What's Next: Dispensary Licensing, Legislation & Housing Could Be Part of Solution

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By Susan Geier

It's been said many times over the years as New Hampshire battles a long opioid crises: you can't arrest your way out of a drug problem.
But, you can't treat your way out of it either, says Dr. Seddon Savage, chair of the Opioid Task Force, which is part of the NH Governor's Commission on Alcohol and Other Drugs.
She said task force members know communities need a broader approach — such as increasing housing and treatment providers — that also integrates into the general health care system.
But in the short-term, the treatment of county jail inmates with substance use disorders has expanded, thanks to greater awareness of MAT's potential to reduce harm — and recent litigation.
Corrections officials and treatment providers say they are ethically bound to provide the best care possible.
"Bottom line, it [medication-assisted treatment] saves lives," said Jessica Norton, MA, LCMHC, director of Inmate Services and Programming at the Rockingham County Department of Corrections. "We have a captive audience who may not have the resources or ability to seek these treatments in the community. If someone ends up at our facility, we are going to do whatever we can to ensure they return to the community safer and preferably healthier."
There has been a concerted push to address treatment and support services around the state, including more than $64 million in federal funding used to set up the Doorway system to coordinate treatment and response efforts.
While none of that funding went to county jails, the need for MAT for inmates is clear, said Savage.

Litigation Drives Changes

Carroll County Corrections Superintendent Jason Henry has long advocated for MAT for all inmates, but the county's commissioners have repeatedly voted against starting MAT for anyone currently incarcerated or those coming into the jail who are not already on the treatment.
"Carroll County inmates will be treated differently, and that's sad," Henry said.
He says the ACLU has been before the commissioners, citing the recent court cases, as well as specialists, doctors, and other jail superintendents. The issue isn't about funding, he said, but rather commissioners' concerns over inmates becoming addicted to suboxone, one of the drugs used in MAT.
In *Brenda Smith vs. Aroostook County*, jail officials in Aroostook County, Maine, prohibited Brenda Smith from continuing her suboxone regimen while incarcerated. In 2018, she sued in federal court arguing that withholding treatment violates the Americans with Disabilities Act and the Eighth Amendment of the constitution.
The court agreed. Aroostook County appealed. In April, the U.S. Court of Appeals for the First Circuit (which includes New Hampshire) upheld the ruling and affirmed the county must provide Smith with medication for her opioid use disorder.
Carroll County commissioners did approve Henry's memorandum of understanding with ROAD to a Better Life in Wolfeboro to provide MAT services for inmates who are already receiving medication when they come into the jail.
The agreement was necessary, Henry said, because the physicians currently providing medical services at the jail do not want to provide two different standards of care.
"It puts them in a very awkward position, Henry said. "The doctors won't do it."
The *Smith* ruling and another case in Massachusetts were cited in the report published by the Opioid Task Force over the summer.
"We continue to fight to make sure all those incarcerated in jail and prison in the state get access to their medication," says Henry Klementowicz, staff attorney with the ACLU NH.
Dr. Savage said litigation certainly can help drive policy but added that it's the right thing to do: "We know this population is heavily affected so it would be a great use of time and community resources to get into offering treatment to help break the cycle."

Consistent, Coordinated Community Services Recommended

The task force is comprised of people representing health care, law enforcement, and policymakers. It isn't funded and members don't implement programs, but its recommendations are passed to the Governor's Commission for review. The report can also be used for advocacy purposes, and its seven recommendations include increasing the

availability of drug treatment of OUD for all individuals in the justice system including jails and prisons and increasing provider capacity across the justice system, said Savage.
“We appreciate and commend the task force for their work on this and the recognition that MAT is the standard of care that can save lives,” says the ACLU’s Klementowicz.
Another recommendation is for officials to consider the adoption of common guidelines for the treatment and care of SUDs.
“We all recognize communities often benefit from locally-grown solutions,” Savage said. “The jails have prided themselves on operating in a way to meet the needs of their communities, but when you have a set of conditions of misunderstanding around something like SUD it can be helpful to have everyone on the same page at least at some rudimentary level.”
The report noted the inconsistent availability of MAT services, limited data collection (in some cases because these services are new), funding and staffing challenges, and lack of community-based SUD treatment capacity and shelters for housing insecure individuals on release from incarceration increases the risk for relapse.
NH Drug Court Coordinator Alex Casale said drug court officials want people to be able to continue their treatment, but it is an issue in counties where the jails have been without MAT in place.
For example, if a drug court participant on MAT has to go back to jail — even a couple of days — and the jail does not provide MAT that person has to detox. Once released, they can go back on MAT but the treatment has been interrupted.
“We should not tell people which medication they need to be on,” said Rockingham County’s Norton. “If someone wants the help or is already seeking treatment, they should be able to choose which avenue they prefer.”
Rockingham County jail offers MAT and support services but is going one step further by pursuing a license to dispense methadone, she said. When that happens, it will be just the second correctional facility in the U.S. to have that license. Jail Superintendent Stephen Church determined it was less expensive to become a dispensary after learning how much for-profit programs would charge to provide that service to inmates.

Legislation Could Advance Solutions

In the 2020 legislative session, New Hampshire’s legislators will debate House Bill 1623, which would expand substance use treatments via telemedicine. The bill cites the *Smith* case. A Senate bill that related to MAT by telemedicine is also in the works, but the bill text isn’t available yet.

Over the summer, U.S. Senators Maggie Hassan (D-NH) and Lisa Murkowski (R-AK) introduced the Mainstreaming Addiction Treatment (MAT) Act. It would eliminate a requirement that requires practitioners to apply for a waiver through the Drug Enforcement Administration to prescribe buprenorphine, according to a press release. The bill would allow community health aides and practitioners to offer MAT working with a provider through telemedicine — something that could benefit rural communities.

Looking Beyond MAT

The state’s Opioid Task Force also recommended expanding access to transitional and recovery-supportive housing post-incarceration. The report noted connecting people to services after release helps to lead to better outcomes. While some funding streams support such services, the challenge is the service rates through public funding are much lower than commercial insurance. Since NH has one of the lowest Medicaid reimbursement rates in the county that makes it difficult for treatment providers to want to accept Medicaid, Savage said.
Also, housing — of all kinds — are in high demand across the state. Some counties have no transitional or recovery-supportive housing (depending on gender), and there are no options for youth. Ironically, the report found “some existing recovery houses do not permit residents on MAT, despite this being one of the best practices for OU,” according to the report.
“It’s not just about corrections,” Gray said. “It’s a problem we have in the community.”

As part of the Granite State News Collaborative, the Bar News has examined the justice system’s response to the state’s behavioral health crises. In those stories, we have explored the state’s alternative sentencing programs and the expansion of MAT behind bars.