NIMH paid the new federal funds directly to local Community Mental Health Centers, thus bypassing state governments. Prior to 1963 states were held responsible for the quality of those services; since 1963 nobody claims responsibility. The CMHC Act shifted the main focus of treatment from the state mental hospitals to the new CMHCs, but almost no planning took place regarding follow-up care for the seriously mentally ill patients being discharged from the state hospitals. The 1963 CMHC Act was the beginning of the increase of mentally ill persons becoming homeless, incarcerated in jails and prisons, etc.

**1965, Institutions for Mental Diseases Medicaid exclusion:** When Medicaid was enacted in 1965 the federal government was afraid that states would use it to cover the costs of mentally ill individuals in state mental hospitals so these hospitals were excluded from Medicaid coverage. This was the Institutions for Mental Diseases (IMD) exclusion. However, since Medicaid did cover these same patients if they were hospitalized on the psychiatric ward of a general hospital or living in nursing homes or group homes, the IMD exclusion created a major incentive for states to empty the state hospitals, thus shifting most state costs to federal Medicaid. States had, and still have little incentive to place patients in appropriate community settings or to follow-up and insure that they receive continuing care; the fiscal reward comes simply from emptying the state hospitals. The IMD exclusion has been the single largest reason why deinstitutionalization has failed so abysmally.

Reference: Geller, J.L. Excluding institutions for mental disease from federal reimbursement for services: strategy or tragedy? *Psychiatric Services* 2000; 51: 1397-1403.

**1986, Protection and Advocacy for Individuals with Mental Illness Act:** Under Senator Lowell Weicker's sponsorship, this legislation set up a federal program to fund independent state agencies to investigate allegations of abuse or neglect of mentally ill or disabled persons residing in mental institutions. Widely referred to as the Protection and Advocacy (P&A) program, it has been administered by the Substance Abuse and Mental Health Services Administration (SAMHSA) under the Department of Health and Human Services. As soon as the P&A program was enacted it was taken over by civil rights ideologues who believed that no mentally ill person, no matter how disabled or psychotic, should even be involuntarily hospitalized or medicated. Thus P&A programs in many states have assumed a function of protecting patients *from* treatment, rather than insuring that they *receive* appropriate treatment. The federal government has made no efforts to correct this well-intentioned-program-gone-astray, and in fact SAMHSA has encouraged it. The tragic consequences of the P&A program were highlighted by the *Wall*

*Street Journal* on August 16, 2008, describing how P&A workers in Maine insisted on the discharge of a psychotic young man from the state hospital despite the objections of the treating physicians and his family; he went home and killed his mother with an axe. Others have described how P&A programs, in clear violation of the law, “have engaged in federally prohibited lobby efforts and how they have tried to defeat proposed legislation, some of which would actually benefit their clients.”

Reference: Peters, AJ. Lawyers who break the law: What Congress can do to prevent mental health patient advocates from violating federal legislation. *Oregon Law Review* 2010; 89: 133-173.

**1990, American with Disabilities Act:** Another well-meaning federal program, the American with Disabilities Act (ADA) was an attempt to prohibit discrimination based on disability, which was officially defined as “a physical or mental impairment that substantially limits a major life activity.” Thus under the ADA disabled people could not be discriminated against, for example, in hiring, promotion or termination, and employers were expected to make “reasonable accommodation” for disabled employees. The consequences of the ADA have been exactly the opposite of what was intended. Employers, fearful of endless litigation, simply stopped hiring disabled workers. In recent years the ADA has also been used by the Department of Justice to demand that state psychiatric hospitals discharge patients to live in “the least restrictive alternative” in the community. For example, in April 2011, the Department of Justice sued New Hampshire. In many cases moving patients from a state hospital to a nursing home or a group home in a crime-ridden neighborhood is just as or more restrictive as a state hospital, but the former is regarded as more acceptable to the federal government because the patients are “in the community.”

Reference: Olson, W. Under the ADA, we may all be disabled. *Wall Street Journal*, May 17, 1999.

**1996, Health Insurance Portability and Accountability Act (HIPPA):** This was an attempt to protect the privacy of an individuals’ health information and medical records; people who disclose such information without the consent of the individual involved can be fined up to \$25,000 per year. HIPPA is widely regarded as having markedly reduced the information available to families as they attempt to get treatment for seriously mentally ill family members. This was recently illustrated by the *New York Times Magazine* cover story about a man with bipolar disorder. Blatantly psychotic, the family finally got him hospitalized but then was unable to get any information, even that he was in the hospital to which they had had him admitted:

“It took a week just to get the social worker assigned to his case on the phone. Although I had been sitting right next to my father at PESS when he was told where he would be transferred, privacy laws prohibited the nurses at the new facility from even confirming, without his written consent, that he had been admitted. I asked if someone could tell him we called and have him sign a consent form so that we could speak with his doctor or social worker.

Yes, I was told, he would be given a consent form — if he was there, which again they would not confirm or deny.

Eventually one nurse took pity and told us that he had indeed filled out the form but had granted access only to Barack Obama and Duke Ellington.”

Such examples are the rule under HIPPA, not the exception.

Reference: Interlandi, J. Love and commitment: What it takes to put your father away in a mental hospital. *New York Times Magazine*, June 24, 2012, pp. 26-47.

Thus, almost everything the federal government has attempted to do legislatively has made the problems associated with serious mental illness worse rather than better. And if anyone has any lingering doubts about the ability of the federal government to improve matters, look closely at the federal agency whose official mission is to reduce the “impact of substance abuse and mental illness on America’s communities.” This is the Substance Abuse and Mental Health Services Administration (SAMHSA), a \$3.6 billion component of the Department of Health and Human Services. It has 537 federal employees whose *average* salary is \$107,760. Its current three-year plan, a 41,804 word document entitled “Leading Change: A Plan for SAMHSA’s Roles and Actions 2011-2014,” does not even mention schizophrenia or bipolar disorder because, in fact, SAMHSA has no interest in serious mental illnesses. What *does* interest SAMHSA are producing free coloring books and sticker sets for children, such as their “Mental Well-Being Sticker Sets,” and producing a musical for SAMHSA staff to celebrate World AIDS Day (cost of musical: \$83,625). SAMHSA also gives away lots of money. It gives \$70,000 a year to organizations in California and Pennsylvania that have lobbied against legislation making it easier to treat seriously mentally ill individuals. And it gives \$330,000 a year to an organization in Massachusetts whose director claims that “the covert mission of the mental health system...is social control.” Indeed, SAMHSA has been described as “a federal health agency distinguished by the fact that the health of its clients would improve if it went out of business.”

Reference: Torrey, EF. Bureaucratic insanity: The federal agency that wastes money while undermining public health. *National Review*, June 20, 2011, pp. 25-26.

**Conclusion:** The track record of the federal government in its attempts to improve services for individuals with serious mental illnesses is a record of well-intentioned programs which have made the problem worse, not better. Rarely in the history of American government have programs conceived with such good intentions produced such bad results.