**ACCESS TO SERVICES**

**An estimated 14% or 397,474 of Nevada residents are 65 years of age or older according to the U.S. Census. Eight percent of those older than 65, approximately 31,798, live in poverty at 100% of the Federal Poverty Level, and 36% of them have a disability. The Aging and Disability Services Division NRS 439 Report of Community Needs and Priorities for Older Nevadans, published in June 2016, said that "Case Management, Home Health Care and Transportation" were the three most needed services, however that all home and community-based services were important to keep older people in their homes and to save taxpayer dollars.**

- **Access to Services**
  - **Waiver Slots**- keep people living in the community as opposed to institutionalization. For aging adults, services include personal care (bathing, grooming, toileting, transferring/ambulating, dressing, eating), adult day care, respite care, homemaker services, chore service, and adult companion. These services are provided in the home, Homes for Individual Residential Care, Residential Group Care and in Assisted Living Facilities. To be eligible one has to be nursing home imminent.

    Currently, 449 seniors are waiting 234 days for Home and Community-Based services, almost a year. If these elders do not receive waiver services they will enter a nursing home or pass away. Slots for waiver services need to be increased and the waitlist eliminated. The Governor in the Strategic Plan Framework for Nevadans has called for a 20% increase in the availability of home and community-based services to vulnerable adults.

  - **Provider Rates** – provider rates across the board for Medicaid providers have not been adjusted since 2002. Since then, Medicaid has been expanded to provide more services to mothers and children, the Aged, Blind and Disabled, and childless adults. However, because the rates are so low, many Medicaid providers have stopped accepting Medicaid clients or have gone out of business. Current reimbursement rates do not support an additional expansion to meet the growing demand. The reimbursement rate for Medicaid providers needs to be revised to meet the demand for in-home and personal care. Nevada Assemblywoman Robin Titus has authored a letter asking the Governor's consideration of Medicaid rates in his budget. The letter requests:
    - "Review of the Medicaid rate methodology for reimbursing postacute care facilities and personal care and home health services"[1]
    - "Inclusion of an appropriation in the Governor's recommended and legislatively approved budget that supports payment rates that are sufficient to ensure that Medicaid beneficiaries have access to covered services."[2]
    - "Index the reimbursement rate to increase with inflation in future biennia."[3]

[1] Letter from Robin L. Titus, M.D., Nevada State Assemblywoman, Chair, Subcommittee to Conduct a Study of Postacute Care to Governor Brian Sandoval, July 8, 2016.
[2] Ibid.
[3] Ibid.

Additionally, in the event there is an increase in the minimum wage, that the provider reimbursement rate be adjusted concurrently.

- **"Olmstead Decision"** – (ADA Title II, 1990) enables people with disabilities to live in the least restrictive setting of their choice. Nevada became an Olmstead friendly state when an Olmstead Plan was approved by the Nevada State Legislature in 2003. Nevada is currently in the process of updating the Aging and Disabilities Services Strategic Plans that has Olmstead concepts incorporated throughout the document. Those concepts include: Access to appropriate services to keep one living in the community rather than an institution, access to services at a reasonable pace, and access to services whether budgeted or not, if necessary to avoid premature institutionalization, be accommodated.

**Additional concepts**:

- Elimination of Medicaid services because they are optional in the state plan and put people at a risk of institutionalization is an Olmstead violation.
- Olmstead requires that a person who is able to move into a community setting and wishes to do so must be given the proper support to accomplish this transition.
- The state is obligated to coordinate efforts with Medicaid to ensure access to Long Term Services and Supports (LTSS) and to disseminate knowledge about access to LTSS, habilitation and rehabilitation options to community providers, individuals needing services, family members and primary support providers.

## BEHAVIORAL, COGNITIVE AND MENTAL HEALTH

**Understanding the Issue**

- It is estimated that 20 – 25% of individuals age 65 and older have a mental health disorder, often compounded by chronic physical diseases of aging (http://www.apa.org/about/gr/issues/aging/mental-health.aspx)
- Mental health disorders affecting older adults include:
  a) Ongoing chronic psychiatric illnesses
  b) Onset of illnesses with behavioral and/or cognitive symptoms such as dementia or stroke
  c) Disorders due to age-related disability, life events or caregiving such as depression or anxiety
- Based on 2015 Census estimates, 84,400 – 105,500 older Nevadans are affected by these disorders (http://www.census.gov/quickfacts/table/PST045215/32)
- Nevada has one of the highest geriatric suicide rates in the U.S. One in four attempted suicides result in death; approximately 60% of older adults saw their doctor within one month of their suicide
- Dementia affects 1 in 9 at age 65 and almost 50% of those age 85 and over

**Unmet Needs**

Nevada's current health care system is inadequate to effectively meet the specialized behavioral health needs of older adults. Untreated mental health issues frequently result in poorer health outcomes, higher health care utilization, increased levels of disability/impairment, higher stress on family and professional caregivers, increased mortality and greater risk of suicide. (https://www.ncoa.org/news/resources-for-reporters/get-the-facts/healthy-aging-facts/) The scarcity of providers with expertise in caring for older adults with behavioral issues yields additional negative consequences including inappropriate admissions for inpatient psychiatric care, unsafe discharges from medical settings and limited access to proven cost-effective treatments.

Challenges to addressing unmet needs include:

- Misconceptions about the normal aging process; lack of understanding regarding behavioral health issues experienced by older adults
- Training for medical professionals in screening, diagnosis, treatment and behavior management
- Medication management programs for prescription and non-prescription drugs
- Education and training for professional and family caregivers
- Limited number of providers offering evidence-based programs to address behavioral/cognitive symptoms
- Reimbursement levels inadequate to sustain the higher staffing and training costs for community-based providers to serve behaviorally complex older adults

**Action Needed**

**1) Expand Nevada Medicaid's Behavioral Complex Care Program to include community-based long term care services**

This change will: 1) ensure parity in reimbursement between institutional and community-based providers serving behaviorally complex older adults, 2) expand the number of community-based care options for older individuals who wish to remain in their own home for as long as possible and, 3) shift the state's financial obligation to less costly types of care.

**2) Fund evidence-based behavioral health demonstration projects targeted to deliver better care to older adults with behavioral, cognitive and mental health challenges**
Demonstration projects would implement tested interventions to deliver cost-efficient quality care, reduce unnecessary emergency and hospital admissions, promote safe discharges from medical settings and decrease premature nursing home placements.

**CAREGIVERS**

**Understanding the Issue**

Key statistics about family caregivers:

- There are an estimated 500,000 Nevadans providing approximately 400 million hours annually of unpaid care to family, friends and neighbors live independently (AARP)
- Family caregivers provide the majority of unpaid care for their loved ones, at an estimated saving to Nevada taxpayers of $4 billion per year (AARP)
- Up to 75% of caregivers are women; the majority are middle aged and employed outside of the home

Caregiving tasks:

- Personal care – Includes tasks such as meal preparation, bathing and managing incontinence
- Medications – Almost 50% of caregivers administer 5 to 9 prescriptions each day
- Complex medical tasks – Includes wound care, intravenous medications and injections
- Coordination of care and services – Managing medical care, transportation, home health, personal care, financial affairs and medical insurance

Impact on caregivers:

- Physical and emotional stress results in higher rates of depression, chronic illness and even death
- 75% of caregivers are employed outside of the home. Businesses are impacted by lost productivity due to employees fulfilling caregiving responsibilities. Washoe County employees providing caregiving to family study found that it cost the county $1 million per year in lost productivity (Center for Healthy Aging).
- Financial stress includes ongoing out-of-pocket expenses and missed time in the workplace or resignation from a job in order to provide full time care
- Nursing home placement is often the only option when caregivers can no longer manage caring for a loved one at home. Annually, nursing home costs can range from $72,000 - $85,000 [LW1] and are paid by families, insurance, Medicaid and other government programs. The impact on Medicaid is significant as older adults utilize over half of all dollars spent even though they are a small percentage of the total enrolled.
- On a federal level, caregiving groups are trying to get congressional support for a "Credit for Caring" act, which would give a credit through federal income tax for caregivers who meet certain qualifications.

**Comment [LW1]:** [LW1]Need to check figures both NH costs and Medicaid nos and $s spent

**Unmet Needs**

- Education and training – Family caregivers receive little or no training yet provide complex medical and nursing tasks for loved ones with chronic diseases and cognitive disorders, such as Alzheimer's
- Supportive services – Home and community-based services, such as adult day care, personal care, respite and case management help family caregivers manage caregiving tasks, reducing burden

and stress. For the projected demands of the growing senior population in Nevada, there is already a shortage of affordable, quality community-based services and providers.

· Respite – Defined as a break from the demands and responsibilities of caregiving

**ACTION NEEDED**

1) Increase Home and Community-Based Waiver and COPE [LW2] Slots – These programs fund an array of home and community-based services to assist individuals, who qualify financially for Medicaid and are deemed at risk of nursing home placement, to remain in the community. Costs for these services are less than the costs for a nursing home placement. Additional waivered slots are requested to provide services to those on current waiting lists and accommodate the increasing demand due to the growth in the aging population, especially in those 85 and older who are at greatest risk.

2) Educate caregivers on available services and resources in the community, especially those in the workforce.

3) Encourage employers to protect and provide resources to their employees responsible for eldercare and to collaborate with community organizations.

4) Educate caregivers to plan, especially in need determination, accessibility, and availability to elder health and social services. Introduce the tools and information needed to enhance the quality of life for their elders they are caregiving and themselves, such as respite.

**Comment [LW2]:** [LW2]I thought only the waivers assisted people who qualified for Medicaid. We need to verify this information. Mary will make a call.

**LEGAL ISSUES**

Note: Unsafe discharges are now against both federal and state law, and discharge planning is required in some detail by federal law (See 42 CFR 48.43). The solution to what is happening in Nevada would be to ENFORCE the law. A statute could be crafted with that in mind. Further discussion is needed on this topic. (8/8/16 S. Ramm)

**Elder Abuse:**

There are two areas of concern in the elder abuse laws that should be discussed:

First, the penalties for neglecting an older or vulnerable person and causing physical pain or mental suffering or for causing substantial bodily or mental harm or death are too lenient—ranging from a gross misdemeanor to a category B felony and imprisonment from 2-6 years. This compares to penalties of up to 20 years for substantial bodily harm or death as the result of child abuse or of causing substantial harm or death when driving under the influence.
ACTION NEEDED: Raise the penalty for causing substantial harm or death to people who are older or vulnerable to between 2 and 20 years.

Secondly, under the mandatory reporting laws, immunity is granted from civil or criminal liability for reporting, investigating or submitting information about elder abuse. This allows people who commit elder abuse and then report it to possibly not be punished because they are immune from prosecution.
ACTION NEEDED:
Add to the statute: "The immunity provisions of NRS 200.5096 do not apply to any person who commits, conspires to commit, aids and abets, or is an accessory after the fact, to elder or vulnerable person abuse, neglect, abandonment, isolation and exploitation or any crime under NRS 200.5091-NRS 200.5-995.

**Mandatory Arbitration:**

The Federal Arbitration Act has been interpreted to mean that arbitration clauses in long-term care facility contracts are legal as long as they follow all of the same requirements as arbitration clauses in any other contract. However, a court in New York recently ruled that other factors can be looked at. These include whether there was a meeting of the minds when the contract was entered, pressures of the moment the contract was signed, the sophistication level of the parties, and whether the person signing the document understands everything.

ACTION NEEDED – Mandatory Arbitration Clauses

1. Require that all long-term care contracts contain a SEPARATE mandatory arbitration agreement that explains all of the ramifications of signing the agreement, including the loss of the right to take grievances to court. The agreement should clearly state that either party can opt out of mandatory arbitration at any time.

**GUARDIANSHIP: TO BE DETERMINED, IF THERE IS ROOM.**

## MEDICAID-LONG TERM SERVICES AND SUPPORTS

**Understanding the Issues**

- **Guiding Principles**
  - Implementation of Medicaid and CHIP Managed Care Final Rule (CMS-2390-F) including
    - Beneficiary support and information
    - Enrollment/disenrollment protections
    - Network adequacy and access to care
    - Identification of enrollees with LTSS needs and comprehensive independent assessment to determine and oversee care plan for enrollees
    - Compliance with CMS' person-centered planning and home and community-based setting regulations
    - Quality of care
    - Program integrity (KFF.org)
  - Individuals enrolling in MLTSS have a choice of plan and providers (AARP)
  - Transparency
  - Reinvestment of savings to improve access to and quality of home and community based care. Saving should be allocated to increase eligibility for services so that more individuals can receive HCBS. (AARP)

**Unmet Needs**

- **Care Recipients and Care Partners**
  - Person and family centered to allow individuals to live as independently as possible and exercise control over their own care arrangement (AARP Letter 12/16/15)
  - Continue to address historical LTSS institutional bias; most older adults would prefer to receive services in their homes and communities (AARP Letter)
  - Adequacy of community-based provider network to meet needs of consumers, including those with costly illnesses and/or with medically challenging conditions and provide services in a timely manner.
  - Lack of availability of a sufficient funding and a continuum of LTSS services under managed care contract
  - Full inclusion of family caregivers in service planning and delivery

- **Providers**
  - Current provider groups who have not received rate increases in since 2002 – adult day care, home health, personal
  - Provider reimbursement rates have not kept pace with changes in CPI, reimbursement rates to be indexed to automatically increase with inflation and adjustments to state's minimum wage
  - Provider credentialing process
  - Claims, billing and payment process, reporting requirements

**Action Needed**

- **Adequately fund MLTSS to meet the needs of qualified individuals and eliminate waiting lists**

- **Legislative guidance and oversight required to decide future of Medicaid LTSS and possible transition to managed care in Nevada**

    - **Transition**
        - Complete transparency at each step in the process including clearly defined processes of decision making and transition implementation action steps
        - Stakeholder input processes involved for consideration of adopting and implementation of managed care for MLTSS

    - **Enactment of CMS Rules Related to MLTSS:**
        - Creates a structure for engaging stakeholders in the ongoing monitoring of MLTSS programs;
        - Requires a deliberative state planning process, which includes standards for a state's readiness reviews of managed care plans and specific information to be provided to beneficiaries transitioning from fee-for-service to managed care;
        - Provides that MLTSS programs must be implemented and operated consistent with federal laws, including the Americans with Disabilities Act;
        - Enacts payment methodologies that reflect the goals of MLTSS programs to improve the health of populations, support beneficiaries' experience of care, support community integration of enrollees, and control costs;
        - Requires the creation of an independent beneficiary support system that services as a centralized point of contact for choice counseling along with other services and supports to help individuals navigate the managed care delivery system;
        - Requires person-centered processes to ensure that beneficiaries' medical and non-medical needs are met and that they have the quality of life and level of independence they desire;
        - Establishes standards for coordination and referral by the managed care plan when services are divided between contracts or delivery systems to ensure that the beneficiary's service plan is comprehensive;
        - Sets standards to evaluate the adequacy of the network for MLTSS programs, the qualifications and credentialing of providers, and the accessibility of providers to meet the needs of MLTSS enrollees;
        - Requires managed care plans to participate in efforts by the state to prevent, detect, and report critical incidents that adversely impact enrollee health and welfare; and
        - Requires states to incorporate MLTSS-specific elements into their quality strategies.

    - **Oversight**
        - State responsibilities for oversight
            - Robust MCO-readiness review process (AARP)
            - Ensure all reporting requirement and performance standards are in compliance and that standards are leading to improved quality and access (AARP)

- State must be committed and take steps to actively monitor and use all enforcement tools available (AARP)

- State and managed care plans must create stakeholder and advisory groups to oversee MLTSS
  - Nevada must create and maintain a stakeholder group to solicit and address the opinions of beneficiaries, individuals representing beneficiaries, providers and other stakeholders in the design, implementation and oversight of a state's MLTSS. The composition of the group and frequency of meetings must be sufficient to ensure meaningful engagement.
  - Plans providing MLTSS must have a member advisory committee that includes at least a reasonably representative sample of the populations receiving LTSS covered by the plan or other individuals representing enrollees (http://kff.org/report-section/cmss-final-rule-on-medicaid-managed-care-issue-brief/)