

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 JUNE 16, 2010

### MINUTES

**PRESENT:** Deron Wilkes, Susan Perry, Vickie Jones, Jennifer Wagner, Natalie Atkinson, Charles Dunn, Teresa Brown, Chad Webb, Joshua Martin, Belle Manjong, Cindy Beane (via teleconference), Regenia Mayne, David G. Sudbeck, Sheila Kelly, dan connery

#### I. REVIEW OF MINUTES

Minutes reviewed and approved.

#### II. CSM Update

Vickie Jones explained that the contract with CSM has run into problems with the Purchasing office of Department of Administration and must now be presented as a Sole Source document. As a result, the processing of the contract will again be delayed. David Sudbeck stated that he cancelled a scheduled conference call with Peter Pastras of CSM on June 15, 2010 in order that CSM not accrue any further expenses until the contract was approved. Mr. Pastras stated that he was familiar with the Sole Source process and would await processing before scheduling CSM to continue providing services. Susan Perry suggested that if Judge Bloom would issue a Court Order on this issue, the contract could be rapidly approved. Jennifer Wagner suggested a joint effort with Susan Perry to submit a motion to Judge Bloom to require funds to be processed through the circuit clerk. Jennifer asked if David Sudbeck was also interested in signing on to this motion. He declined, stating that the Judge has already indicated on two separate occasions that he had no interest in the Court being involved in this matter, and expected DHHR to provide resolution. Mr. Sudbeck requested that he be served with a copy of any motion being prepared by the parties.

### **III. TBI WAIVER UPDATE**

Cindy Beane stated that a revised draft CMS application was sent to the Court Monitor's office on June 1, 2010. She thanked the Office of the Court Monitor for their assistance in developing the required policy manual for the waiver. Sheila Kelly gave an overview of the proposed requirement for TBI Certification of case managers, personal attendants and Cognitive Therapists. While it will initially be difficult for individuals to obtain certification as there are no certified CRTs in the state according to the Certification website, it was felt by the group that TBI certification was extremely important for staff working with members in the TBI waiver. The revised policy manual will include an interim proposal for individuals to obtain certification until a pool of certified individuals becomes available over time.

Additionally, the Independent Options program proposed for self-management of the waiver was discussed. The group agreed that only Personal Attendant and Environmental Adaptations would be included in the Independent Options program although the individual was certainly entitled to select his or her preferred Case Manager and Cognitive Rehabilitation Therapist. While Case Management will be a required service for all individuals in the waiver, CRT may not be appropriate and will not be a required part of each individual's budget.

Jennifer Wagner stated that her office had not been copied on the revised draft CMS application sent to the Office of the Court Monitor by BMS. WVA agreed that they had not seen it either. The Court Monitor's office stated that this was an inadvertent oversight and that it would forward copies to the Petitioners. Jennifer also asked if the process was on the recommended timeline. David Sudbeck stated that the timeline was being followed.

### **IV. I.O.P.**

Vickie summarized the discussion held in the Community Supports workgroup regarding IOP or Intensive Services. The Community Supports workgroup will be reviewing proposals submitted by various Comprehensive providers for use of the one million dollar co-occurring funding for Intensive Services. The group has agreed that the funds will be used only for non-Medicaid billable services and possibly for start up costs of new co-occurring IS. Sheila Kelly suggested that a potentially cost-effective way of managing the overwhelming demand for community-based co-occurring treatment services for this population was for treatment providers to work cooperatively with local Drug Courts to jointly address the severe problems in West Virginia with prescription and opioid drug abuse. The Parties agreed that this was a good idea that should be explored further.

### **V. BHHF REPORT**

Deron Wilkes stated that his report to the Court Monitor's office would be delivered on Friday June 18, 2010. Jennifer Wagner requested that it also be sent to the Petitioner and that target dates for process steps be included. Vickie indicated that Prestera has provided sufficient information to issue an approval and change order on their proposed group homes and supported living, but that Westbrook has had difficulty locating a property and is somewhat behind in providing an acceptably detailed program proposal to the Bureau.

There was discussion amongst the entire group as to the definition of the term *independent* in regards to care coordination. The Bureau has decided, with the approval of the Parties, to define “independent” as meaning provided by an agency other than a Comprehensive. The Bureau will issue an RFQ very soon in this matter. Parties agreed if there was not sufficient interest expressed by non-Comprehensive providers, the Bureau would distribute the care coordinators among the Comprehensives.

## **VI. PETITIONER REPORT**

Jennifer Wagner asked if the SPA to MHC had been approved and Cindy confirmed that it had and ultimately removed all limits on behavioral health for both the basic and enhanced plans. Jennifer asked for a copy of the approved SPA. Jennifer also noted that the Gazette had reported that the State was attempting to extend MHC and asked for an update. Susan stated that the Governor has expressed interest in maintaining the MHC program as a voluntary option for participants and the BMS is discussing this with CMS. No final decision has been reached. Jennifer requested an update as soon as the course of action is determined, and Susan confirmed that this would be before September, when MHC was reportedly being terminated.

## **VII. SPECIAL ASSISTANT REPORT**

Sheila presented data regarding Juvenile commitments that indicates that almost one in ten commitments state wide is of a juvenile. This is a particular problem as it leads to the juvenile being registered on the NICS system for his or her entire life. One way of addressing the problem would be a statutory change in Chapter 27 which currently requires that all children over age 12 must either voluntarily agree to sign themselves into treatment or must be committed. If parents could sign their children into treatment up to age 18, many commitments of juveniles would be avoided.

Sheila also again expressed her concern about impending Managed Care for the SSI population and the impact this would have on inpatient commitment. Parenthetically, she asked if the BMS had repaid the private psychiatric hospitals that had been denied payment for the individuals with Basic coverage under the Mountain Health Choices plan who had been committed and diverted from the state psychiatric system. MHC did not include inpatient psychiatric care as a covered service for individuals with Basic Medicaid. Cindy said she did not know but would ask and have the Bureau get back with an answer.

## VIII. MANAGED CARE

Susan Perry stated that she was disappointed with Plaintiff's decision to file a Request for Resolution. She believes that she has always been very open with the Parties and has attempted to supply information as requested. She further believes that the Request causes her to advise her client, the Department, not to communicate openly with the Parties in order to protect the Department from further exposure in a potential lawsuit. The Department had apparently planned a series of public hearings to obtain input on the rollout of the managed care process. Sheila stated that the issue was not how to roll it out but rather whether to implement the process at all. Jennifer replied that in Plaintiff's opinion there has been a lack of communication and sharing of information by the Department, particularly with regard to timelines, contracts with the MCOs, quality assurance standards and stakeholder input into the development of the system. Jennifer further noted that the Department would eliminate the concern if it communicated openly and worked collaboratively with the community, and that ultimately such a decision remained with the Department. Jennifer further noted that Petitioners had not been invited to any such public forum. Jennifer elected not to withdraw her Request for Resolution. Jennifer again requested copies of the MCO contract addenda, timelines, and the 1915(b) waiver application, with the understanding that they would potentially be in draft form. David Sudbeck stated that he would be expecting a reply from Respondent concerning Plaintiff's notice on June 30, 2010, and Petitioners agreed to this extension in the requested timeline. At that time he will review all the information submitted.

## IX. OTHER

David Sudbeck distributed the Policy Statement on Prescribing Practices for review by Plaintiff. This Policy was a mediated outcome of the Agreed Order. After review it was decided that the Policy was adequate and agreed upon by the Parties. It was signed by the Court Monitor and returned to Vickie Jones for further processing.

Next Meeting: Wednesday July 28, 2010  
10:00 a.m.-12:00 noon  
Covenant House  
600 Shrewsbury Street, Charleston, WV 25301