

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.

MONDAY, JUNE 4, 2012

MINUTES

PRESENT: Kevin Stalnaker, Vickie Jones, Cindy Beane, Dee Weston, Dan Hedges, Wendy Elswick, Regenia Mayne, Teresa Brown, David G. Sudbeck, Sheila Kelly, Travis Britton, Susan Perry, Jennifer Taylor, Molly Underwood Poe, and Kim Stitzinger Jones.

A special meeting of the parties was conducted related to the death of a patient at Bateman Hospital late last year. Due to the fact that the patient's relatives have filed a civil suit in Cabell County (Pike v. WV Dept of Health and Human Resources, Civil Action No.: 12-C-269) the Department, on the advice of counsel, felt unable to respond to any questions regarding the incident. Department staff will respond at a later date when pending legal actions have been resolved.

I. COURT MONITOR REPORT

David Sudbeck followed up with a status report on the Requests for Resolution (RFR) filed by the plaintiffs.

He has interviewed many individuals in connection with the RFR on Grievances and the grievance system utilized by BHHF in resolving patient complaints. He believes that the issue can be resolved with an amendment to the Order Appointing the Court Monitor under the authority item 3. The amendment would add an additional step after in-hospital procedures for appeal have been exhausted. Subsequent appeals would be addressed to the Office of the Court Monitor for investigation and resolution, if possible. David intends to investigate each allegation personally. If no agreed resolution can be identified, the appeal would proceed through the current system of referral to the Assistant Commissioner at BHHF.

Dan indicated that he would like the Office of Consumer Affairs and Community Outreach to resume responsibility for internal investigations within BHHF, believing that the OCACO would be more objective than the internal office, the Office of Monitoring and Compliance, currently assigned

to perform investigations. There appeared to be some misunderstanding that the OCACO was not an internal office of BHHF and was therefore less biased however this is not the case. Both the OCACO and the OMC are internal offices to BHHF.

David stated that only a small proportion of the appeals he received on the list submitted by BHHF had been investigated by OMC. Sheila pointed out that two substantiations of neglect had been overturned by OMC as “not meeting criminal definition of neglect” however the two cases had clearly met the definition of neglect in 64CSR59, the rights regulations for patients in state operated psychiatric facilities.

David agreed to meet with the staff at Mountain State Justice to discuss resolution of their concerns on June 18 at 3 PM. Subsequent to that he will release his report and recommendations. The parties will have the standard 15 days to review the report and to appeal if they so prefer.

David then reported on the trip he made to Lakin long term care facility to review individuals with Traumatic Brain Injury. He interviewed or reviewed the cases of ten patients and the social work staff. Given the financial limitations of the TBI waiver program, he believes that all ten patients are properly placed in nursing home level of care as they cannot be managed in the community without twenty four hour supervision. The TBI waiver will not extend to that level of care due to cost constraints on waivers applied by Centers for Medicaid and Medicare Services (the waiver must be cost neutral to placement in a nursing home). Dee pointed out that the cost neutrality applied to the aggregate of patients on the waiver, however since the TBI program is expected to be fairly small, it is unlikely that the cost of 24 hour care can be absorbed, even in the aggregate, while still maintaining cost neutrality.

David intends to visit Jackie Withrow long term care facility (previously Pinecrest) and Hopemont in the future to perform similar interviews. Asked about the populations of these facilities, Kevin replied that Jackie Withrow has a current population of about 93 individuals, Lakin 102 and Hopemont 97.

Regenia asked about eligibility criteria for the waiver however Cindy Beane indicated that anyone in a long term care facility (nursing home) has already met the eligibility criteria for the waiver. Dan inquired about recent complaints by the union, published in the Gazette, regarding nursing shortages at Hopemont. Kevin indicated that there are vacant nursing positions in all the BHHF facilities, as there are in almost all hospitals, however the situation was not a crisis in any facility including Hopemont.

Dee asked if the eligibility criteria for the TBI waiver could be adjusted to include individuals at risk of nursing home placement, given that the program will not support 24 hour care. Cindy stated that this would require an application for change to CMS and that she believes that it is far too early to state that the program eligibility needs to be opened up, given that the provider system is still being developed and patients identified. The program is only a few months old. She is willing to revisit the proposal at a later date.

II. BHHF REPORT

Vickie reviewed the Gatekeeping policy and the comments forwarded by providers. There was considerable discussion however no one in the group felt that the demands being placed on providers exceeded their statutory responsibilities and the group authorized BHHF to continue with implementation of the policy as proposed.

Susan and Sheila discussed the committee newly assembled to review and make revisions to Chapter 27 as a companion effort to the recently completed Behavioral Health Services and Supports regulations for community based services. Dan is on the committee, which will meet on June 19 from one to three. Sheila will be coordinating and she and Jennifer Taylor will work on the language. Providers will be urged to participate in the process. Dan would like strength built into requirement for diversion from inpatient hospitalization through use of community based services.

BHHF is concerned that gatekeepers are under-utilizing community based options to inpatient hospitalization. Sheila again asserted that although occasionally patients who have been committed under civil procedures by a certifier may not require hospitalization at Sharpe or Bateman, they invariably needed at least temporary 24 hour protected settings. Centers are not using CSUs for commitment as much as had been hoped for a variety of reasons, among them inability to lock units and a dearth of available medical staff for 24 hour supervision of individuals with possible medical complications. Plaintiffs and DHHR agree that alternatives need to be exercised more consistently by the Centers. DHHR indicated that problems with overcrowding at Bateman and Sharpe would end if the state psychiatric facilities had right of refusal once they reached capacity, however legal pointed out that national precedents have been set obligating the state to ensure that individuals receive necessary medical and psychiatric care.

Dan requested commitment data by per capita by CMHC region at the next meeting. BHHF will provide.

III. PETITIONER REPORT

Regenia asked that BMS supply a copy of the recently submitted proposal to CMS which would allow Medicaid to reimburse private Institutions for Mental Disease (IMDs) (in this state this would include Riverpark and Highland). Cindy will insure that she receives a copy. The issue is to be put on the agenda for the July meeting.

IV. BMS REPORT

Cindy Beane stated the TBI Waiver Policy and Procedure is in place and screening has begun for eligibility of applicants. Thus far eight individuals have been referred. Six met the criteria for eligibility, however of the six, one met both medical and financial eligibility, two did not meet financial eligibility, one application was withdrawn as the individual had nowhere to live upon discharge, and two are pending financial eligibility approval.

She also presented a set of maps depicting the service areas of the three TBI waiver services. Case management and personal attendant are available in every county. Cognitive rehabilitation is growing in availability. Program staff has done trainings in 69 locations for potential referrals, including Lakin. Jackie Withrow is scheduled, as is the Ombudsman's office and other advocacy agencies. Quality Council will begin meeting in August. She believes that this particular program has come into operational status in record time.

V. SPECIAL ASSISTANT REPORT

Sheila reported on her progress on the RFR regarding discharge planning. She has interviewed social work staff at both hospitals, reviewed patients kept over 30 days in a diversion facility and has received multiple lists of patients from advocates. She has investigated each case described. She reports that the consequent report will be available in two weeks and should contain

quite a bit of interesting data. She is not identifying any consistent systemic issues. All hospitals engage in intensive discharge planning. Discharge planning is not a systemic problem, however placement for extremely difficult patients is a problem. One issue that complicates the discharge planning picture is that physicians report patients to have reached “maximum benefit of hospitalization”, which is often confused with “ready for discharge”. While some patients may have benefited as much as possible from hospitalization, this does not mean that they can be safely discharged, either for their own safety or that of the public.

Wendy reported that BCF and BHHF have been meeting jointly to discuss issues with Department guardians and Health Care Surrogates. They will be sponsoring trainings at both state facilities to increase knowledge and facilitate communication between DHHR guardianship staff and hospital social workers.

Next Meeting: July 30, 2012
10:00 a.m.-12:00 noon
Covenant House
600 Shrewsbury Street, Charleston, WV 25301