

NORTHCARE NETWORK

POLICY TITLE: Jail Diversion
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PURPOSE

Community Mental Health Service Providers (CMHSP) offer jail diversion services in a collaborative effort with the criminal justice system for persons alleged to have committed a misdemeanor or non-violent felony and who also meet criteria of Serious Mental Illness (SMI), Seriously Emotionally Disturbed (SED), or Developmentally Disabled (DD). The purpose of this policy is to clarify roles and activities of the five CMHSPs in the Upper Peninsula and law enforcement agencies related to determining diversion eligibility, treatment, and diversion implementation. NorthCare Network Prepaid Inpatient Health Plan (PIHP) is responsible to monitor compliance by the CMHSPs in assuring a jail diversion process is available to individuals who meet mental health criteria.

DEFINITIONS

Arraignment: The stage in the court process where the person is formally charged and enters a plea of guilty or not guilty.

Booking: The stage in the law enforcement custody process following arrest, when the individual is processed for formal admission to jail.

CMHSP: Community Mental Health Services Program. A program operated under Chapter 2 of the Mental Health Code as a county mental health agency, a community mental health organization or a community mental health authority.

Co-Occurring Disorder: A dual diagnosis of a mental health disorder and a substance abuse disorder.

MDCH: Michigan Department of Community Health.

Jail Diversion Training: Cross training of law enforcement, court, substance abuse and mental health personnel on the diversion system and how to recognize and treat individuals exhibiting behavior warranting jail diversion intervention.

Jail Diversion Process: A plan to divert an individual with a serious mental illness; co-occurring disorders; or a developmental disability in contact with the justice system from custody to linkages with community-based treatment and support services. The individual thus avoids or spends a significantly reduced time period in jail on the current charge. Depending on the point of contact with the justice system at which diversion occurs, the program may be either a **pre-booking or post-booking** diversion plan. The jail diversion process is intended for individuals alleged to have committed misdemeanors or certain, usually non-violent, felonies and who voluntarily agree to participate in the diversion plan.

Post-booking Diversion Process: Diversion occurs after the individual has been booked and is in jail; out on bond; or in court for arraignment. CMHSP staff work with stakeholders such as prosecutors, attorneys, community corrections, parole and probation officers, community-based mental health and substance abuse providers and the courts to develop and implement a plan that will produce a disposition outside the

jail. The individual is then linked to an appropriate array of community-based mental health and substance abuse treatment services.

Pre-booking Diversion Process: Diversion occurs at the point of the individual's contact with law enforcement officers; before formal charges are brought and relies heavily on effective interactions between law enforcement officers and community mental health and substance abuse services. The individual is linked to an appropriate array of community-based mental health and substance abuse treatment services.

Screening: Performed by CMHSP staff to evaluate a person involved with the criminal justice system to determine whether the person has a serious mental illness, co-occurring substance disorder, or a developmental disability, and would benefit from mental health services and supports in accordance with established standards and local jail diversion agreements.

POLICY

Jail Diversion is a legal decision to utilize community mental health interventions in lieu of incarceration for eligible persons with charges or convictions for misdemeanors or non-violent felonies. The decision to use mental health services can be reached at any time deemed appropriate -- including before the individual is taken into custody; after they have been taken into custody or arrested; before they are booked; after they have been booked; before or after they are arraigned; as a condition of bond; before they are convicted; or as a condition of probation.

Mental health professionals screen persons to evaluate service eligibility and report to the legal system recommendations for mental health services as a condition of bond, in lieu of prosecution, or as a condition of the reduction in charges. These recommendations are made within the framework of a coordinated set of policies and procedures to assure that:

1. Services are integrated.
2. Key agency representatives (both front line and administrative staff) will have a shared understanding and communication regarding jail diversion.
3. Agency leaders are committed to these activities.
4. Interactions between the criminal justice system and the community mental health system are maintained to ensure recommended services are provided to the consumer.
5. Eligible individuals are identified at an early point of contact.
6. Criminal justice system decision-makers are provided with information related to the impact that incarceration versus treatment in the community may have on an individual's mental health.

PROCEDURES

A. Jail Diversion Written Collaborative Agreement

The following is expected of the CMHSPs:

1. Identify liaison personnel to coordinate key interactions and maintain current agreements with local law enforcement agencies.
2. Liaison staff will participate in the NorthCare Jail Diversion Regional Committee to assure consistency across the region.
3. Maintain contact with representatives of the criminal justice system to review jail diversion procedures and local concerns.

4. Participate in local community corrections board meetings.
5. Maintain open communication regarding procedures and agreements while preserving standards of confidentiality.
6. Provide and actively promote cross-training activities necessary to assure that CMHSP staff, representatives of local criminal justice agencies and substance abuse providers have a common understanding of all jail diversion procedures.
7. To maintain a database that tracks key demographic information and diversion efforts throughout the region, including the unique consumer ID assigned by the CMHSP. Data are submitted to NorthCare on a quarterly basis and entered into a regional report required in the Master Contract with MDCH.

B. Guidelines for Pre Booking

1. **General** - Pre booking jail diversion refers to activities in which law enforcement officers and CMHSP staff engage in lieu of booking the individual into jail for an alleged misdemeanor or non-violent felony offense.
 - a. Persons considered for pre booking jail diversion shall be individuals who have allegedly committed misdemeanors or non-violent felonies, and who meet diagnostic, eligibility, and service criteria for SMI, SED, or DD.
 - b. These individuals, if found eligible for available treatment services by the CMHSP, may be diverted to treatment instead of being charged and incarcerated in a county jail. Protective custody may be required in emergency situations. In such circumstances, emergency services policies and procedures are followed.
 - c. Diversion is an authorized decision by a law enforcement officer to release the individual for the purpose of obtaining recommended mental health treatment because the officer has a reasonable belief that diversion to treatment would be in the best interest of the individual and the community.
 - d. The individual who is diverted to treatment is considered a voluntary consumer of mental health services if treatment is sought in lieu of incarceration. The individual cannot be required to release information or to follow-through with recommended treatment if the law enforcement agency involved decides not to file charges against the individual.
 - e. If charges are filed, but the individual is not booked into jail because they agree to recommended treatment services, the individual must consent to the release of relevant treatment information by the CMHSP to the criminal justice decision-making agencies and authorities involved in the current legal matter before the CMHSP can release any ongoing treatment information.
2. **Pre Booking Procedural Steps**
 - a. When a law enforcement officer has a reasonable belief that an individual may have a serious mental illness, a serious emotional disorder or a developmental disability and he/she has allegedly

committed a misdemeanor or non-violent felony, the officer may arrange a screening by CMHSP. The evaluation will determine mental health treatment needs and options for services.

- b. All persons considered for pre booking jail diversion and who may be in need of protective custody as defined by the Michigan Mental Health Code shall be screened for inpatient psychiatric or CMHSP crisis service alternatives.
- c. If law enforcement decides not to charge the individual with a misdemeanor or felony and decides instead to divert the individual for mental health services and the individual agrees, legal jurisdiction ends at that point. The CMHSP is not expected to report back to the legal system as to ongoing treatment related to the current incident because the individual diverted will be considered a voluntary consumer of mental health services in the same manner as if the consumer sought treatment on their own.
- d. If charges will be filed, but the individual is diverted to treatment instead of jail, the consumer will provide informed consent to release information to the justice system. The consumer will be expected to follow treatment recommendations as well as participate in any legal proceedings related to the alleged criminal behavior.
- e. The law enforcement agency involved shall be responsible for assisting in the linking to housing assistance for individuals who are homeless, have a transient address, or cannot return to their usual place of residence, and who will remain in the community to receive mental health services in lieu of charges or incarceration.

3. Pre Booking Contact Communication Procedures

- a. Law enforcement officer will call the local CMHSP office during routine office hours. After hours, the law enforcement officer will call the local CMHSP crisis number. At this contact point, the officer and the CMHSP phone crisis support person will exchange information pertinent to timely linking and agree upon a location for the contact (e.g. police office, the county jail offices, or a CMHSP site).
- b. The CMHSP crisis support service provider will complete a face-to-face screening and make initial recommendations including emergency treatment if required, or jail diversion consideration.
- c. The law enforcement officer will inform CMHSP of their decision regarding diversion.
- d. The CMHSP crisis support staff will link the consumer to the treatment provider(s) if the consumer is in need of available mental health treatment services, and is released from law enforcement custody to obtain these services.
- e. The CMHSP staff person will obtain written informed consent from the consumer for any release of information needed.
- f. The law enforcement staff person(s) will assist in placement linking and provide CMHSP with relevant information as needed.

C. Guidelines for Post Booking Diversion

1. **General** - Most diversion efforts involve post-booking activity and focus upon intervention following booking into the county jail. A key reason for diversion at this time would be the expectation that an individual's mental health would significantly deteriorate if they remained incarcerated. Another key factor is whether the diversion would significantly benefit both the consumer and the community.

2. Post Booking Procedural Steps

- a. All persons involved in misdemeanor and/or non-violent felony charges, and whose symptoms meet diagnostic and service eligibility for SMI and/or DD and who provide informed consent are eligible for the CMHSP to assist with jail diversion consideration.
- b. Any person within the criminal justice or CMHSP systems who may be aware of an incarcerated individual suspected of having a SMI or DD may make referrals for jail diversion consideration. Family or other individuals who represent the individual's mental health interests may also make referrals for diversion consideration.
- c. The sheriff's department will provide all necessary information related to incarceration/holding status.
- d. **In an emergency situation** --The CMHSP crisis support service provider will complete a face-to-face screening and make initial recommendations including emergency treatment if required, or jail diversion consideration.
- e. **For non-emergency referrals**-- The CMHSP will determine service eligibility and make treatment recommendations within the first 24 to 48 hours of detention wherever possible. Upon receiving written informed consent to release information from the diversion candidate, the CMHSP will provide the sheriff, county prosecutor, and court of jurisdiction with risk management information relevant to the impact of incarceration or release upon the jail diversion candidate's mental health and treatment. Eligibility for services at CMHSP and treatment recommendations will also be provided.
- f. All individuals eligible for post-booking jail diversion will be personally responsible for participating in the services identified by their mental health service treatment plan to maintain diversion status.
- g. All individuals participating in post-booking diversion shall be subject to periodic review (as requested by the court), as well as immediate notification to the court and/or its designee(s) in the event of further legal violations, misconduct, and/or failure to comply with the diversion plan.

3. Post Booking Contact Communication Procedures

- a. The sheriff's department will contact the local CMHSP during regular office hours. After business hours, the sheriff will call the local CMHSP crisis service number. The sheriff's department will provide information to the CMHSP regarding the candidate for jail diversion consideration. A time frame will be established for subsequent linking and planning

- for the CMHSP to screen the candidate.
- b. CMHSP will be responsible for obtaining written informed consent from the diversion candidate prior to information exchange with the court, prosecutor, or sheriff regarding potential diversion.
 - c. The CMHSP will share with the sheriff's department the findings relevant to possible diversion and discuss any concerns the sheriff may have.
 - d. CMHSP will submit in writing to the sheriff, prosecutor, and court or designee the assessment of mental health risks involved in either incarceration or diversion.
 - e. The decision-making authority (e.g. judge) will review the findings and make a decision with respect to diversion, and **notify the CMHSP of the outcome in writing.**
 - f. In the event of an authorized diversion, the CMHSP will review the expected conditions of bond/diversion status with the consumer, and make arrangements with the sheriff's department for release.
 - g. Once a decision to divert is authorized by the relevant legal authority and communicated in writing to the CMHSP, the CMHSP will coordinate with the sheriff to facilitate the release of the incarcerated individual to be diverted.
 - h. CMHSP will report progress and noncompliance as directed by the court.

REFERENCES

- ✓ Michigan Mental Health Code (Act 258 of the Public Acts of 1974 as amended) Section 207.
- ✓ Medicaid Managed Specialty Supports and Services 1915 (b)/(c) Waiver Program, Adult Jail Diversion Policy Practice Guideline, February 2005.