

STATE OF WEST VIRGINIA
THIRTEENTH JUDICIAL CIRCUIT
OFFICE OF THE COURT MONITOR



Report to the
Court and Parties

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

August 25, 2010

■ **INTRODUCTION** ■

As required by an order of the Thirteenth Circuit Court in the matter of E.H. et al v Khan Matin, et al, the Court Monitor is to regularly submit a report to the Court and the Parties with regard to measures agreed by the Parties and/or ordered by the Court. This shall serve as the Court Monitor's second regular report since his appointment in July, 2009.

The report will describe and comment upon the progress made by the Parties with regard to implementation of the court orders on "**Case Management**" (August 7, 2009), "**Traumatic Brain Injury**" (August 7, 2009), and the "**Agreed Order**" (July 2, 2009). A section of the report will also concentrate on the activities of the Special Assistant as they relate to the implementation of a consumer tracking system for individuals committed to either public or private hospitals and her informal findings and recommendations related to the results of the tracking system.

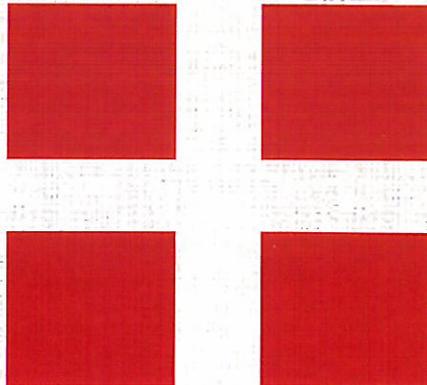
■ **CASE MANAGEMENT ORDER** ■

The Case Management Order addressed three concerns: 1) overcrowding in state operated psychiatric facilities; 2) the effect of the Mountain Health Choices Medicaid program on reimbursement rates for and access to community-based behavioral health services and 3) the contracting of an external consultant to evaluate Medicaid utilization management guidelines for community-based behavioral health services in West Virginia.

With diligent effort, the Bureau for Behavioral Health and Health Facilities has been able to provide reasonable control upon population growth at Bateman Hospital, which for the most part has remained within its licensed capacity for several months. Unfortunately, continued and even accelerated growth in the forensic population at Sharpe Hospital has resulted in steadily increasing overcrowding in that facility as it struggles to contain and serve the forensic population while still providing acute care for a large number of counties in northern and eastern West Virginia. A planned 50 bed addition to the Sharpe facility for the purpose of housing and treating forensic patients was put "on hold" pending a "bed study". The Office of the Court Monitor has asked several times about the results of the proposed study but has received no clear answer from the Department. Meanwhile, Sharpe houses acute care patients in mixed units with forensic patients and acute care patients are sleeping in rooms never intended to house patients. The continued growth of the forensic population and its subsequent impact on the availability of acute care beds is of significant concern to the Office of the Court Monitor.

The Court Monitor submitted his recommendations to the Court with regard to the Mountain Health Choices Program in February 2010. Essentially the recommendation was to remove behavioral health services from inclusion as a restricted service under the Basic Medicaid Plan for MHC members. Although the Department objected to the recommendation, changes in federal regulations that affected operation of the program forced the Department to consider a state plan amendment withdrawing/cancelling the program. The Governor expressed a desire to retain the positive self-responsibility aspects of MHC and the Department is now in discussions with the federal Medicaid agency to identify a method of retaining those aspects. In the meantime however, behavioral health services will be equalized for both the Basic and Enhanced Medicaid populations and barriers to access to behavioral health services to the Medicaid population posed by MHC are due to be eliminated in the near future.

With the agreement of the Parties, the Court Monitor's Office has approved a contract with Clinical Services Management, P.C. (CSM) to conduct a review of Medicaid utilization management guidelines in West Virginia. The first deliverable outlined in the contract has been completed by CSM however purchasing issues raised by the Department of Administration (DOA) delayed official approval of the contract and therefore the first payment. As a result, the consulting firm has not yet been able to conduct its first on-site visit to West Virginia. The Court Monitor and Department of Health and Human Resources have worked diligently to resolve contractual issues to the satisfaction of DOA. The initial coordinating meeting is now likely to occur in August. As a result of the contractual delays, implementation of the project will be delayed far beyond the original timelines. The Court Monitor is optimistic that CSM can complete work in the Fall of 2010, submitting a report of observations and recommendations as a final step in the project.



■ TRAUMATIC BRAIN INJURY COURT ORDER ■

The Court entered an order on March 15, 2010, specifying a time line for the steps necessary for completion of an application to the federal Medicaid agency for a TBI Waiver Program. Said chart was developed with the participation and approval of respondent, petitioners and the Court Monitor. Thus far, all activities on the chart due to be completed prior to the date of this report have been completed and all time lines have been met. Staff of the Office of the Court Monitor has been very active in assisting with this project and the development of the Utilization Guidelines for the waiver. The next expected time-line on the chart will be October 01, 2010, at which time the final waiver application is to be submitted to the Center for Medicare and Medicaid Services (CMS) for the agency's review and approval. An enrollment date for this new TBI waiver program is projected for February 01, 2011, pending timely approval by CMS.

■ AGREED COURT ORDER ■

* **Care Coordinators:** Thirty-five (35) care coordinators will be added to the community-based behavioral health system in fiscal year 2010-2011. The purpose of the coordinators is to prevent unnecessary or avoidable commitment by providing assistance, linkage, advocacy, and transportation to consumers with a history of inpatient commitment or those at risk of commitment. Most of the CBHCs have care coordinators from a prior grant process. The new coordinators will supplement the activities of previously identified staff and in some areas provide an additional and new community-based service. Agreement has been reached that nineteen of the thirty-five coordinators will be employed by the Comprehensive Behavioral Health Centers (CBHC). FY 2010-2011 budgets have been finalized and the funds are available for the CBHCs to employ the new staff. The Office of the Court Monitor understands that 10.2 Care Coordinators have been hired as of the date of this report. An Announcement of Funding Availability (AFA) for the remaining sixteen care coordinators was released by DHHR on June 28, 2010. Those coordinators will be reserved for agencies that are licensed behavioral health centers but are not CBHCs. Proposals are due back into DHHR by July 23, 2010. If an insufficient number of suitable proposals are received, the coordinator positions will be released to the CBHCs.

* **Group Homes:** After the Bureau for Behavioral Health and Health Facilities (BHHF) completed an analysis/study of commitment rates it was decided in the first year to concentrate on developing group homes in Kanawha, Cabell and Wood Counties. These three counties have the highest commitment rates in the state. The Prester Center is scheduled to open a six-bed home in the Huntington area on August 9, 2010. An additional two group homes will be opened in September

2010: one in Huntington and one in Charleston. Westbrook Health Systems is scheduled to open a six bed group home in early fall 2010 in the Parkersburg region. For the most part, group home beds will be utilized to place long term or repeated patients of Bateman and Sharpe Hospitals in the community with adequate supports and supervision. It is expected that the group homes will be long term placements for most individuals.

* **Residential Slots:** Based on the afore-mentioned analysis/study, the majority of the 39 residential slots (transitional supported housing) will be funded in the Kanawha, Cabell and Wood County areas. Prester Center is planning on developing eight supported housing "slots" in Charleston and an additional eight in the Huntington area. These programs are to be initiated by August 2010. Westbrook Health Systems is scheduled to develop sixteen residential slots: 3 in Jackson, 3 in Roane and 10 in Wood Counties. Westbrook is awaiting change order approvals from BHHF before initiating these programs. It is possible that one "slot" will encompass the care of more than one individual depending upon the intensity of service required for each person and the degree to which supplementary services such as Assertive Community Treatment are available. The Parties have agreed that the residential slots will not be 24 hour supervised housing services but the budget for each slot should supply funding for 12 to 16 hours of support per day for one person, or less for two or more.

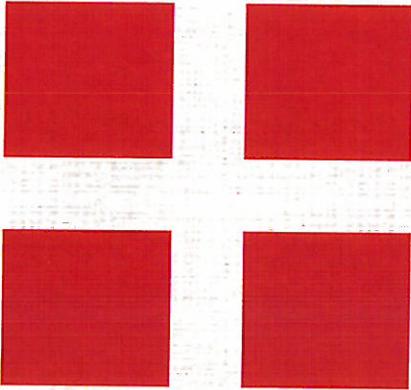
* **Day Treatment Programs:** It has been agreed that Day Treatment Programs will be grant-funded day support programs that will supplement the group home programming structure and supply services to other individuals with persistent mental illness or mild intellectual disabilities with co-occurring mental illness. Because the first year's group homes are to be developed in Cabell, Kanawha and Wood counties, the day programs will be located in those counties as well. Prester Center submitted a proposal in July 2010 and is awaiting review and approval by BHHF. Westbrook has received approval from BHHF to develop day treatment programs in Jackson and Wood Counties. Again, these are pending change orders from BHHF.

* **Prescription Practices:** The Office of the Court Monitor worked with a group of providers and state hospital staff chaired by BHHF to develop a policy/process to ensure consistent prescribing practices and communications between inpatient and outpatient professional staff, including a doctor-to-doctor handoff protocol. The completed policy was reviewed and approved by respondents and petitioners at the June 16, 2010, meeting of the parties. This policy has been distributed to the state facilities and public diversionary hospitals.

* **Unit for dually diagnosed mental health and addictions patients at Bateman Hospital:** This unit required extensive physical renovation of two hospital wards and the recruitment of a physician with expertise in addictions.

One of the two units was opened in Spring of 2010, and the co-occurring unit in June, 2010. Both are now receiving patients and Bateman Hospital's licensed capacity has increased to 110 patients. Addictions continue to pose massive management problems for the system with at least a third and probably half of all commitments occasioned by or complicated by substance abuse and dependence.

***Highland Assessment Unit:** The Highland Assessment Unit is now open with mixed success. The program is essentially a voluntary option for individuals who may be committed from Kanawha County. For whatever reason, a substantial proportion of individuals choose to be committed rather than receive a three day screening and brief intervention on the Assessment Unit. Nonetheless the Unit has been instrumental in decreasing commitments from the Kanawha County area. The program was downsized until demand increases and revisions are implemented in Putnam and Boone county Mental Hygiene processes to allow utilization of the option by those counties as well.



■ **REPORT OF THE SPECIAL ASSISTANT** ■

The role of the Special Assistant is described in the Agreed Order (July 2, 2009) and the Court Monitor Order (July 3, 2009). The Special Assistant is to be responsible for providing oversight for commitments in West Virginia, utilizing, in part, the tracking system created by DHHR in compliance with the Agreed Order. DHHR has created a tracking system which supplies the Office of the Court Monitor with daily reports regarding population levels in state and privately operated contractual psychiatric hospitals and weekly reports with individual demographics for each person committed to a diversion hospital, by location, and each person treated in a state facility. This data includes name, age, county of origin or residence, diagnostic group, length of stay and insurance status as available at the time of commitment. The Special Assistant conducts reviews of newly admitted patients through her access to the electronic records system of the state hospitals. Additionally she visits each diversion hospital regularly, reviewing records and interviewing patients when necessary.

The Special Assistant also meets regularly with the Department and working groups of representatives of the Comprehensive

Behavioral Health Centers to review proposals submitted in compliance with the Court Orders and to discuss problems in the commitment or treatment system across the state.

In the course of those reviews and meetings, the Special Assistant has arrived at some preliminary conclusions regarding the community-based behavioral health system and the state's need for inpatient treatment options relative to the available supply. Those conclusions, and some recommendations, will be available in an extensive report later this year.

■ **STATUS OF THE STATE PSYCHIATRIC HOSPITAL SYSTEM** ■

As identified in the Agreed Order, the Bateman Hospital has completed renovation of two units in an older wing of the hospital. One of these units is identified as specializing in co-occurring psychiatric and substance abuse treatment. The hospital has recruited a psychiatrist who is Board-certified in Addictions Treatment and the Unit recently opened.

As a result of the renovations, the capacity of the hospital has increased by 20 beds. The Bateman license now allows 110 patients. Because of this fact and the efforts of the Prester Center, associated diversion hospitals and Highland Hospital, the Hospital has operated under licensed capacity for months, relieving stress upon staff and other patients.

Unfortunately, the ever-increasing long term forensic population continues to create a crisis in bed availability at Sharpe Hospital. Sharpe has been operating well over licensed capacity for some months, creating crowded conditions and an occasionally hazardous environment for patients and staff. Admissions office staff divert as many acute care patients as possible to private psychiatric beds, however increasing medical complexity, aggressiveness and co-occurring addictions limit the ability of staff to divert many patients. The Office of the Court Monitor is working with the Department to develop potential solutions to the problem of forensic over-population.

■ **REQUEST FOR RESOLUTION** ■

A Request for Resolution was submitted to the Court Monitor and filed with the Court on June 11, 2010 by the Petitioners regarding Respondents' failure to produce documents and the proposed transition of Medicaid to Managed Care for the TANF and SSI Populations. Respondents' filed their response on June 30, 2010 asserting that the Court Monitor should deny the Petitioners request for injunctive relief, and that further investigation in the matter be delayed. On July 26, 2010 the Court issued an order denying Petitioners' Request for Resolution stating at this time the Court finds and concludes that there is no basis for an evidentiary hearing as any proposed future injury as alleged by the Petitioners is purely speculative prior to the implementation of the program.

■ COURT MONITOR OFFICE WEBSITE ■

The website for the Court Monitor's office has been developed and is available for the public to utilize. Reports issued by the Court Monitor's Office and current orders being issued by the court are obtainable on this web page. The website can be accessed by going to www.courtmonitor.wv.gov.

**CARE-COORDINATORS ADDED TO THE BEHAVIORAL
HEALTH SYSTEM IN FISCAL YEAR 2010-2011**

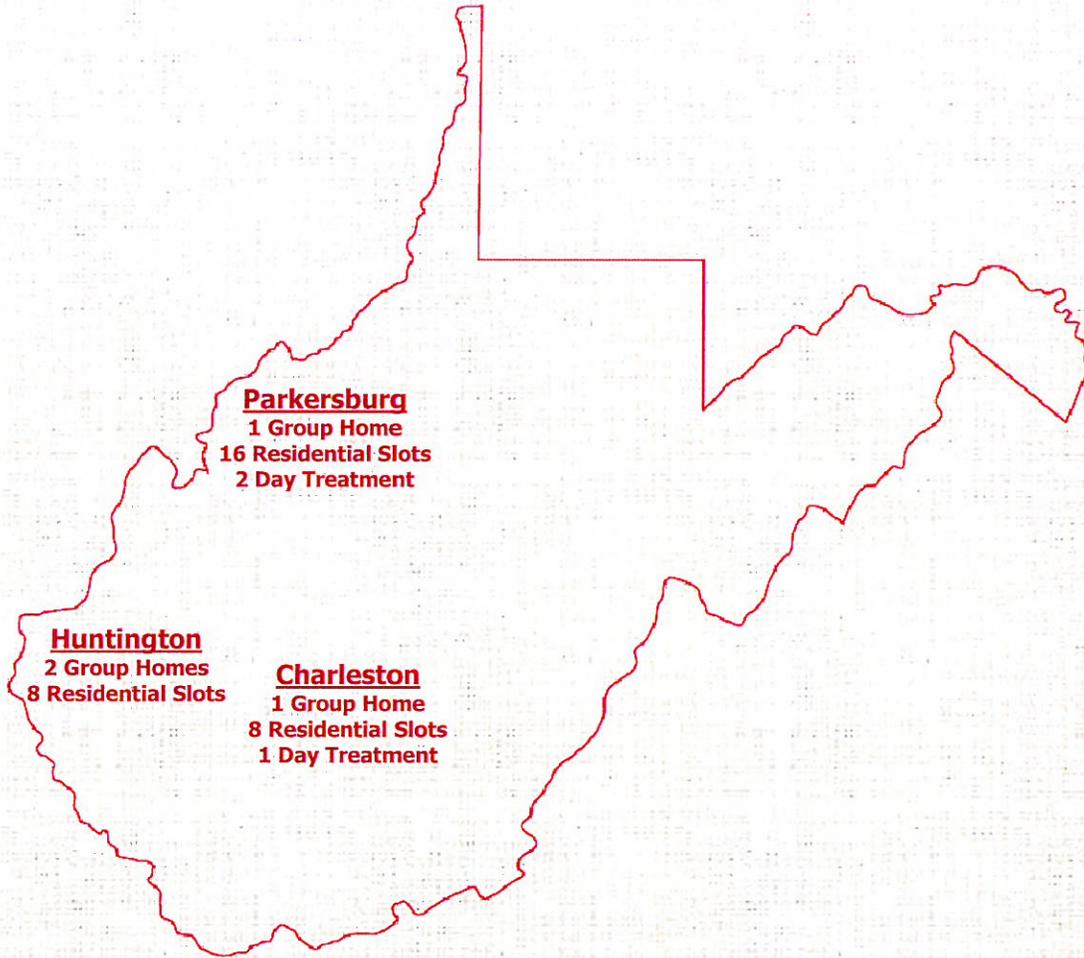
Center Name	# of Care Coordinators Allotted	In Process of Hiring	Already Hired
EastRidge	2		2
Northwood	2	2	
Appalachian	2		2
Southern Highlands	1	1	
Westbrook	2		2
FMRS	2		2
Valley	1	1	
Logan-Mingo	1	1	
Seneca	1	1	
Healthways	2	1	1
United Summit	1	1	
Prestera Center	0		
Potomac Highlands Guild	2		1.2
Total	19	8	10.2

■ SUMMARY ■

The Court Monitor and the Parties recognize that some of the *original time lines* outlined in the court orders have not been achieved but also acknowledge that considerable activity is occurring to comply with the court mandated objectives. This report addresses throughout, many of those activities and provides the court with an update as to the progress being made. One of the major accomplishments made by the Respondent is that there currently is no over-bedding taking place at Bateman Hospital. This is a significant change and provides much relief to the patients receiving treatment and to the staff who work at this hospital.

The Court Monitor is aware of some over-bedding issues at Sharpe Hospital and is observing carefully the actions of Respondents as they attempt to address and resolve this problem.

Program Development - Map



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To The Court Monitor



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Court Monitor



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To The Court Monitor