

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.*

**TUESDAY, FEBRUARY 21, 2012**

### MINUTES

**PRESENT:** Allen Campbell, Kevin Stalnaker, Vickie Jones, Cindy Beane, Dee Weston, Dan Hedges, Susan Perry, Wendy Elswick, Regenia Mayne, Teresa Brown, Kim Stitzinger Jones, David G. Sudbeck, Sheila Kelly, dan connery

#### **I. COURT MONITOR REPORT**

David Sudbeck informed the Parties of his meeting with the Behavioral Healthcare Providers Association regarding the issues raised in court about Memoranda of Understanding among the Department, the providers and the mental hygiene system. The Providers felt that such memoranda were not helpful, reiterating most people's belief that they needed to be locally negotiated to deal with local issue. The providers preferred an option of pursuing changes in the Agree Order.

Wendy Elswick expressed concern that the Providers have no formal status in the Agreed Order and therefore have no ability to suggest changes to the Order. Plaintiff and the Department agreed to amend the section of the order dealing with the MOUs and essentially consider the issues resolved. Wendy also stated that Respondent would be more than glad to meet with Providers regarding their concerns. She will compose a draft amendment to be distributed and commented on by the Parties.

David Sudbeck also informed the Parties of his recent visit to Potomac Center. He was generally pleased with conditions and services there and commended Beth Morrison as a great addition to the group. At this time, only two children were in the program longer than the two year time limit.

## II. BHHF REPORT

Vickie Jones informed the Parties that the Department had received a revised proposal by United Summit Center to use funds originally allocated to the creation of a group home in order to add an additional eight longer term (30 days) substance abuse or dually diagnosed treatment beds to the complement agreed upon in the last MOPs for a total of 26 beds in the site near Summit's main office devoted to substance abuse and dual diagnosis. The Parties believe that group homes are vital to keeping individuals with persistent mental illness in community settings and therefore elected to deny the request from Summit.

Vickie also updated the Parties regarding the sections of the Agreed Order that had been highlighted in the recent court hearing:

3c) A draft document was distributed that had been developed based on the aspects of Chapter 27 that address the issue of gatekeeping. The Parties will examine and return comments to Vickie regarding this document.

3e) The Department has allowed CSU's to utilize sites as step-down since 2007 and for commitments since 2009. At rates that had either been established based on Medicaid rates, proposed by the CBHCs and agreed to by the DHHR or established by the DHHR and agreed to by the CBHCs providing the services. The rates established include the following: Step Down - \$275/day; Detox - \$325/day; Commitment - \$500/day; Crisis – based on Medicaid rate. Because there were concerns expressed by some that they weren't aware you could use the CSU's for step down, Kevin agreed to send out another contract for this service to see if other Providers would also like to provide step down beds. Kevin Stalnaker is in the process of analyzing data and responses from providers to a draft contract between the providers and the BHHF before trying to create a final written agreement with each CSU provider that addresses the many issues surrounding the use of step-downs. This contract will be sent out right away. Vickie stated that while some providers agreed to accept the daily rate offered by the Department, others felt that it was too low. This seemed to be a major and inconsistent barrier to use of CSUs for longer term stepdown. Kevin agreed, at David Sudbeck's request, to confirm his findings in writing to the Parties, once they are complete. It was agreed this was completed by the DHHR as well since the DHHR has utilized CSUs for both step downs and for commitments since 2007 and 2009, respectively.

3f) An amendment to the Order is forthcoming with regard to MOUs.

8) Sheila is in the process of identifying how broadly the Physician Handoff Protocol has been distributed and implemented. She has visited four of the eight facilities widely used by BHHF as diversion hospitals. In at least two hospitals, the protocol had not been distributed from management of the hospital to line staff for implementation. St. Mary's discharge planners are intimately familiar with the protocol which they use daily. BARH is very pleased the FMRS has a discharge planner involved in unit activities daily and the planner participates in unit staffings. BARH also is pleased with the participation they receive from Seneca's linkage worker. Highland and the Pavilion have no familiarity with the protocol at the line level of implementation. It was agreed this was completed by the DHHR.

10b) Kevin Stalnaker is in the process of producing a document that will define and separate mandatory and voluntary overtime with explanations of overtime usage with regards to acuity, call-offs, high census, scheduling conflicts and the like.

10d) Monitoring is an ongoing process aided by the audits conducted by Legal Aid.

Vickie also commented on the Highland Assessment Unit. Though the program was initially focused on the mental health/illness population, the Department is working in the Legislature to add addictions to the reasons the unit may be used as a diversion from commitment. It has also been expanded beyond the borders of Kanawha County to Lincoln and Boone counties. Susan Perry stated that the Legislative committee agreed to move the bill forward but insisted on having the Department re-initiate the program in the Legislature next year as Legislators had concerns regarding due process for participants.

### **III. PETITIONER REPORT**

Petitioner had no report at this time.

### **IV. BMS REPORT**

Cindy Beane stated the TBI Waiver is operational, and that a letter for referral has been sent to facilities and providers to initiate enrollment. She also stated that the policy should be online sometime within the week. She also plans to contact facilities to confirm receipt of the letter of notification in the near future.

### **V. SPECIAL ASSISTANT REPORT**

Sheila discussed her recent visits to four of the eight most-utilized inpatient hospitals. She continues to observe consistent indications that people are not being inappropriately placed in inpatient facilities although a small number may have gone without commitment. Average length of stay remains low for most patients. Lack of placement alternatives is the primary cause for individuals to be in facilities for longer than 10 to 12 days. At times, hospitals have immense difficulty re-stabilizing patients for their psychotic states, and those patients end up being transferred to Bateman or Sharpe for long term treatment. She intends to visit the remaining four facilities in the next month. It is her impression that in the main, certifiers are cautious to not commit people unnecessarily and in fact, has observed at least two incidents in which certifications were denied, only to have the individuals return two to three days later with a serious suicide attempt.

Next Meeting: Monday, April 9, 2012  
10:00 a.m.-12:00 noon  
Covenant House  
600 Shrewsbury Street, Charleston, WV 25301