

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, JULY 13, 2011

### MINUTES

**PRESENT:** Vickie Jones, Allen Campbell, Michael Bevers, Kevin Stalnaker, Susan Perry, Molly Jordan, Regenia Mayne, David Estep, Cindy Beane, Jennifer Wagner, Belle Manjong, Wendy Elswick, David G. Sudbeck, Sheila Kelly, dan connery

#### I. COURT MONITOR REPORT

David Sudbeck asked if the suggested amendment to the Potomac Center Order appointing an advocate had been completed. Jennifer indicated that she and Wendy had consulted and now had a final draft. Jennifer Wagner, Wendy Elswick and David Sudbeck reviewed the draft, approved it, and signed. David will review with Judge Bloom when he meets with him.

David reminded the Parties of the Evidentiary Hearing before Judge Bloom on July 19, 2011. He urged the Parties to provide witnesses who are capable of definitively answering questions regarding purchasing at the hearing. Wendy indicated that she had not been sure as to the rules regarding producing the names of witnesses prior to the hearing but that she was more than willing to do so if that were the custom. The following individuals will be present and prepared to testify:

Vickie Jones, Commissioner  
Kevin Stalnaker, Deputy Commissioner, BHHF  
Cindy Beane, Deputy Commissioner, BMS  
A representative from BMS Fiscal office (possibly Tina Bailes, Deputy Commissioner)  
Brian Rosen from DHHR Purchasing  
An Advocate from Legal Aid (tentatively)

Wendy will be the counsel of record for the Department.

David distributed a document charting the average monthly admissions and diversion from both Sharpe and Bateman from October 2009 to June 2011. It is clear from this document that Bateman has been under the facility's licensed capacity throughout the period with the exception of June, 2011, however Sharpe had been consistently over capacity, primarily due to the ever-increasing forensic population in that facility. Sheila has been reviewing admissions and diversions since late 2009 and indicates that very few individuals are inappropriately committed. Inpatient psychiatric capacity has been challenged over the last few years in state facilities and in private facilities. Sharpe and Bateman between them are diverting 100 patients per day or more yet the state facilities remain overcrowded. The group agreed to discuss the nature of admissions and the need for appropriate services at a later date. David indicated that he had provided the monthly census information to Judge Bloom in anticipation of the Evidentiary Hearing.

Sheila stated that in some areas of the state, mental hygiene hearings are not being held forthwith, as required by statute (the definition of forthwith is not clear in the statute). Kanawha county and some northern panhandle counties were given as examples (not including Ohio county). This creates considerable problems for emergency rooms at OVMC, CAMC and Thomas, in particular, where patients sometimes sit for 12 hours, and in some cases, for entire weekends, often creating considerable disruption. There was discussion regarding the chain of command for mental hygiene commissioners. The circuit judges are ultimately responsible for appointing commissioners in their circuit. Sheila has suggested a peer review process for mental hygiene commissioners on several occasions but no action has been taken. This is a systemic problem that needs to be addressed.

David also relayed that he was pleased not to have heard any complaints/grievances regarding the heating/cooling issues at Sharpe. Regenia Mayne also reported that she had received no complaints regarding the same issue. Susan Perry indicated that the contractors were hard at work at the facility and were making progress daily on maintaining and repairing the problems.

## **II. BHHF REPORT**

Molly Jordan explained that she is heading up a work group to implement recommendations set forth by the Clinical Services Management Report. A date for the first meeting of this group should be achieved by the end of the week (and in fact is now scheduled for August 5). David Sudbeck suggested possible attendance by a representative from CSM via teleconferencing if necessary at some point. Jennifer Wagner inquired as to the possibility of establishing timelines for implementation at this first meeting and Molly stated that if possible, the group would do so.

Vickie Jones presented information from a draft summary regarding funding and program implementation of the Agreed Order. Information for Years One, Two and Three was provided with respect to Community Supports, Supported Housing, Residential Supports, Day Treatment, Care Coordination and Charity Care. This information was not in a finalized report and therefore not available for distribution. Vickie assured the Parties that a final version would be available before the Evidentiary Hearing on Tuesday, July 19, 2011. She stated that at a minimum, almost 21 million dollars in new funding has been and/or is being injected into the community-based behavioral health system over the past three years. She further indicated that some funding remains

available from the agreed order from supported housing positions not yet identified. Sheila suggested that transitional programs for substance abusers who have “graduated” from residential treatment programs or residential treatment programs for women with addictions would be very useful. The Department will come back with some suggestions. Sheila offered to assist.

Additionally, Vickie stated that she had circulated an email to comprehensive providers to ask if anyone had an interest in the remaining unallocated supported living slots. Pretera had requested six to eight and Healthways in Brooke and Hancock had requested 20. Sheila felt that this was far too many slots for a small center and will do further research on the commitment and diversion rates from Healthways counties. Westbrook had also requested some slots although the center did not specify a number. Vickie stated that on recalculation, it appeared that only 10 slots remained unallocated and that she currently had sufficient requests to allot all of those.

Sheila and David expressed interest in knowing what exactly was being done with all of the funding allocated and they intend to visit some or all of the locations in the coming year to find out.

Vickie described Substance Abuse Round Table meetings that she had attended along with Acting Governor Tomblin in the past week. She stated that Governor Tomblin has had interest in substance abuse programming and problems for many years and is committed to addressing relevant issues. She explained that starting October 1, 2011, Substance Abuse and Mental Health Federal Block Grants will be integrated. There will be a Substance Abuse Planning Council to work with the Mental Health Planning Council to consult with BHHF on relevant issues with regard to block grant allocation and strategic planning. The Planning Councils will be advisory in nature. The Department has posted an Announcement of Funding Availability for both councils on its website, along with numerous other AFAs for community based consumer operated services.

### **III. PETITIONER REPORT**

Jennifer Wagner had no report at this time.

### **IV. SPECIAL ASSISTANT REPORT**

Sheila discussed recent data regarding commitments from 2009 to the present fiscal year. She will have a final version of that data this week (that data is attached). Overall since 2009 commitments have dropped slightly, however in the past year, less than 1%. She provided an analysis of May admissions to Bateman which indicate that 65% of admissions in that month have co-occurring or primary diagnoses of substance abuse. 25% of individuals committed to Bateman are already involved in intensive community programming such as ID/DD waiver, mental health group homes, homeless assistance programs and/or ACT. Often they stop taking their medications and providers have no ability to force them to do so. Over time individuals become psychotic and require a return to Bateman for restabilization. Most providers, Pretera in particular, have been very cooperative in taking people back into intensive programs once they are stable. Nonetheless the point to be made is that individuals with substance abuse diagnoses tend to be non-cooperative in treatment programming and followup and will therefore relapse, requiring re-hospitalization. Individuals in intensive programs tend to require episodic rehospitalization as an expression of their

illness. She believes that focus on community based programming needs to be shifted somewhat from programming for individuals with chronic psychiatric illness to programming for individuals with substance abuse problems and acute crises. The group discussed this only briefly as time was running out.

Sheila briefly described her recent activities with regard to revising the Chapter 27 code and the Behavioral Health rules and regulations followed by the Certificate of Need standards. One recent activity is the development of a small subcommittee of comprehensive executives to define and clarify the roles and functions of a comprehensive community mental health center. Jennifer expressed interest in participating in such discussions as her schedule permitted. Sheila welcomed her to the group.

Lastly, Sheila expressed concern that she was receiving multiple complaints from providers, advocates and hospital staff that many of the Centers do not have sliding fee scale for individuals who are uninsured and some require full or partial cash payments for services that should be covered by the Center's charity care allocation. Some Centers are not accepting Medicaid payment for substance abuse services covered by Medicaid. Jennifer asked if the Department had a payment mechanism for uninsured individuals and was assured that the charity care funding methodology was designed for just such patients and instances. The group was very concerned and is interested in looking into it further.

## **V. BMS REPORT**

Cindy Beane stated the ACT Medicaid plan amendment has been approved and that a group is being established to revise and update the policy. In the meantime, individuals with mental health problems and ID/DD are being accepted into the program.

She informed the group that Money Follow the Person will kick off in August and that she hopes that this will address the needs of some individuals with TBI until the waiver can be approved. She also stated that BMS has requested an extension regarding questions from CMS on community focused treatment (CFT). CMS has indicated to BMS that it is very concerned with language in the Utilization Manual regarding CFT that implies that maintenance of functioning is an acceptable goal for the program. This is in contradiction to CMS guidelines for reimbursable treatment by Medicaid. BMS is working with providers to develop program language in the UM guidelines that will satisfy CMS's concerns.

David Sudbeck requested a timeline for enrollment for the TBI Waiver. After discussion and additional input from Susan Perry, it was decided that a possible estimate for enrollment would be early 2012.

## **VI. OTHER**

Kevin Stalnaker informed the group that Karen Woofter had resigned her position as an advocate at Sharpe and that Legal Aid was in the process of posting her position.

Next Meeting: Wednesday, August 31, 2011  
10:00 a.m.-12:00 noon  
Covenant House  
600 Shrewsbury Street, Charleston, WV 25301

## SUMMARY

### MAY 2011 ADMISSIONS TO BATEMAN HOSPITAL

Prepared July 8, 2011 from records of admissions

Office of the Court Monitor

Total admissions: 59

- Male: 41
- Female: 18

140 total referrals to Bateman for psychiatric hospitalization in May.

Eighty one (81) were diverted to private psychiatric facilities.

Of the 59 admitted to Bateman, the following is true:

- 38 (65%) had co-occurring diagnoses or primary diagnoses of substance abuse.
- 39 (66%) had a history of prior admissions for psychiatric or substance abuse treatment to state or private programs.
- 13 (22%) were homeless. Several were involved in rapid rehousing projects in the Huntington area.
- 15 (25%) were already receiving intensive community-based services such as group home, waiver, supported living or ACT.
- 1 individual was identified as a sex offender.
- 2 individuals were referred from the regional jail (one had been released back to the jail as stable within the month of May and again had to be referred back to Bateman).
- 7 (12%) were identified as having intellectual or developmental disabilities (almost certainly there were more with mild impairments).
- 1 individual was transferred from Lakin as psychiatrically unstable.
- 3 individuals were either admitted twice within the month or were discharged and readmitted within the month.
- 2 individuals had very high levels of alcohol upon admission (BAC .298, .137).
- Two individuals were transferred from Highland (one from the TPC).
- One individual was transferred from the Goode Center as unmanageable.
- One individual was readmitted from IEMC.
- 3 individuals were over age 64.
- Only two individuals were under age 22 in this month.

## COUNTY OF ORIGIN

- Mason: 7
- Cabell: 16 (27%)
- Jackson: 1 (committed from ER at CAMC)
- Wayne: 3
- Out of State: 4 (committed in Cabell)
- McDowell: 2 (one from regional jail)
- Boone: 3
- Putnam: 2
- Kanawha: 8 (two from Highland)
- Lincoln: 5
- Logan: 2
- Raleigh: 1 (committed from Cabell)
- Fayette: 1 (committed from CAMC)
- Mercer: 3
- Marion: 1 (committed from Cabell)

Non-Forensic  
Hospitalizations by County by State Fiscal Year

Name of County	2009	2010	2011
Barbour	3	1	14
Berkeley	40	27	34
Boone	22	10	31
Braxton	6	10	9
Brooke	9	8	13
Cabell	136	131	207
Calhoun	5	2	7
Clay	9	5	4
Doddridge	5	4	8
Fayette	34	57	47
Gilmer	6	9	4
Grant	12	13	6
Greenbrier	48	52	68
Hampshire	5	6	14
Hancock	9	16	25
Hardy	8	13	6
Harrison	95	109	110
Jackson	37	29	39
Jefferson	14	18	22
Kanawha	590	555	492
Lewis	56	42	29
Lincoln	53	63	62
Logan	102	105	70
Marion	125	109	115
Marshall	100	67	75
Mason	59	74	92
McDowell	28	20	25
Mercer	140	77	56
Mineral	17	18	12
Mingo	43	41	49
Monongalia	102	127	113
Monroe	7	10	10
Morgan	2	5	3

Forensic Only  
Hospitalizations by County by State Fiscal Year

Name of County	2009	2010	2011
Barbour	2	2	2
Berkeley		3	1
Boone	1	1	3
Braxton		2	1
Cabell	3	2	4
Clay		1	0
Doddridge	3	5	2
Fayette	2	1	3
Gilmer	2		0
Grant			1
Greenbrier			1
Hancock			2
Hardy	1	2	0
Harrison	3	5	3
Jackson	1		0
Jefferson	1	2	2
Kanawha	5	13	13
Lewis	2		1
Lincoln	1	1	0
Logan	3		3
Marion	1		5
Marshall	2	5	5
Mason	2	2	0
McDowell			2
Mercer	5	5	1
Mineral	1		3
Mingo	1	2	2
Monongalia	1	1	2
Monroe	2	1	1
Morgan	2		1
Nicholas		1	1
Ohio	5	3	2
Pocahontas		2	0

Nicholas	32	38	15	Preston	3		1
Ohio	209	186	203	Putnam		1	1
Out of state	133	174	132	Raleigh	5	9	6
Pendleton	5	7	7	Randolph		3	4
Pleasants	6	6	6	Roane			1
Pocahontas	16	12	22	Summers	1		1
Preston	44	26	27	Taylor	1		1
Putnam	67	66	59	Tucker		1	0
Raleigh	117	97	96	Unknown		1	0
Randolph	21	9	27	Upshur	2	5	1
Ritchie	25	24	15	Wayne		1	1
Roane	12	23	22	Webster	1		1
Summers	5	13	4	Wetzel	1		1
Taylor	46	31	26	Wood	3	4	0
Tucker	4	12	5	Grand Total	69	86	91
Tyler	8	7	5				
Unknown	29	12	24				
Upshur	19	9	22				
Wayne	80	51	58				
Webster	9	3	7				
Wetzel	78	65	64				
Wirt	14	17	9				
Wood	342	332	305				
Wyoming	20	28	27				
Grand Total	3268	3081	3058				

Revised 7/13/2011