

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.*

May 1, 2011

## ■ 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 third 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 ■

### I. UTILIZATION MANAGEMENT CONSULTATION

In November, 2010, Clinical Services Management (CSM) was finally able to begin working on the contract described in the Case Management Order approved by Judge Bloom in 2009. This order requires that "...DHHR shall hire an independent national expert...to review utilization management guidelines that govern authorization for community mental health services....The Court Monitor and the parties shall review these recommendations and work to come to an agreement regarding these recommendations".

Although the report was to have been finished no later than March 1, 2010, contract procurement issues with state government held up the starting date of the work for many months in spite of conscientious effort by BHHF to move the contract through the purchasing process.

CSM met with the coordinating team representing all of the Parties and some provider agencies as an initial step in development of recommendations. Subsequently, members of the CSM team interviewed a broad variety of stakeholders across the state including staff and management from acute hospitals, state hospitals, consumer agencies, advocacy agencies, provider agencies, third party administrators, and state agencies. In addition CSM performed a survey of all executive directors of the comprehensive community behavioral health agencies, both by telephone and by internet. Behind the scenes, CSM conducted a review of several state Medicaid behavioral health plans the agency judged to be similar in structure and demographics to West Virginia. Those states included Iowa, Nebraska, and Texas. One

confounding variable in the work of the agency was West Virginia's exploration of implementation of Managed Care during the time frame in which CSM was reviewing and interviewing stakeholders. This issue consumed so much of the focus and concern of stakeholders that the report, by necessity, includes several references to Managed Care implementation. This implementation is currently on indefinite hold.

By February 11, 2011, CSM submitted an initial draft for review by the Parties. The report is well over 200 pages and includes a broad variety of recommendations that touch upon many aspects of the West Virginia behavioral health system in addition to the Medicaid utilization management issues identified in the Case Management Order. The draft is being reviewed by the Parties for accuracy and comment, which is to be provided by mid-April. It is expected that the report should be available for general release by mid-May, 2011.

### II. OVER-BEDDING IN THE STATE HOSPITAL SYSTEM

The most recent reinvigoration of the Hartley court case was triggered by a report done by the Behavioral Health Ombudsman regarding "Over-bedding at Mildred Mitchell Bateman Hospital" issued in 2008 and a subsequent report completed by the Court Monitor in 2010 entitled "Over-bedding at William R. Sharpe Hospital". At the time these reports were written, each of the state operated psychiatric facilities was operating well above their licensed capacity, Bateman by 20 patients or more per day in 2008 and Sharpe by a similar number in 2010. The overcrowding of the facilities was causing increasing disruption to patient care and to patient and staff safety.

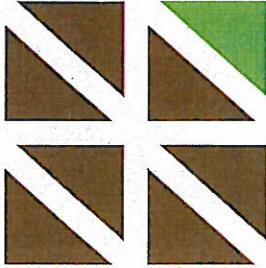
Due to diligent effort by management and staff at the hospitals and Central Office of BHHF, Bateman has not been over its licensed capacity for any length of time dating back to December, 2009.

Bateman's licensed capacity was increased by the opening of two newly renovated additional units that added 20 beds to the Bateman resources and admissions staff have put many hours into diverting patients whenever possible to private psychiatric facilities. This allows patients to receive care in their home communities, cost of care is offset by Medicaid and Medicare in many hospitals, length of stay is generally much shorter, and Bateman is able to operate within its licensed capacity. On average, over 50 patients are diverted to private hospitals from the Bateman catchment area on any given day.

Similarly, Sharpe has managed to control the size of the hospital's population by diverting ten patients to a specially designated forensic unit at Riverpark Hospital, diverting a few forensic patients to Bateman (approximately 23 at any time) and by diverting as many patients as possible to private psychiatric facilities. On average 40 to 50 patients per day are diverted from Sharpe to private facilities.

In this manner, Sharpe, too, has remained very close to its licensed capacity for the past several months. This has caused great relief to staff and patients, who experienced considerable stress under the crowded conditions existing previously.

The Office of the Court Monitor would like to recognize the effort, cooperation, and diligence displayed throughout this very challenging time by management at DHHR, BHHF and the two state hospitals. It is evident that the management staff of all three entities are concerned about the safety and well-being of staff and patients and about the quality of behavioral health care available to the citizens of West Virginia.



### ■ TRAUMATIC BRAIN INJURY COURT ORDER ■

The Court entered an order on March 15, 2010, stipulating the time lines that the Bureau for Medical Services should meet for the completion of an application to the federal Medicaid agency for a TBI Waiver Program. The specified activities were performed in compliance with the timeline and the application for a waiver was submitted to the Center for Medicare and Medicaid Services (CMS) on October 1, 2010. In January of 2011 Respondents were notified by CMS that the agency was requesting additional information from West Virginia DHHR and that the 90 day "clock" (timeline within which the agency operates in responding to an application) was formally stopped until questions were answered and agreement is reached. Once the requested information is received and accepted by CMS, the agency will "restart" the 90 day response period. This action by the federal agency, CMS, has effectively postponed the implementation of this waiver program, which was tentatively to begin enrollment on February 1, 2011. DHHR's Bureau for Medical Services is currently working with the CMS to provide the necessary information to allow CMS to approve the waiver application. This year, House Bill (HB) 2349 was introduced into the West Virginia legislature to provide a funding source for the TBI Medicaid Waiver and to establish and fund a TBI Trust Fund. This legislation did not pass, but the Governor modified his original budget (HB 2012) request to include \$800,000 for the TBI Medicaid Waiver program. These funds will allow for the state to pull down a federal match in funding which would total approximately \$2.4

million for the TBI Waiver program. The Supreme Court filed their Memorandum decision on TBI on April 1, 2011 affirming the August 7, 2009 Order of the Circuit Court of Kanawha County by Judge Bloom.

### ■ AGREED COURT ORDER ■

The Bureau for Behavioral Health and Health Facilities (BHHF) completed an analysis/study of commitment rates by geographic area in order to guide the Parties in selection of those providers to be given priority in development of the programs specified in the Agreed Order. In conjunction with the Parties, the BHHF then identified the Prester Center and Westbrook Health Systems as Year One providers; FMRS, Valley and Northwood as Year Two providers and Southern Highlands and United Summit Center were identified for Year Three. The Court Monitor's Office coordinated meetings among the Providers and the Parties for each year's targeted services.

Most of the community programs that were identified for Year One are currently operational. These programs will continue to be funded in subsequent years and include group homes, day programs and supported living slots as described in the Agreed Order. Location of these programs and those for the following years are identified in the enclosed map of West Virginia.

BHHF has received proposals for the programs required in Year Two's service array. Some programs are currently in the early stages of operations, other providers are completing necessary budgetary and contractual processes with the Department.

Proposals for programs for Year Three are to be submitted by early May. If all contractual materials and approvals are complete, funding will be allocated to Year Three providers beginning July 1, 2011.

Funding has continued to be provided to support the thirty-five (35) care coordinators that were added to the community behavioral health system in Year One. Although the BHHF has made funding available for the independent Care Coordinators specified in the Agreed Order, licensure issues have delayed implementation of these programs. The majority of the programs who provided proposals for independent care coordinators are community social service agencies who are not licensed behavioral health centers. The Department is awaiting a legal decision as to whether care coordination is to be clearly classified as a behavioral health service necessitating a behavioral health license. Should such a requirement be imposed, the agencies will be even more significantly delayed in implementing these programs as they will be required to obtain Certificates of Need and Behavioral Health licenses in order to qualify for the funding made available by the Bureau.

The Department has been conscientious in complying with the Court's "Agreed Order". Contained in this report is a breakdown of the funding allocations that have been committed thus far for the support of community programs. *Chart A* demonstrates that \$2,286,187 was disbursed in Year One. *Chart B* establishes that an additional \$7,726,159 will be disbursed for the development of community programs in Year Two. This amounts to approximately 10 million dollars of increased funding for community based mental health and substance abuse programs over the first two years of implementation of the Agreed Order.

The Comprehensive Behavioral Health Centers have been equally committed in conceiving and developing the sorts of community based programs necessary to address the unique challenges of their particular constituent base.

Because of continued controversy over crisis stabilization programs, the Court Monitor's Office coordinated a joint meeting with representatives of the Comprehensive Behavioral Health Centers and the Parties to attempt to clarify and address the issues regarding Crisis Stabilization Services outlined in the Agreed Order. This meeting resulted in the development of a "crisis stabilization plan of action" with identified objectives and timelines.

In addition, a working sub-group facilitated by the Special Assistant addressed the following specific objectives:

- Identification of a consistent definition of CSU patient eligibility and level of care;
- Evaluation of placement and utilization of current beds statewide;
- Assurance that exclusionary criteria for patients are not overly restrictive;
- Evaluation of the current reimbursement mechanism vis a vis the Bureau's charity care methodology; and
- Determination as to whether some units could include additional or alternative services such as detoxification or "step down" from acute care in order to utilize resources to an optimal extent.

The working subgroup has concluded its work but has "spun off" a smaller group to develop recommended per diem rates for the alternative service types conceived by the main group. The results of that group are pending at the time of this writing.

### ■ REPORT OF THE SPECIAL ASSISTANT ■

The Special Assistant to the Court Monitor is tasked, according to the Court Order, with "oversight of commitments as the parties agreed to in the Agreed Order". That Agreed Order states: "Beginning on July 1, 2009, DHHR shall provide oversight for individuals who have been committed to either public or private hospitals through (a) the implementation of a consumer tracking system; (b) a tracking Memorandum

of Understanding and (c) oversight by the Office of the Ombudsman for Behavioral Health, which shall employ at least one full-time individual to oversee this function no later than September 1, 2009".

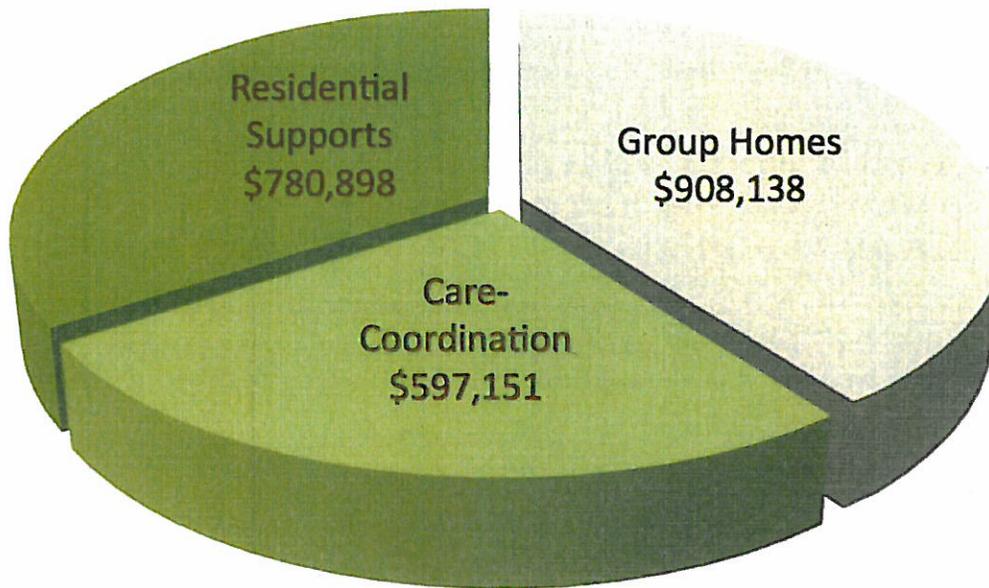
The Special Assistant released a report in January, 2011, analyzing commitments to state and private psychiatric hospitals for the months of November and December, 2010. As a result of that analysis and her work in the preceding year, she recommended the following:

- Creation of a separate inpatient forensic psychiatric program;
- Inclusion of local psychiatric hospitals into a continuum of community-based psychiatric care;
- Creation of distinct units in the state hospital system for adults with developmental disabilities and consequent severe behavioral problems;
- Revision of the behavioral health standards for Certificate of Need and licensure;
- Development of a comprehensive short and long term substance abuse treatment plan including incorporation of local drug courts into community based systems of care;
- Identification of separate job functions for DHHR guardians with increased accountability for location of placement and participation in treatment and placement planning;
- Development of a peer review process for Mental Hygiene Commissioners;
- Re-evaluation of the role of community-based Crisis Stabilization Units;
- Revision of the BHHF charity care funding methodology;
- Increased availability of transitional and crisis housing in all areas of the state; and
- Increased accessibility to detoxification in the community.

### ■ REQUEST FOR RESOLUTION ■

Mountain State Justice (MSJ) filed a Request for Resolution on October 20, 2010 expressing concerns about the quality of advocacy services provided to patients hospitalized at Sharpe Hospital. These services are currently provided by Legal Aid Services under contract with the Bureau for Behavioral Health and Health Facilities (BHHF). As a result of the Request for Resolution, the Court Monitor conducted an investigation of advocacy services provided at the hospital over a period of several months and in March, 2011 produced a report essentially supporting the concerns expressed by MSJ. The Monitor held a series of meetings with the BHHF and Legal Aid and a preliminary plan of action to resolve the concerns was supported by all. The BHHF submitted a formal response to the Court on March 24, 2011, indicating that the BHHF had found merit in the Monitor's formal recommendations and was determined to correct the problems identified.

**Chart A**

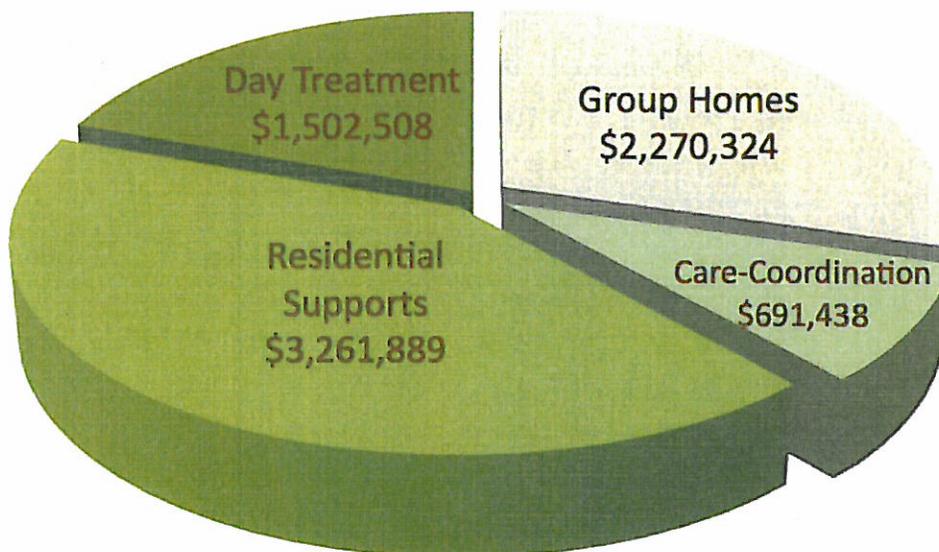


**YEAR ONE**

**SFY-10**

**\$2,286,187 Awarded for Community Program Development**

**Chart B**



**YEAR TWO**

**SFY-11**

**\$7,726,159 Awarded for Community Program Development**

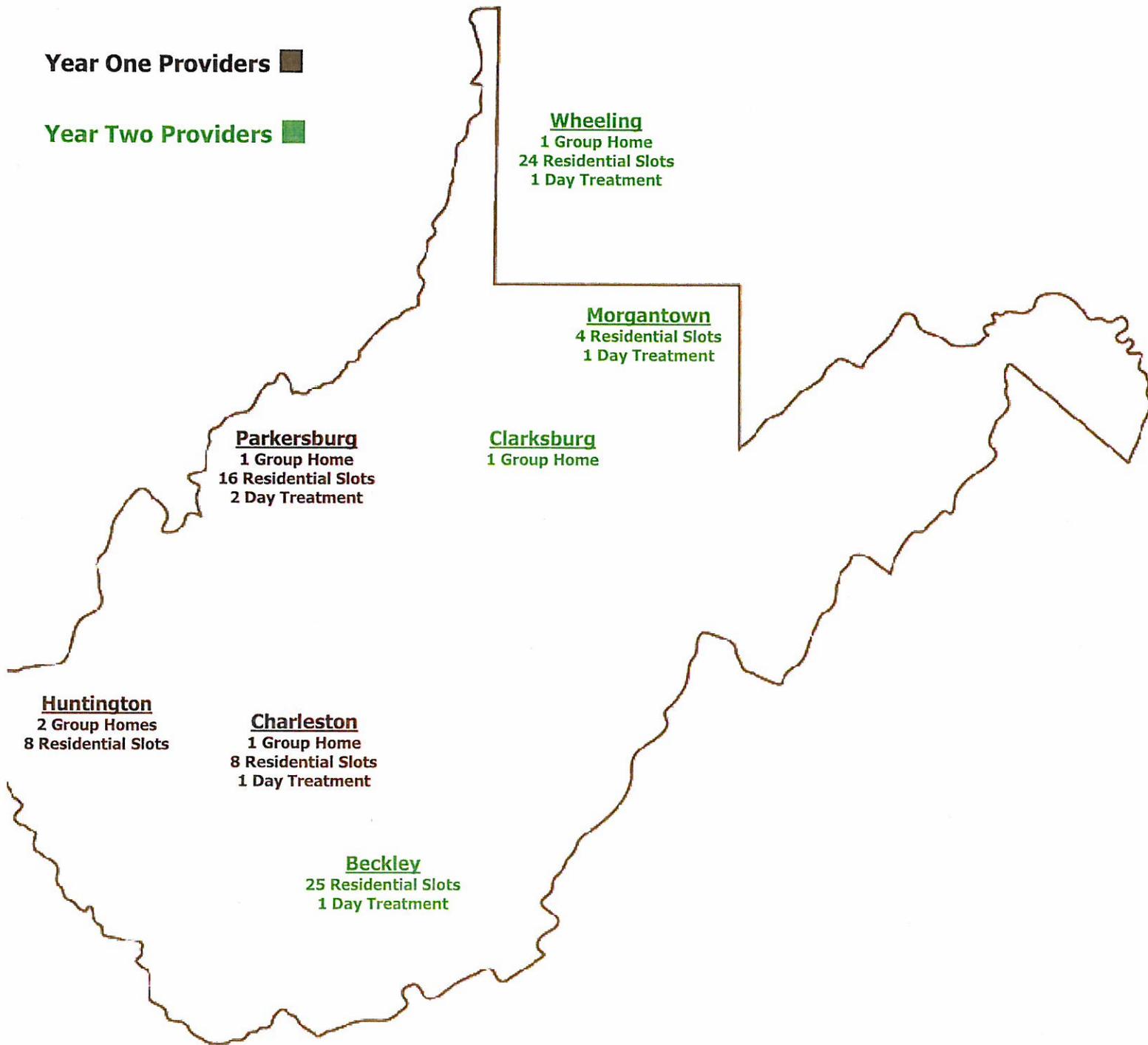
■ [COURT MONITOR OFFICE WEBSITE](#) ■

Reports issued by the Court Monitor's office, Meeting of the Parties minutes and current court orders being issued by the court are obtainable on this web page. The website can be accessed by going to [www.courtmonitor.wv.gov](http://www.courtmonitor.wv.gov).

# Program Development Map for 2010-2011

**Year One Providers** ■

**Year Two Providers** ■



Sheila Kelly  
Special Assistant  
To The Court Monitor

David G. Sudbeck  
Court Monitor

dan connery  
Administrative Assistant  
To The Court Monitor