

STATE OF WEST VIRGINIA
THIRTEENTH JUDICIAL CIRCUIT
OFFICE OF THE COURT MONITOR
STATE CAPITOL COMPLEX
BUILDING 6, ROOM 850
CHARLESTON, WEST VIRGINIA 25305



LOUIS H. BLOOM
JUDGE

DAVID G. SUDBECK
COURT MONITOR

MEETING OF THE PARTIES

In E.H., et al., v. Khan Matin, et al.

WEDNESDAY, APRIL 13, 2011

MINUTES

PRESENT: Vickie Jones, Allen Campbell, Kevin Stalnaker, Teresa Brown, Cindy Beane, Jennifer Wagner, Wendy Elswick, David G. Sudbeck, Sheila Kelly, dan connery

I. CLINICAL SERVICES MANAGEMENT - UPDATE

The Office of the Court Monitor has received the technical comments provided by DHHR with regard to the final draft CSM report. None of those comments seemed to require any substantial change to the report therefore it is considered to be ready for general release. CSM has expressed interest in responding to the Department's comments and intends to do so in the near future. The Office appreciates DHHR's lack of defensiveness and the moderate and cooperative nature of the DHHR comments. David Sudbeck requested a timeframe as to when and to whom the Final Report should be released. It was agreed that the final report should be released to Judge Bloom and the Parties, and that any further distribution would be performed by the Parties themselves. Jennifer Wagner indicated that Mountain State Justice and the Provider's Association intend to submit comments and implementation recommendations/suggestions regarding the report and David requested that this be done by May 5, 2011. It was agreed that the comments from both sides would not be included in the Final Report as the Report is a document unto itself, and that comments are a separate entity to become part of the court record. David stated that once all comments are received, he would consult the Parties regarding an implementation action plan.

II. CRISIS STABILIZATION ACTION PLAN

Sheila Kelly stated that the final report of the CSU work group had been submitted to the Office of the Court Monitor. One crucial aspect of the tasks assigned the work group was the evolution and future of charity care particularly as it applies to payment for CSU services. The work group had tabled this issue pending a recommendation that the Provider's Association intended to

submit to the BHHF. A continuing effort is establishment of a per diem rate for the alternative uses of CSU beds described in the work group report. Sheila, Craig Richards, Judy Akers and Mark Games have a small work group attempting to put together an organized and valid method of identifying a per diem for the services that is capable of being modified in a systematic way in the future. The small group started with the Detoxification alternative as it was felt that the staffing requirements would cause this per diem to be the most expensive. Using Bureau of Labor statistics and incorporating indirect costs, the group arrived at a per diem rate of \$350/day for detoxification services. The only concern expressed was that the formula utilized for payment of psychiatrists is excessively low by West Virginia standards. Craig is investigating this further and is attempting to identify an appropriate payment methodology. Sheila stated that the lower rate for detoxification should not affect CSU rates since the CSU rates are court ordered in the Agreed Order.

Jennifer asked if the issue of additional CSU beds had been addressed. The working group had looked at the situation and agreed that the only area that clearly needed additional beds was Huntington. Pretera had submitted a proposal to add five CSU beds however the BHHF countered with a request that those beds be detoxification beds since this is clearly the most needed service in that area. Pretera then submitted a proposal to do detoxification in a new program it is implementing in a motel it recently purchased (at a per diem of \$325) and the BHHF is finalizing approval of this service. No additional CSU beds are recommended or necessary at this time.

Vickie also mentioned that additional language in the Case Management order makes it clear, in the Department's view, that CSU payment outside the charity care formula as required by the Agreed Order referred exclusively to Medicaid patients that had been denied payment due to the Mountain Health Choices program. This program no longer affects CSU services and eligibility. BHHF believes that this issue is resolved and there was no disagreement from the Parties although Jennifer is interested in pursuing the charity care distribution mechanism. Vickie stated that the Providers had resubmitted their request that charity care remain as is in FY 2012 but that they intend to make recommendations for modifications based on utilization in FY 2013. The Department is willing to consider any fiscally responsible alternative that ensures appropriate clinical safety net services.

III. REPORT TO THE COURT – MAY 1, 2011

David Sudbeck distributed copies of the most recent Report to the Court for technical corrections. A minor change on allocation wording was suggested. Additionally, it was revealed that the Supreme Court had issued an opinion supporting Judge Bloom's requirement that the Department implement a TBI waiver as had been agreed in a prior mediated agreement. Language regarding this decision will be added to the report. BHHF confirmed the accuracy of the Year One and Two services contained in a map in the report.

IV. REQUEST FOR RESOLUTION PROCESS

David Sudbeck distributed a handout on the process for Request for Resolution (RFR) for discussion, considering that new Counsel for BHHF had no experience with the RFR process. He made it clear that the Court Monitor's Office will not dismiss an RFR without an investigation by

the Monitor's Office which normally results in recommendations to the Parties on the issue at hand. After these recommendations are made, any of the Parties may object or otherwise respond. If neither Party disagrees with the findings, the formal recommendations may become a Court Order.

V. BHHF REPORT

Vickie Jones summarized the status of the Year Two programs. Year Two providers include Valley, Northwood, Summit Center and FMRS. All four either have completed change orders for services or change orders are working through the purchasing system. Some Centers have already begun to implement programs.

As a Year Three provider, Southern Highlands has proposed an eight-bed group home, twenty residential slots and no day treatment programs, however has requested the right to implement a Day Treatment Program depending upon the outcome of a CMS examination of Community Focused Treatment (CFT) as a Medicaid billing code. United Summit Center has also proposed an eight-bed group home in Year Two with 16 supported living slots and one day treatment program to follow in Year Three. Vickie stated that Logan Mingo is technically considered to be a Year Three provider but has declined to add any services through the Hartley program. The BHHF is considering issuing an AFA for interested parties to implement programs in Logan Mingo's area. Of the Year Two supported living slots, a number have not been requested and the funds will therefore either be allowed for additional supported housing slots in areas not designated as original "high commitment areas" or will be made available for other purposes as determined and agreed by the Parties.

Kevin Stalnaker stated that Riverpark Hospital is to open ten additional forensic beds on May 15, 2011. It is hoped that this will further assist in reducing the overcrowding at Sharpe Hospital. Riverpark will then have a total of twenty forensic patients.

Kevin added that a Systemic Grievance has been filed by Legal Aid regarding privacy issues surrounding the improper use of cell phones by staff at Bateman Hospital. David Sudbeck explained that an extension until April 15, 2011 had been granted to Legal Aid for the employee improvement plans.

VI. PETITIONER REPORT

Jennifer Wagner expressed continuing concern that the million dollars of co-occurring funding described in the Agreed Order was improperly awarded in some cases to programs which were not treatment programs in the traditional sense. Vickie Jones replied that the comprehensives had been offered access to the funds and had not submitted requests for the entire amount, therefore the BHHF had decided to allocate the remaining funds to programs that served the co-occurring population, albeit not in a traditional treatment capacity as discussed with the Court Monitor's Office and at the MOP. BHHF's focus was on reduction of hospital admissions and BHHF staff felt that these program proposals offered some hope of that. Jennifer Wagner agreed that the proposed non-traditional services were important and worthy of consideration but did not meet the description contained in the Agreed Order. Sheila inquired as to the status of the licensing and certificate of need debate regarding these supportive social programs. Vickie stated that the Department had not yet reached a formal decision on the issue and that it was being discussed. Sheila further stated that she was not convinced that outpatient co-occurring intensive programs

were likely to have a significant impact on hospital admissions as the population that was able and willing to cooperate with consistent daily outpatient treatment was unlikely to end up as a committed patient. Nonetheless she agreed with Jennifer's contention that the programs approved by BHHF did not meet the concrete language of the court order.

Jennifer inquired as to whether additional funding could be found to provide outpatient services and stated that she was aware of a couple centers that were interested in providing the service. Vickie advised her there is no additional funding available from the \$1 million originally established for co-occurring disorders but that additional funding was available from the "leftover" supported housing slot funding and that Centers could submit proposals to the BHHF in writing.

VII. BMS REPORT

Cindy Beane stated a TBI Waiver program manager is being hired and that a possible candidate has been selected by Marcus Canaday. She stated that CMS had expressed additional concerns regarding the Department's methodology for selection of a fiscal intermediary. Those concerns may result in an extensive purchasing process that will require months to complete. The fiscal intermediary and operating entity must be in place before CMS will authorize initiation of the program. Therefore BMS expects substantial delay on the project. Cindy stated however that she believed that BMS will be able to begin the program before CMS approval is obtained by using the Money Follows the Person (MFP) grant recently approved by CMS. Nonetheless even the MFP process will require some time to get the infrastructure ready for implementation. Conservatively, BMS expects that it will be at least six more months before the program can begin, even through MFP.

Cindy stated that she expected CMS approval of the State Plan Amendment for ACT in the immediate future. The questions regarding CFT will probably be provided at that time. She believes that the questions will revolve around the issue of "maintenance of functioning" as a treatment goal rather than rehabilitation as required by CMS. Sheila pointed out that the resolution of this issue will directly impact implementation of the recommendations of the CSM report.

VIII. ALTERNATIVE USE OF SUPPORTED LIVING DOLLARS

The small working group on per diem funding has developed an alternative proposal for use of "left over" supported living slots (at this point those slots represent approximately \$800,000 in available funds by the end of Year Three). The proposed alternative will allow Centers to either convert some of the slots they have already requested to a per diem option or, if they have no slots, to access a "pool" of funds that can be used at a rate of \$110 per day to provide temporary housing or staff supervision for individuals at risk of hospitalization/commitment. Craig is working on a methodology for billing the per diem rate from non-traditional funding sources. The alternative option may not be available if a billing methodology can't be identified.

Jennifer stated that the traditional supported living option was a nationally demonstrated beneficial model and she did not want to lose access to slots for providers. Sheila pointed out that the traditional slot allowed providers to keep one or two people out of the hospital for a year, which is of course a good thing. However, this model is much more effective for individuals with persistent mental health problems. Those individuals constitute only about a seventh or less of the

commitments to the diversion and state facilities. Individuals with addictions and personality disorders are much more likely to be committed and also more likely to benefit from the alternative model. Even if each individual received a maximum 30 days of support, the provider and funds are theoretically able to keep 12 people out of the hospital each year.

Jennifer had no problem with exploring the alternative model further but wanted the Department to issue an AFA to all providers allowing them access to the alternative model. Sheila pointed out that providers who already had slots had the ability under the proposal to switch some of their slots to the alternative model and that the purpose of putting the remaining funds into a “pool” was to enable rural and smaller centers access to the funds. Jennifer felt that the rural and smaller centers ought to be able to have access to the traditional slots through an AFA process. The issue will be discussed further once Craig determines if the alternative billing methodology can be utilized.

IX. OTHER

David Sudbeck stated that he had been involved in a meeting of management staff and the state Fire Marshal at Sharpe Hospital regarding the new nursing stations he had recommended in the Sharpe Overbedding report. The Fire Marshal indicated that because the staff committees working on the project had recommended significant architectural changes such as relocating secured medication rooms, the project had become hugely expensive and much more extensive than the Court Monitor had intended. Therefore David will work with the Sharpe staff and the Fire Marshal to develop a revised nursing station, only. He will meet with the group at Sharpe in May.

In conversing with the Fire Marshall, David also discovered that the heating/cooling system within the hospital is non-functioning/in violation and will need to be repaired, at significant cost to the Department. The Department stated that it was aware of this issue and is currently working to resolve this matter as quickly as possible and is following all purchasing procedures to do so. In addition, while a temporary solution is being offered and may be required, a permanent solution for our clients and staff is the priority of the DHHR. David offered the assistance of the Court Monitor in speeding this process up and Kevin Stalnaker stated that he would deliver a full report on the exact status of the process to David by April 27, 2011.

David also handed out HB 3094 that passed the Legislature this session, allowing employees to be refunded the replacement cost of personal possessions damaged in patient or job-related altercations. He is very pleased at the Department’s progress in resolving this small but important issue.

Next Meeting: Wednesday, June 1, 2011
10:00 a.m.-12:00 noon
Covenant House
600 Shrewsbury Street, Charleston, WV 25301