



Foundation *for*
Opioid Response Efforts



4/2/20

Correctional Facilities and MOUD During the COVID-19 Pandemic

Foundation for Opioid Response Efforts (FORE)

University of Arkansas for Medical Sciences
Fay W. Boozman College of Public Health

Hall Center for Law and Health at
Indiana University Robert H. McKinney School of Law

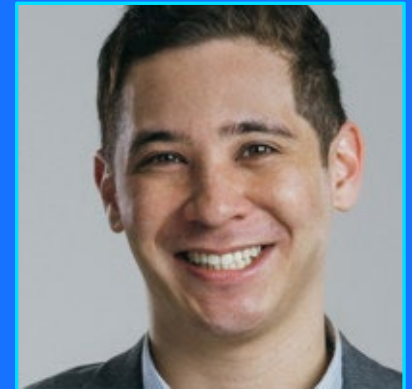
National Academy for State Health Policy (NASHP)

Introduction



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Ken Shatzkes, Ph.D.
Senior Program Officer
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<https://www.ForeFdn.org>

Agenda

1. **Welcome and Webinar Logistics**
2. **Foundation for Opioid Response Efforts**
 - Introduction to FORE
 - FORE COVID-19 National Emergency Response
 - Introductions
3. **Medications for OUD (MOUD) in Corrections** with **Nickolas Zaller, Ph.D.**
4. **Legal and Policy Environment** with **Nicolas Terry, LL.M**
5. **Medicaid Considerations** with **Jodi Manz, MSW**
6. **Question and Answer Session** with: **Nickolas Zaller, Ph.D.**
Nicolas Terry, LL.M
Jodi Manz, MSW
Lauren Brinkley-Rubinstein, Ph.D.

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Webinar Logistics

1. Webinar is being recorded and will be on www.ForeFdn.org shortly after the session ends.
2. Presentation slides will be made available for download on our website.
3. Please use the “Q&A” found at the bottom of your Zoom screen.
 - If you have a similar question, please upvote using the thumbs up button on the question.
 - We will read as many questions live as time permits.
4. An FAQ will be provided on our website based on the questions submitted during the Q&A session.
5. Any resources you would like to share with everyone please send to info@ForeFdn.org
6. There will be a brief survey immediately following the webinar. Please provide us with feedback!

About FORE

Founded in 2018, the Foundation for Opioid Response Efforts (FORE) is a 501(c)(3) private, national, grantmaking foundation focused on supporting solutions to the opioid crisis.

FORE's *mission* is to convene and support partners advancing patient-centered, innovative, evidence-based solutions impacting people experiencing opioid use disorder (OUD), their families, and their communities.

FORE is committed to funding a diversity of projects that contribute solutions to the crisis at national, state, and community levels.

- Inaugural RFP: Access to Treatment for Vulnerable Populations
 - 19 Grants Awarded: <https://ForeFdn.org/our-grantees/>



Provider education



Payer strategies



Policy initiatives



Public awareness



FORE's COVID-19 National Emergency Response

- FORE is looking for ways to provide broad assistance during this time of uncertainty
- Up-to-date Resources
- Webinars:
 - Weekly series
 - Thursdays @3pm ET
- Facilitating connections with experts and technical assistance
- Submit your ideas

Follow updates on our website:

www.ForeFdn.org

Foundation for Opioid Response Efforts

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Resources

Sharing knowledge about promising practices and their sustainable implementation is vital to ending the opioid crisis. Our resources include the recommendations of experts and the perspectives of those on the frontlines.

Choose Category

- COVID-19**
Harvard Law, Bill of Health: Protecting the Vulnerable SUD Population During COVID-19
March 26, 2020
Details concerning the additional challenges faced by the SUD (and OUD) population at this time, the positive, ameliorative steps taken by federal, state, and local governments, and recommended additional steps that are needed.
→
- COVID-19**
Webinar: Federal and State Policy Levers to Maintain Access to MOUD During the COVID-19 Pandemic
March 26, 2020
Join Jocelyn Guyer, MPA, and Jodi Manz, MSW, as they review emerging federal and state actions and opportunities (including case studies) to assist those with OUD through the COVID-19 pandemic.
Recorded Webinar | Slides
→
- COVID-19**
FORE Opinion Letter: Prescribing Buprenorphine During a Public Health Emergency
March 19, 2020
Legal analysis of four hypothetical scenarios for prescribing buprenorphine for opioid use disorder in the United States during the novel coronavirus outbreak.
→
- COVID-19**
SAMHSA: COVID-19 Public Health Emergency Response and 42 CFR Part 2 Guidance
March 19, 2020
The Substance Abuse and Mental Health Services Administration (SAMHSA) is providing guidance to ensure that SUD treatment services are uninterrupted during the COVID-19 public health emergency.
→
- COVID-19**
Webinar: MOUD and the COVID-19 National Emergency Response
March 19, 2020
Join Dr. Hannah Snyder, Jodi Manz, MSW, and Daniel McClughen, Esq, as they review key steps, fast evolving regulatory changes, and newly issued guidance around MOUD during the COVID-19 pandemic.
Recorded Webinar | Slides
→
- COVID-19**
SAMHSA: FAQ on the provision of methadone and buprenorphine for the treatment of OUD in the COVID-19 Emergency
March 19, 2020
The Substance Abuse and Mental Health Services Administration (SAMHSA) has compiled an FAQ on prescribing MOUD during the COVID-19 pandemic.
→

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Webinar Presenters



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Nickolas Zaller, Ph.D.

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Medications for Opioid Use Disorder (MOUD) in Corrections



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Nickolas Zaller, Ph.D.

Professor

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MOUD in Corrections: Overview

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- Well-established that correctional populations are at heightened risk of significant morbidity and mortality from OUD, **especially post-release**
- MOUD is considered **the standard of care** in the community
- The legality of **not** providing MOUD in corrections is increasingly being challenged (and is widely considered unethical)
- And, a growing number of prisons and jails are offering MOUD (while limited, jails in at least 30 states offer MOUD)

MOUD in Corrections: Overview

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- Within correctional settings, MOUD needs to be delivered through **a multi-disciplinary team** of correctional and behavioral health providers
- This may mean contracting with community-based SUD providers to deliver tx within correctional settings
- Essential to include **robust re-entry planning and linkage to MOUD upon release**, especially for those already stable on MOUD regimens

That is in the “best of times,” what about now?

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- COVID-19 has made **continuity of MOUD** even more challenging
- While facilities try and follow evolving guidance to protect individuals from COVID-19, individuals with MOUD may be **particularly vulnerable**
- Also, older adults with SUD are especially high-risk for more severe COVID-19 complications

COVID-19 Challenges for Correctional Facilities

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- Social distancing is exceedingly difficult
- Isolation of suspected/confirmed COVID-19 cases may also prove to be difficult, if not impossible
- Staffing shortages are often the norm
- Correctional facilities are not actually “closed” environments

Correctional Populations are Especially Vulnerable

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High prevalence of:

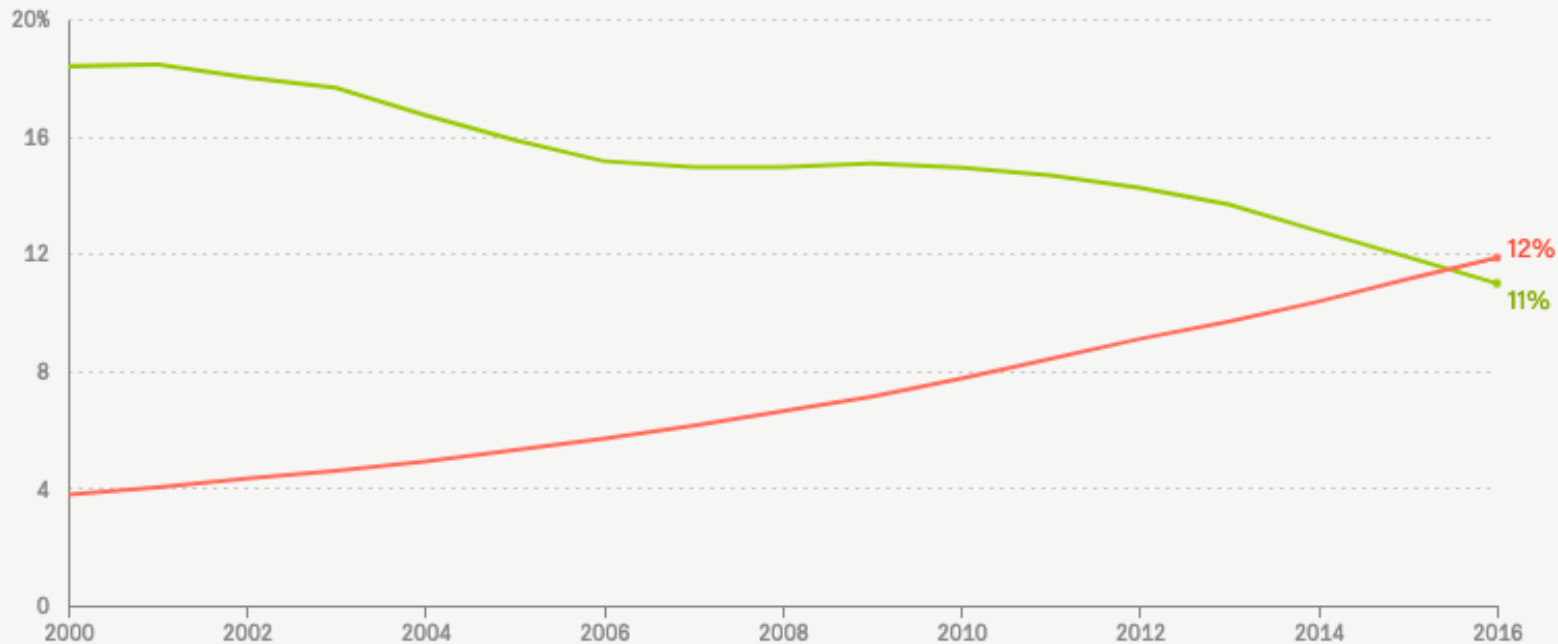
- Behavioral health disorders (mental illness and SUD)

AND

- Chronic physical health conditions (asthma, hypertension, diabetes, CVD, etc.)

The Aging Population In State Prisons

Between 2000 and 2016, the percentage of **people who are 55 or older** has been consistently growing, reaching 12 percent in 2016. This means for the first time, the aging population in state prisons has surpassed the number of **young adults between the age 18 and 24**.



Source: National Corrections Reporting Program

Immediate Steps to be Taken to Reduce Risk

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- **Release individuals who:**
 - have serious underlying medical conditions (in addition to SUD);
 - older individuals (>50) who do not pose serious threats to public safety;
 - individuals who are nearing their anticipated release date (within a few months to a few years); and
 - Individuals who are non-violent, especially those with SUD, and/or who have minor technical violations
- **Do not arrest/incarcerate for low-level, non-violent offences**

Immediate Steps to be Taken to Reduce Risk

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- **De-densify:** reorganize individuals into smallest possible units, or cohorts, in order to facilitate better social distancing
 - But responses that include primarily quarantining people in solitary confinement should be avoided
- **Free up space** for purposes of isolation, when needed
- **Educate and implement** routine screening, particularly for those at highest risk
- **Access to personal hygiene products**, especially soap for free
- **Waive co-pays** to encourage prompt reporting of symptoms
- **Use telemedicine** as much as possible to provide medical care for non-emergent and/or behavioral health issues

Access to MOUD Upon Release

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- **Use of telemedicine and e-prescribing:**
 - SAMHSA/DEA have released guidance for e-prescribing of controlled substances, including buprenorphine without an in-person medical evaluation
 - Does not apply to methadone
 - HHS has relaxed HIPPA restrictions for use of video platforms for telehealth (e.g. facetime, skype, etc.)
 - Use telemedicine for behavioral health counseling (though consider waiving counseling requirements if not available via telehealth)
 - Assess risk for overdose on an ongoing basis (use of telehealth or telephone checks) and ensure access to naloxone
 - Waive urine toxicology screenings for stable patients
 - Consider longer prescriptions

Legal and Policy Environment



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Nicolas Terry, LL.M

Executive Director

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Background

- **Concurrent public health emergencies**
 - SUD overdose deaths, increasing rapidly during last decade peaking at 70,000 deaths per year
 - COVID-19, 100,000-240,000 in 2020, then...
- **“Nested” pandemic problem;** general population threatened by COVID-19 plus highly vulnerable SUD jail/prison population
 - Incarcerated population, 2.2 million
 - Prison population with SUD, 65% +; repeat arrests in jails, 52% +
 - Prisons/jails are “tinderbox”; unhealthy, aging population, in dense, overcrowded situations unsuitable for distancing = high transmission rates with minimal containment
 - Exceptionally low rate of SUD treatment; troubling low level of general healthcare makes mitigation challenging
 - Highly fragmented: federal prisons, federal ICE detention facilities, state prisons, local/county jails

Current State

- Changing day-to-day, as with all government reactions to pandemic
 - Infection rates and deaths of inmates and staff rising fast, but incomplete data. E.g., Oakdale federal prison in Louisiana reporting exploding numbers of cases among staff and prisoners
- Judicial proceedings have slowed with emergency procedures in place
 - Of benefit to those bailed etc., but not to those in custody
- Small number of states/local law enforcement have defaulted to issuing summons rather than arresting those suspected of low-level, non-violent property, prostitution, and drug crimes.
- Some states (e.g., New York) have suspended in-person probation/parole visits
- Some systems relying on protocols/COVID-19 action plans (e.g., Federal Bureau of Prisons) and are building quarantine facilities, etc.

Early Release

- **Some cities/counties (relatively few) acting to reduce jail and prison populations. E.g., Harris County, Texas, judge has ordered release of 1000 non-violent inmates. Criteria vary:**
 - High risk of transmission
 - Low level charges, misdemeanors, minor drug charges, probation violations, early parole
- **But, exceptionally high risk of overdose on release:**
 - Lack of secure housing
 - Possible homelessness exacerbates problem with second vulnerable population with its own high SUD rate
 - Typical SUD services, such as meetings, outpatient care shut down during pandemic
 - Urgent need for pre-release extended-release naltrexone Medicaid-based healthcare, support services, housing, naloxone, fentanyl test strips, etc.

Legal & Policy Environment

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- Some (few?) of those returning to treatment environment may benefit from SAMHSA waiver allowing take-home doses of methadone, lockboxes, etc., DEA relaxation on buprenorphine rules, including geographic limitations, telehealth. Syringe exchanges deemed “essential services.”
- Eighth Amendment case law imposes “deliberate indifference” standard to petitioner’s health and safety; more than negligence; sometimes referred to as “subjective recklessness,” *Farmer v. Brennan* (1994)
 - Suits being filed across the country referencing COVID-19, e.g., diabetic man in an Oregon jail
 - Judge Mueller (ED Ca.) overseeing multiple cases filed to reduce prison population
- Judge John E. Jones (MD Pa) in very well-reasoned opinion has ordered release of 13 persons in ICE detention in various jails because they are at particular risk if COVID-19 was to be transmitted to them; e.g., diabetes, immunocompromised, etc.
- Governors seem uninterested in using their reprieve powers to facilitate early releases

References

- Brandon George and Nicolas P. Terry, Protecting the Vulnerable Substance Use Disorder Population During COVID-19, Harvard Law Bill of Health, <https://blog.petrieflom.law.harvard.edu/2020/03/26/protecting-substance-use-disorder-population-covid-19/>
- Top doctor at Rikers Island calls the jail a 'public health disaster unfolding before our eyes', Wash. Post, <https://www.washingtonpost.com/nation/2020/03/31/rikers-island-coronavirus-spread/>
- Second Inmate Dies From COVID-19 at Louisiana Prison as Entire Federal System Goes on Lockdown, https://www.vice.com/en_us/article/5dmend/second-inmate-dies-from-covid-19-at-louisiana-prison-as-entire-federal-system-goes-on-lockdown
- Federal Bureau of Prisons COVID-19 Action Plan, https://www.bop.gov/resources/news/20200313_covid-19.jsp
- Harris County to release about 1,000 'non-violent' inmates, calling jail a 'ticking time bomb', <https://www.khou.com/article/news/health/coronavirus/harris-county-extends-stay-at-home-order-through-april-30-citing-alarming-accelertion-of-covid-19-cases/285-46fda6df-572e-48e3-930b-92eade3f68ec>
- Farmer v. Brennan, 511 U.S. 825 (1994), <https://supreme.justia.com/cases/federal/us/511/825/>
- Thakker v. Doll, MD Pa., 3/31/2020 (Judge John Jones) https://www.aclupa.org/sites/default/files/field_documents/memo_and_order_granting_tr_o_and_release.pdf

Medicaid Considerations



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Jodi Manz, MSW

Project Director

Chronic and Vulnerable Populations

National Academy for State Health Policy



Medicaid “Inmate Exclusion”

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- Inmate exclusion in Medicaid **does not allow Medicaid coverage** of services for any incarcerated individual unless services are provided outside of the institution in a hospital setting for at least 24 hours
 - Other funding streams (particularly grants) are covering SUD treatment services in incarceration settings
 - States need policies and levers to quickly ensure coverage upon re-entry – particular challenge for jails
- Most states have a **“suspension rather than termination”** policy for jails (42 states) and prisons (43 states) *if individuals are enrolled in Medicaid upon entry*
 - 23 of those states have implemented an automated data exchange to support

Considerations for Medicaid enrollment

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- Very different realities of **jails v prisons** and implications for re-entry, particularly for states without unified incarceration systems
- **Eligibility** for this population is not likely for states without Medicaid expansion
- Medicaid applications are **not processed** instantaneously
- While some state Medicaid programs have **infrastructure** to support enrollment for those close to re-entry, others do not – this is a relatively innovative practice spurred partially by SUD epidemic

In-reach and re-entry benefit practices

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- Some states created opportunities for currently incarcerated individuals to **submit Medicaid applications** before they are released to ensure coverage upon re-entry
 - Utah very recently passed a bill ([HB38](#)) directing Medicaid to submit a waiver to cover inmates up to 30 days prior to release
 - Ohio model of [pre-release enrollment](#) through Medicaid managed care using peers
 - Massachusetts and other states using contractors to help enroll
 - **Challenges in crisis:**
 - Systems cooperation is essential
 - Relies on vendors, peers, and/or social services staff to guide process
 - Takes time to build infrastructure, administer contracts, prepare staff
- States are also using and exploring **presumptive eligibility** mechanisms that allow for coverage before eligibility is confirmed

COVID 1135 Waiver of Inmate Exclusion

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- March 19: California requested [additional section 1135 waiver flexibilities](#) including COVID-19 related coverage flexibility for incarcerated individuals:
 - **Waiver of the inmate exclusion** for coverage of “testing, diagnosis and treatment of COVID-19 or services to ensure other care is provided in a safe way without transporting individuals to acute care facilities.”
 - **Many long-standing (and long-challenged) health policies are being waived under authority of public health emergency declarations**
 - While CMS [did not grant](#) this action, this potentially sets the stage for continued pressure to waive the inmate exclusion for COVID - and potentially other services (like SUD)



Take Care of Yourself!
Thank You For Your Work!

Questions?



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Additional Resources



SAMHSA COVID-19 guidance and resources
<https://www.samhsa.gov/coronavirus>



Centers for Medicare & Medicaid Services guidance, including a compilation of state 1135 waivers
<https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>



American Society of Addiction Medicine compilation of guidance and resources, including links to state-level policy actions and waiver requests
<https://www.asam.org/Quality-Science/covid-19-coronavirus>



State Health & Value Strategies resources on state policy options and responses
<https://www.shvs.org/>



Manatt Health resources on federal and state strategies to respond to COVID-19
<https://www.manatt.com/COVID-19> and <https://healthinsights.manatt.com/>



National Academy for State Health Policy resources on state activity <https://nashp.org/>



About the Foundation for Opioid Response Efforts

The Foundation for Opioid Response Efforts (FORE) was founded in 2018 as a private 501(c)(3) national, grant-making foundation focused on addressing the nation's opioid crisis. FORE is committed to funding a diversity of projects contributing solutions to the crisis at national, state, and community levels. FORE's mission is to convene and support partners advancing patient-centered, innovative, evidence-based solutions impacting people experiencing opioid use disorder, their families, and their communities.



About the National Academy for State Health Policy

The National Academy for State Health Policy is a nonpartisan forum of policymakers throughout state governments, learning, leading and implementing innovative solutions to health policy challenges. To accomplish our mission we:

- Convene state leaders to solve problems and share solutions
- Conduct policy analyses and research
- Disseminate information on state policies and programs
- Provide technical assistance to states

The responsibility for health care and health care policy does not reside within a single state agency or department. At NASHP, we provide a unique forum for productive interchange across all lines of authority, including the executive and legislative branches.



General inquiries: info@ForeFdn.org



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