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 30, 2016

MINUTES

PRESENT: David G. Sudbeck, Kyle Blackburn, Christopher Dodrill, Allison Anderson, Regenia Mayne, Teresa Brown, Lydia Milnes, Kelly Morgan, Victoria Jones, Cynthia Beane, Lindsey McIntosh

I. COURT MONITOR REPORT

David Sudbeck started the meeting by mentioning no new grievances have been filed with his office. Kelly Morgan gave an update as to the American Medical Foundation conducting the chemical restraint audit. She stated that the American Medical Foundation is still on track to begin the review in the near future and that once it started, that it would take approximately 2 months to conduct the review and expect a report by the end of August or by the next Meeting of the Parties meeting (September 8, 2016).

David advised that he had reviewed the recent LAWV hospital audit from Sharpe and Bateman, noted that there were no areas of noncompliance, and asked whether any of the parties had any comments. Kelly and Lydia had no comments. WV Advocates had not received the audit reports and requested time to review and

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report any concerns or questions that they might have. Following the meeting, Lydia reported that she forwarded the LAWV audits reports to WV Advocates for review.

David Sudbeck handed out an Order dated August 1, 2001 reflecting the agreement of the Parties to change the mission of Potomac Center's on-site ICFMR facility located in Romney, WV to one that serves developmentally disabled children as a transitional placement. David noted that the Potomac Center had 24 beds and asked whether the Potomac Center is still operating as a transitional facility, and not as an Institution, per the Order. Vickie Jones reported that Beth Morrison is the Program Manager for the Potomac Center and oversees the IDD population. Vickie confirmed that there was a license for 24 beds, that a LAWV Advocate is assigned to the Potomac Center, and that the Potomac Center was operating as a transitional facility, not as an Institution. David Sudbeck asked if he needed to look further into this issue. David mentioned that he received an email from the Program Manager requesting whether one child could stay longer than 24 months due to unusual and specific circumstances. David did not have an issue with this one exception, but requested that BHHF provide specific information on the 24 kids currently residing at the Potomac Center and to ensure that they were not staying more than 24 months. Vickie advised that she would gather the documentation from Beth Morrison and provide it to David within three weeks.

I. BHHF REPORT

Vickie Jones provided a follow-up on testimony by a LAWV Advocate during the recent Status Hearing on the issue of patients being housed in glass/seclusion rooms at Sharpe She has investigated this issue and has determined that there were only a handful of occasions in the month of May wherein patients were temporarily placed in a glass or seclusion room, and that the majority was for one night. She provided a few examples. First, a PICA patient was released from the hospital with an open wound and risk of self-injury. It was determined by the treatment team that it was appropriate and in the best interests of the patient to turn a seclusion room into a patient room. The room did not operate as a seclusion room and the door did not lock. A tv and other furniture was placed in the room and a bathroom is located just outside of the door. David agreed that this was a justified clinical reason for placement in a seclusion room and asked whether the LAWV advocate who testified during the recent Status Hearing was aware of these facts. Vickie stated that she believed the LAWV advocate was aware of these facts as she had been involved with the treatment team at the time that it occurred. Lydia stated that she did not believe this was the focus of the LAWV advocate's testimony. Second, Vickie advised that there occasions wherein a patient requests to be placed in another room to get away from a roommate, for reasons such as snoring. In those cases, the hospital makes every attempt to accommodate the patient, even if it is to place the patient into a glass or seclusion room. Lydia noted that while rare instances, such as the medical situation,

could be appropriate, the spate of recent uses was due to the census being high. Vickie stated that there have not been any patient complaints or grievances on this issue.

Kelly Morgan and Chris Dodrill felt that the issue of placement in glass or seclusion rooms is an issue that should have been addressed in a Party Meeting and/or Request for Information, not as a surprise at a hearing especially considering the various Agreed Orders, Court directives, etc. as to the Court Monitor's role, Request for Information, and 30 days' notice of issues and witness for every hearing. Had Respondents been given the appropriate notice, Respondents could have had a witness present to address these specific facts of patients placed in glass or seclusion rooms. Lydia stated that Petitioners could not have given 30 days' notice, as the increased use of glass rooms and other non-traditional rooms had been occurring less than 30 days prior to the hearing, and that the overall topic of the census is always raised at every hearing by the judge, and thus the parties should always expect that it will be addressed. She further stated that she did give notice and believed a copy of the subpoena of the LAWV advocate had been provided via an email from Jennifer Wagner; however, David agreed he was not provided with notice or a copy of the subpoena either. Lydia stated that she did not believe that the LAWV advocate over exaggerated or failed to provide pertinent details. She pointed out that DHHR should have been fully apprised of the situation and prepared to present to address the issues.

Vickie expressed frustration that if Petitioners or the advocates felt that an issue was serious enough as to affect the best interests of the patient, that the issue should be raised to DHHR/BHHF immediately and not wait to bring it up for the first time during a hearing. Respondents admitted that the LAWV advocate had, in fact, emailed the CEO of Sharpe hospital about the situation prior to raising it with Petitioner's counsel. Lydia agreed that Petitioners' counsel, advocates and DHHR/BHHF all have the same goal in common: to act in accordance with the best interests of the patients.

Chris Dodrill asked if the Parties could agree to provide thirty days' notice of all issues, witnesses and any other information for a court hearing. Petitioners agreed that it was reasonable and that in the future, both parties should give 30 days' notice of all issues that they intend to raise prior to hearings, and give notice of any witness intended to be called prior to the hearing. Chris further asked that even if an issue arises a day before a hearing, Petitioners and/or Advocates notify DHHR/BHHF immediately so that DHHR/BHHF can take steps to address the issue immediately. Lydia agreed that the Petitioners would do so in the future but stated that all parties should expect that the hospital census is an issue that will likely arise at every hearing, and all parties should be prepared to respond accordingly.

Vickie also advised that she recently had a meeting with LAWV and they agreed to prepare a daily log which would address any advocate concern, regardless of

whether it was subject of a patient complaint or not. Lydia agreed that this was a good plan.

II. PETITIONER'S REPORT

Lydia Milnes reported that she had been contacted by several patients at Highland Hospital Clarksburg with concerns. The specifics of the concerns were not important as she didn't think it was appropriate for the parties to address in Hartley. She asked whether an advocate was assigned to diversion facilities and who ensures compliance with 64 CSR 59. Vickie stated her belief that advocates from either LAWV or WV Advocates were provided to diversion facilities but that she would look into the question and respond to the parties. In the meantime, Vickie asked for the patient names or concerns so that she could have the issues investigated and handled appropriately; however, Lydia stated she was uncomfortable providing that information at this time, and that she was only raising the issue to determine whether there were onsite patient advocates to whom the patients could be referred. Vickie stated that without the necessary information, she was unable to address this issue in any manner. Regina Maynes confirmed that WV Advocates can go into any diversion facility, but that WV Advocates are not providing the type of advocacy services in these facilities that LAWV advocates provide in Sharpe and Bateman.

IV. BMS REPORT

Cynthia Beane mentioned during the TBI Waiver Update that as of May 2016, there were 62 active members living at home in their community. 21 applicants were denied financial eligibility, 39 applicants withdrew their case after medical eligibility was determined.

TBI waiver report copy attached below.

Next Meeting: September 8, 2016 10:00am – 12:00pm
One Davis Square
Conference Room 134 Charleston, WV 25301

WV Traumatic Brain Injury (TBI) Waiver Program
Implementation through May 2016

MNER Summary: Since February 1, 2012, the Utilization Management Contractor (UMC) has received, processed, and/or made initial determinations on two hundred and ninety -three (293) Medical Necessity Evaluation Request Forms (MNER)/applications.

- Of those two hundred and ninety-three(293) applications (submitted MNER):
  - 34 applications were closed - no evidence of a TBI
  - 47 applications were withdrawn
  - 8 application pending assessment (Financial Eligibility-Pre-Medical Eligibility)
  - 1 application pending assessment
  - **203 applicants received medical eligibility determination assessments**
    - **41** applicants did not meet medical eligibility
    - **162** applicants were considered medically eligible based on their PAS and Rancho Los Amigos scores
      - 21 applicants were denied financial eligibility
      - 39 applicants withdrew their case after medical eligibility was determined
      - 2 applicants deceased prior to notification of medical eligibility
      - 27 program participants have discontinued their enrollment since 2/2012
      - 7 program participants deceased
      - 4 applicants on MEL
      - 62 Active program participants in May 2016

# MNER Applications Received Per Month									
2012	**#MNER Received**	**2013**	**# MNER Received**	**2014**	**# MNER Received**	**2015**	**# MNER Received**	**2016**	**# MNER Received**
Jan.	N/A	Jan	6	Jan.	9	Jan.	5	Jan.	4
Feb.	4	Feb	5	Feb.	6	Feb.	7	Feb.	8
March	2	March	10	March	4	March	5	March	11
April	4	April	4	April	8	April	5	April	8
May	3	May	9	May	9	May	3	May	2
June	1	June	4	June	7	June	6	June	
July	2	July	10	July	6	July	7	July	
August	5	August	10	August	2	August	4	August	
Sept.	7	Sept	5	Sept.	7	Sept.	6	Sept.	
Oct.	1	Oct.	10	Oct.	8	Oct.	9	Oct.	
Nov.	3	Nov.	5	Nov.	4	Nov.	3	Nov.	
Dec.	2	Dec.	4	Dec.	6	Dec.	8	Dec.	
2012 Total	**34**	**2013 Total**	**82**	**2014 Total**	**76**	**2015 Total**	**68**	**2016 Total**	**33**
Total since program implementation February 2012									**293**

Outreach Efforts Summary: In January 2012, the UMC initially sent emails to all existing Aged and Disabled Waiver Homemaker Agencies, Case Management Agencies, I/DD Waiver Providers and Personal Care Providers. In early February 2012, all applicable referral sources including Nursing Homes, Hospitals, and Licensed Rehabilitation Centers were emailed.

This correspondence announced the TBI Waiver Program, outlined eligibility requirements and supplied copies of the application (MNER) form (*these emails are not included in 2388 Email contacts indicated below).

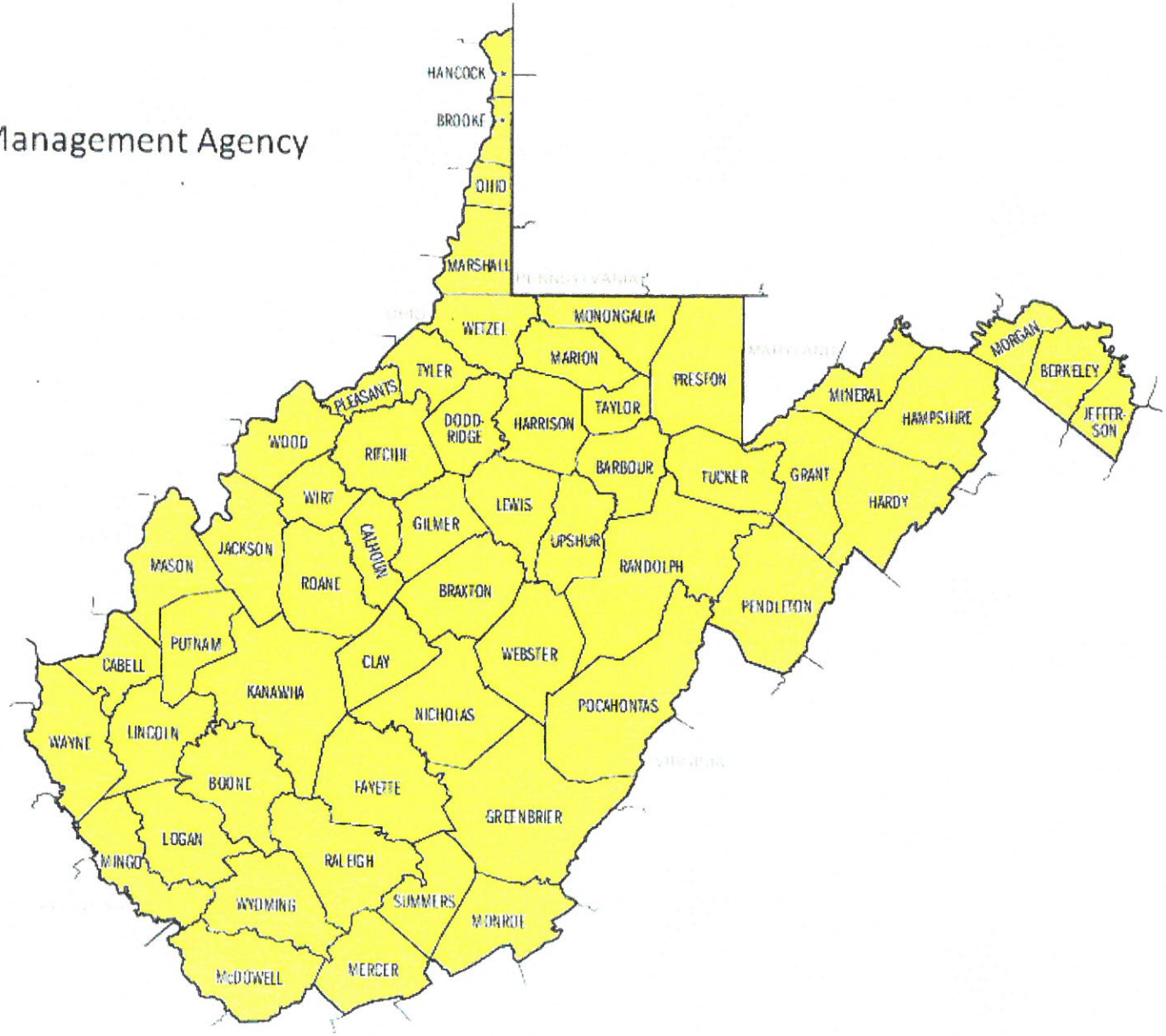
Since March of 2012, UMC staff has conducted statewide outreach efforts to include scheduled face-to-face meetings within the facilities, presentations at local and statewide settings and meetings with the directors of the Aging and Disability Resource Centers.

Additionally, the UMC offers/provides training and technical assistance to the fifteen (15) enrolled provider agencies. Training topics include the Medicaid requirements for covered services (Case Management and Personal Attendant Services) and general information about supporting individuals with TBI.

The UMC targets outreach for each agency selected to provide services for enrolled program participants. Outreach focuses on providing guidance in completing the financial eligibility-pre medical eligibility process and compliance with Medicaid forms. Additionally, the UMC provides technical assistance to resolve specific program participant needs.

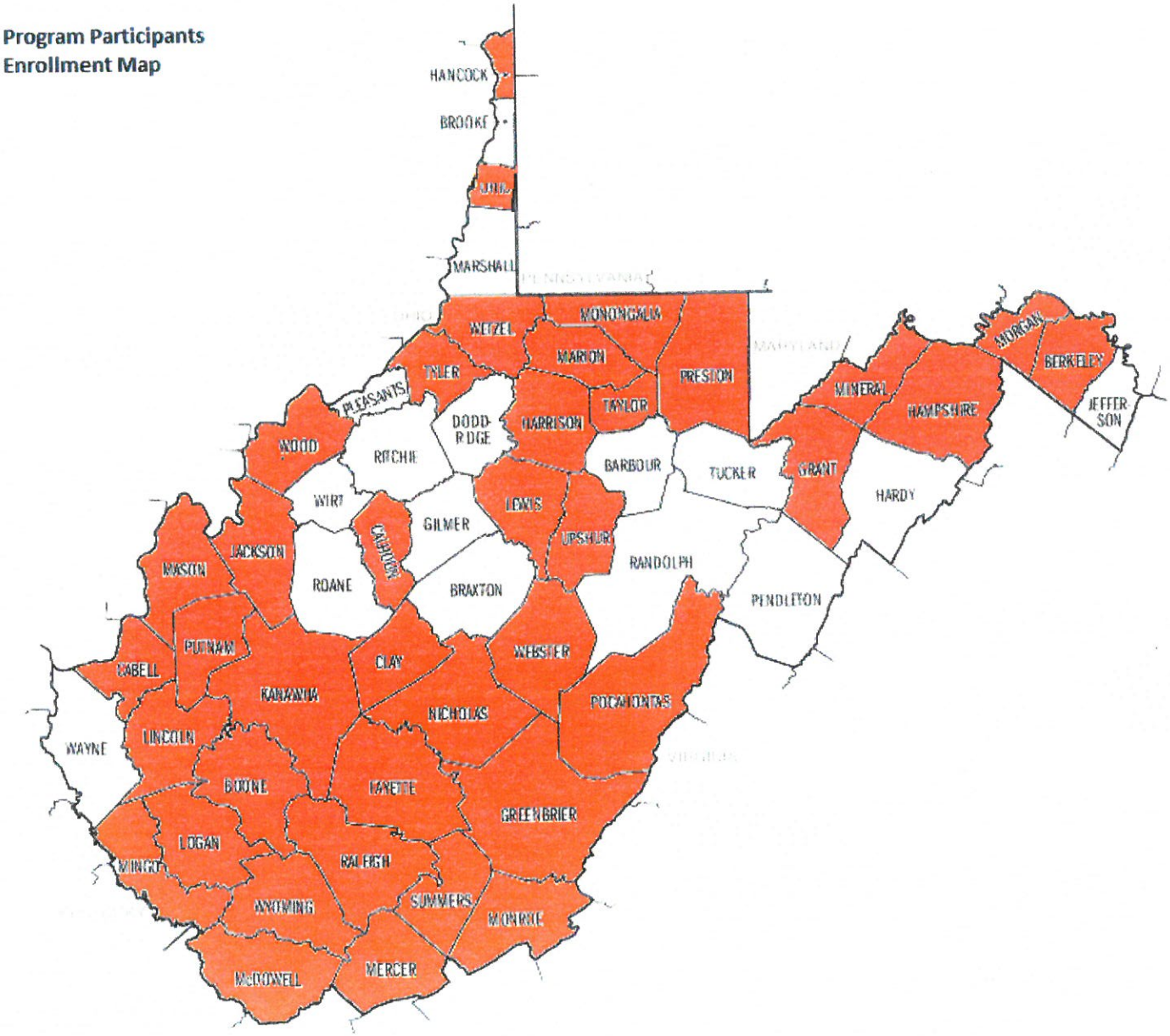
Types and Numbers of Outreach Efforts Made for the WV TBI Waiver Program	
Type of Outreach	**# Outreach Efforts**
General Outreach	
Email	*2388
Phone	1285
Face-to-Face	534
Presentations/Outreach (ex. WV NASW Conference, local DHHR)	62
For Enrolled Providers	
Training-Webinar	46
Trainings-Face-to-Face	4
Face-to-Face Technical Assistance	86
Phone Technical Assistance	438
Total	**4843**

Case Management Agency



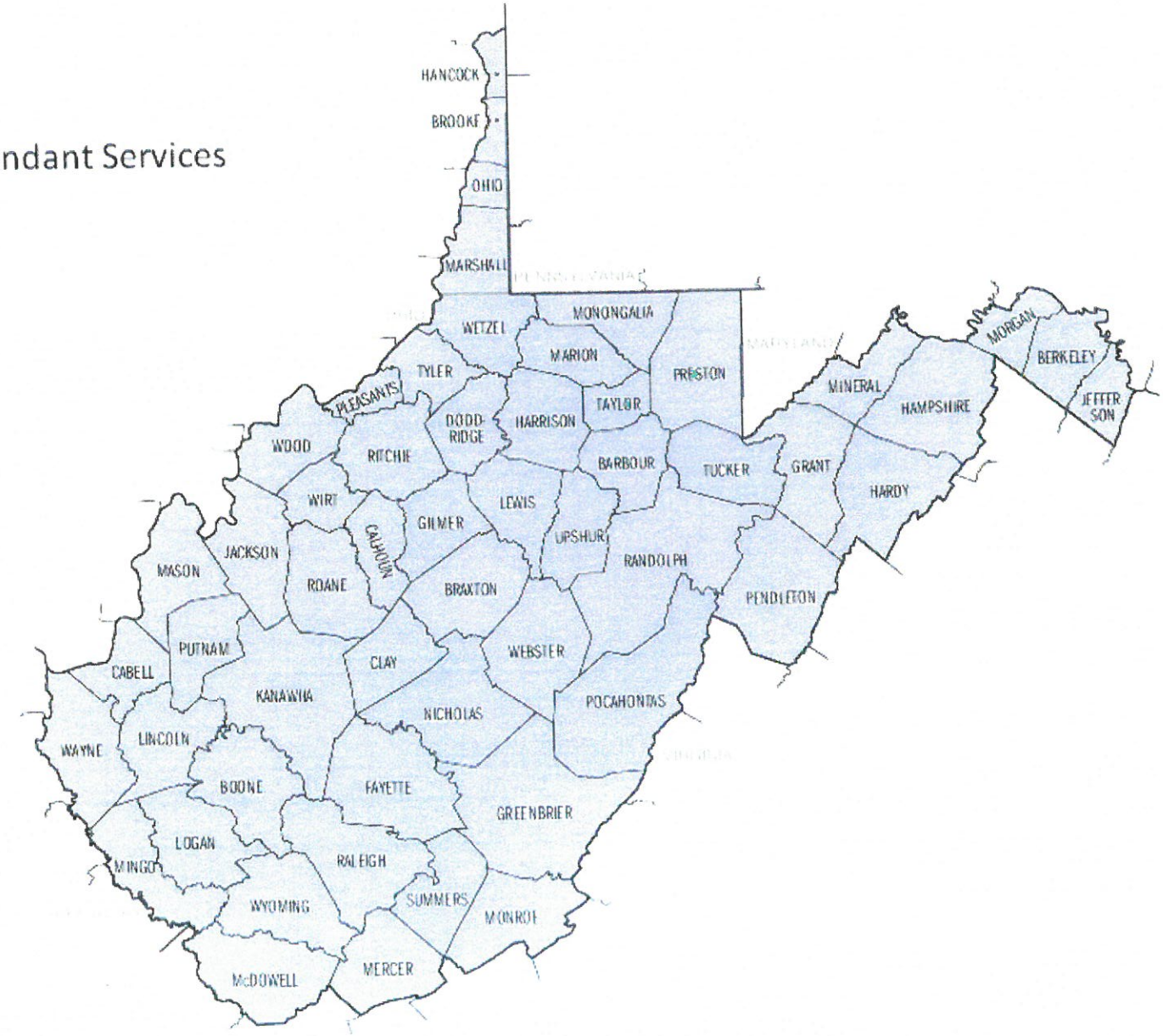
as of May 2016

Program Participants
Enrollment Map



as of May 2016

Personal Attendant Services



as of May 2016

Blackburn, Kyle W

From: Morgan, Kelly <kmorgan@baileywyant.com>
Sent: Wednesday, August 17, 2016 12:03 PM
To: Sudbeck, David G
Cc: Beane, Cynthia E (BMS); 'tbrown@wvadvocates.org'; 'Lydia C. Milnes'; Jones, Victoria L; Villanueva-Matkovich, Karen C; 'rmayne@wvadvocates.org'; Blackburn, Kyle W; Jennifer S. Wagner; Anderson, Allison C; 'christopher.s.dodrill@wvago.gov'; Bailey, Chuck; Sizemore, Jenny
Subject: RE: Meeting of the Parties Minutes (Hartley)

David,

I contacted Kyle to inquire as to precisely whether I needed to set forth specific objections to portions of Petitioners' proposed Party Meeting Minutes or whether you would be posting both revisions on the website. He believed that you would be posting both versions so to preserve objections by both parties. I just wanted to note my objection to deletions of statements that you made during the Party Meeting which was included in the last sentence of the second paragraph of the BHHF report. Specifically, I reported "Lydia stated that she did not believe that the LAWV advocate over exaggerated or failed to provide pertinent details; however, David agreed that the facts provided by DHHR/BHHF on this issue would have been very helpful at the hearing and that the advocate's testimony left the impression that this was much more of a serious issue than it turned out to be. Lydia had deleted from the "however" to the end of the sentence. I am not sure why Petitioners removed or objected this portion of the sentence as that is a precise representation of what occurred during the Party Meeting. I specifically stated that had Respondents had notice of the LAWV Advocate's subpoena as well as the issue to be presented, Respondents would have been prepared to provide complete information. I then asked you whether the information provided by Vickie during the Party Meeting would have been helpful in understanding this issue, and you agreed. I further inquired as to the impression that was left following the LAWV's testimony, and you agreed that you left believing this was much more of a serious issue than it really was. I believe you even made a statement that you believed Judge Bloom had the same impression; however, I did not include that in my draft Meeting Minutes. I would you would agree with my representations; however, if you disagree in any manner, please let me know. As such, I request that this be included in the Party Meeting Minutes. Please advise as to how or what will be considered the final meeting minutes. If you have any questions, please feel free to contact me.

Kelly C. Morgan, Esquire
Bailey & Wyant, PLLC
500 Virginia Street East, Suite 600
Charleston, West Virginia 25301
T: 304.345.4222 | F: 304.343.3133

Blackburn, Kyle W

To: Lydia C. Milnes
Subject: RE: Meeting of the Parties Minutes (Hartley)

From: Lydia C. Milnes [mailto:lydia@msjlaw.org]
Sent: Wednesday, August 17, 2016 12:16 PM
To: 'Morgan, Kelly'; Sudbeck, David G
Cc: Beane, Cynthia E (BMS); 'tbrown@wvadvocates.org'; Jones, Victoria L; Villanueva-Matkovich, Karen C; 'rmayne@wvadvocates.org'; Blackburn, Kyle W; Jennifer S. Wagner; Anderson, Allison C; 'christopher.s.dodrill@wvago.gov'; Bailey, Chuck; Sizemore, Jenny
Subject: RE: Meeting of the Parties Minutes (Hartley)

Kelly and David –
I have always understood the minutes of the meetings to be a summary of issues discussed and agreements made/follow up needed, etc. In the past, the minutes have never included editorial comments, such as David's impressions of prior testimony. I don't disagree that David stated that additional information would have been helpful; but for that matter, I believe David also agreed that had the Department shown up with accurate knowledge of the situation, that would also have been helpful. The point is that I don't include these types of editorial comments, using David to try to make the Department look bad.
As I previously mentioned, if the parties want to include this level of information, then I am going to request that the meetings be recorded and the recordings preserved for the record, so that all of the comments are available for future reference.
Thanks,
Lydia