

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, APRIL 28, 2015**

### MINUTES

**PRESENT:** David G. Sudbeck, Kyle Blackburn, Lydia Milnes, Regina Mayne, Vaughn Sizemore, Cynthia Beane, Karen Villanueva-Matkovich, Kim Stitzinger-Jones, Christopher Dodrill

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

David Sudbeck started the meeting by mentioning there were no new grievances filed since the last Meeting of the Parties to report on. Vaughn Sizemore indicated for the record that from this moment forward that Respondents' would be in attendance and participate in the MOP meetings however they objected to this stating that Petitioners' do not have jurisdiction in this case. Petitioners' strongly objected to this position and wanted it reflected on the record as well. David Sudbeck mentioned a grievance filed from Judge Tabbitts office. Dealing with patient on patient sexual abuse. Karen Villanueva-Matkovich stated an investigation takes time and they have to follow the appropriate order. Vaughn Sizemore followed up and stated the regulation is quite specific regarding an APS investigation of patient on patient sexual assault, the department followed the regulations and, in addition to the requirements under the current policy, they notified law enforcement, which is the appropriate authority to conduct the investigation.

David Sudbeck handed out a copy of an email from Legal Aid of West Virginia dealing with an attempted suicide by a patient at Sharpe Hospital. He asked if the same procedures are taken with this matter as to the previous one. David Sudbeck mentioned that Bill Albert said that nothing was reported to Adult Protective Services. David Sudbeck asked Karen Villanueva-Matkovich why Legal Aid of West Virginia was not told about this. She said she would look into this matter and report back.

Vaughn Sizemore handed out an Educational Handout (copy attached below) dealing with the Title 19 Waiver. Cynthia Beane mentioned that public comments ended April 27, 2015. Now they are working toward getting people off the wait list. Modifications historically are made after the comment period has ended. David Sudbeck handed out some information dealing with the hiring of the medical professional. Vaughn Sizemore stated he believes the cost should be brought to the attention of the Judge. David Sudbeck mentioned the rates he has found, have been very expensive. David Sudbeck handed out the curriculum vitae of Doctor Alan Waldman in Florida. He is willing to work on this matter and mentioned to have the files sent to him to save money. Karen Villanueva-Matkovich said she would have to look into this matter and see how they can pick the 10% sampling of patients.

## **II. BHHF REPORT**

Karen Villanueva-Matkovich mentioned that they are in the final rounds of interviews for the CEO at Sharpe Hospital. She had no other topics to report on.

## **III. PETITIONER REPORT**

During Petitioner's report, Lydia Milnes is concerned that since the Bateman/Sharpe census is high (copy attached below) and understaffed what outreach is being done to bring people to hire in the hospitals. Karen Villanueva-Matovich is working on job fairs and the DOP website to get staff hired. Karen Villanueva-Matkovich said the hospitals are appropriately staffed to deal with the amount of patients on site. Regina Mayne mentioned while looking over the census, at Sharpe it was reported to her that the restraint rooms were being used as patient rooms due to the overcrowding. Karen Villanueva-Matkovich was not aware of this and will look into the matter.

## **IV. BMS REPORT**

Cindy Beane mentioned during the TBI Waiver Update that there were 56 active members living at home in their community. And they will lower the age for approval in July to 3 years old and up. David Sudbeck asked about the Managed Care-Work Groups, Cynthia Beane reported that the last meeting went well and is working toward implementation.

Cindy also distributed the current TBI waiver report [copy attached below]

Next Meeting: Thursday, June 25, 2015  
10:00 a.m.-12:00 noon  
One Davis Square  
Conference Room 134 Charleston, WV 25301

# Educational Handout

*For informational purposes only, subject to change.  
Compiled by the DHHR Office of the Cabinet Secretary.*

## Title XIX, Intellectual/Developmental Disabilities Waiver

- DHHR's Bureau for Medical Services has released the draft five-year renewal application for the Intellectual Developmental Disabilities Waiver (IDDW) for public comment.
- This waiver is an optional program implemented by the state to go above and beyond requirements of law to provide services for our citizens. The waiver is not required by the federal government.
- The IDDW provides services in the community to people who have intellectual and/or developmental disabilities who would qualify for placement in an institutional setting.
- For the last three years, the IDDW has exceeded its budget by tens of millions of dollars.
- The waiver covered 4,534 individuals in FY2014 and the total spent for this population was approximately \$385 million.
- There are over a thousand people waiting for waiver services; some have been waiting for almost three years.
- The proposed changes to the waiver are intended to bring the program within the allocated budget set by the Legislature and allow for cost savings to serve more beneficiaries from the wait list.
- In August 2010, the state paid a parent for 4-6 hours of care for a child or an adult, which was increased to 8 hours for a child and up to 12 hours for an adult. The renewal application returns to 2010 hour limits for children and increases the adult services to 8 hours.
- When determining modifications to the waiver, the Bureau for Medical Services (BMS) compared West Virginia's waiver services to other states. In summary BMS found:
  - West Virginia has one of the most generous waiver benefits in the nation.
  - West Virginia has the most generous waiver benefit of any surrounding state.
  - Not all states pay parents for providing care for IDDW qualifying children.
- The proposed modifications included in the IDDW renewal application are projected to save West Virginia taxpayers in excess of \$40 million a year. Examples of major modifications include the following:
  - Currently, parents of minor children can be paid \$32,000 annually for 8 hours of caregiving a day, regardless of whether the child is in school or not. The proposal will allow parents to earn \$20,000 annually (non-taxable by the IRS) by being paid for 4 hours of care a day on days their child is in school and 6 hours a day when the child is not in school. *Please note: the proposed 4-6 hour allocation is identical to the hours allowed under the pre-August 2010 waiver modifications.*



# Educational Handout

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- Currently, parents of adults receiving IDDW services may be paid up to 12 hours of care per day, totaling up to \$48,000 annually. These amounts are in excess of West Virginia's median household income of \$41,043 and median per capita annual income of \$22,966 (US Census). The proposed modification will allow parents of adults to bill up to 8 hours a day for taking care of their adult child or \$32,000 annually (non-taxable by IRS). *Please note: the proposed 8 hour allocation is 2 hours more that may be paid to parents than allowed under pre-August 2010 waiver modifications, and adults may access even more services through Pre-Vocational and Supported Employment Services. These services are also noted below.*
- Respite care allows for primary care givers to get a break from their care taking duties. Currently, a parent can receive almost 5 hours a day of respite care. BMS is proposing to reduce that to average 2 hours a day and to only allow respite care to be billed on a day when no other direct care service is billed. Many times respite care givers are other family members or friends of the family.
- If the beneficiary needs additional hands-on personal care services (a medical service that is not being reduced), the state makes available benefits for that individual independent of proposed changes to this waiver.
  - Parents can serve as the personal care worker for adult children and be compensated in addition to what they are compensated for the waiver.
  - Personal care includes dressing, feeding, bathing, cleaning, toileting, doing laundry, fixing meals, etc.
  - 210 hours a month is the maximum allowed for these services, paid at a rate of \$16/hour.
- Two new services are being added: Pre-Vocational Services and Supported Employment Job Development.
  - Pre-Vocational Services are designed to create a path to integrated community-based employment in which the person is paid no less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.
  - Supported Employment Job Development is designed for analysis, situational assessments and supports in either acquiring or maintaining competitive employment.
    - CMS is pushing states to ensure that individuals capable of working are being integrated into the actual workforce.
- The 30-day public comment period ends at 5:00 p.m. on April 27, 2015.
- Comments may be submitted by:
  - Email to [IDDWComment@wv.gov](mailto:IDDWComment@wv.gov)
  - Regular mail to The WV Bureau of Medical Services, HCBS Unit, 350 Capitol Street, Room 251, Charleston, WV 25301
- If you need an accessible format of the document please call 304-356-4892.



# Educational Handout

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## Service Scenarios for Children and Adults

### Proposed **Child** Waiver Changes:

- Scenario of a child in school in a 24 hour period
  - Sleep-8 hours\* (\*Mayo Clinic recommends up to 11 hours of sleep daily for school-aged children)
  - School-8 hours
  - Parent paid for support-4 hours
  - Unpaid parental support-4 hours
  - Respite-2 hours

### Current **Child** Waiver Services:

- Scenario of a child in school in a 24 hour period
  - Sleep-8 hours\* (\*Mayo Clinic recommends up to 11 hours of sleep daily for school-aged children)
  - School-8 hours
  - Parent paid for support-8 hours
  - Respite-5 hours

### Proposed **Adult** Waiver Changes:

- Parents can be paid 8 hours
- Sleep-8 hours
- Respite-2 hours
- Personal Care-7 hours

### Current **Adult** Waiver Services:

- Parents could be paid 12 hours
- Sleep-8 hours
- Respite-5 hours
- Personal Care-7 hours

William R. Sharpe Jr. Hospital  
Weston, WV

Vacancy Report

	HS Trainee/ Worker/ Asst.**	LPN**	RN**	Office Asst.	Psychologist	EKG/ EEG Tech	Pharmacist	Electrician	Dietary	Housekeeping	Other*	Total
Vacancies	32	7	23	6	3	0	2	0	8	2	16	99
Temp Employees	1	0	6	2	1	0	0	0	2	2	9	23
Contract Staff	23	16	21	0	0	0	0	0	0	0	0	60

\* Other categories include Social Work, Security, Recreation, and Maintenance positions.  
\*\* Direct Care Positions

Mildred Mitchell Bateman  
Huntington, WV

Vacancy Report

	HS Trainee/ Worker/ Asst.**	LPN**	RN**	Office Asst.	Psychologist	EKG/ EEG Tech	Pharmacist	Electrician	Dietary	Housekeeping	Other*	Total
Vacancies	12	5	9	1	0	0	0	0	6	3	13	49
Temp Employees	14	0	0	0	0	0	2	0	5	1	8	30
Contract Staff	8	13	12	0	0	0	0	0	0	0	0	33

\* Other categories include Social Work, Security, Recreation, and Maintenance positions.  
\*\* Direct Care Positions

William R. Sharpe Jr. Hospital  
Weston, WV

Overtime Report

	HS Trainee/ Worker/ Asst.**	LPN**	RN**	Office Asst.	Psychologist	EKG/ EEG Tech	Pharmacist	Electrician	Dietary	Housekeeping	Other*	Total
Mandated Hours	68.50	27.00	17.75	0.00	0.00	0.00	0.00	0.00	75.50	2.50	256.75	448.00
Mandated Workers	19.00	5.00	3.00	0.00	0.00	0.00	0.00	0.00	10.00	1.00	35.00	73.00
Volunteer OT Hours	351.75	202.75	173.25	2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	730.00
Volunteer OT Workers	56.00	22.00	30.00	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	110.00

\* Other categories include Social Work, Security, Recreation, and Maintenance positions.  
\*\* Direct Care Positions

\* Hours will total from 12:00 AM on Sun morning to 11:59 PM on the following Saturday.  
\* Hours worked includes agency staffing

Mildred Mitchell Bateman Hospital  
Huntington, WV

Overtime Report

	HS Trainee/ Worker/ Asst.**	LPN**	RN**	Office Asst.	Psychologist	EKG/ EEG Tech	Pharmacist	Electrician	Dietary	Housekeeping	Other*	Total
Mandated Hours	72.00	8.00	16.00	0.00	0.00	0.00	1.00	0.00	54.75	0.00	0.00	151.75
Mandated Workers	10.00	1.00	2.00	0.00	0.00	0.00	1.00	0.00	11.00	0.00	0.00	25.00
Volunteer OT Hours	378.00	86.00	110.00	31.25	0.00	0.00	0.00	29.25	0.00	13.25	281.25	929.00
Volunteer OT Workers	56.00	17.00	18.00	6.00	0.00	0.00	0.00	1.00	0.00	4.00	57.00	159.00

\* Other categories include Social Work, Security, Recreation, and Maintenance positions.  
\*\* Direct Care Positions

\* Hours will total from 7:00 AM on Sun morning to 6:59 AM on the following Sunday.  
\* Hours worked includes agency staffing

**WV Traumatic Brain Injury (TBI) Waiver Program  
Implementation through March 2015**

**MNER Summary:** Since February 1, 2012, the Administrative Services Organization (ASO) has received, processed and/or made initial determinations on two hundred and nine (209) Medical Necessity Evaluation Request Forms (MNER)/applications.

- ❖ Of those two hundred and nine (209) applications (submitted MNER):
  - 22 applications were closed - no evidence of a TBI
  - 27 applications were withdrawn
  - 3 pending assessments
  - **157 applicants received medical eligibility determination assessments**
    - 33 applicants did not meet medical eligibility
    - 124 applicants were considered medically eligible based on their PAS and Rancho Los Amigos scores
      - 16 applicants were denied financial eligibility
      - 29 applicants withdrew their case after medical eligibility was determined
      - 5 applicants are awaiting financial eligibility
      - 2 applicants deceased prior to notification of medical eligibility
      - 13 members have discontinued their enrollment since 2/2012
      - 3 member deceased
      - 56 Active Members in March 2015

# MNER Applications Received Per Month							
2012	# MNER Received	2013	# MNER Received	2014	# MNER Received	2015	# MNER Received
January	N/A	January	6	January	9	January	5
February	4	February	5	February	6	February	7
March	2	March	10	March	4	March	5
April	4	April	4	April	8	April	
May	3	May	9	May	9	May	
June	1	June	4	June	7	June	
July	2	July	10	July	6	July	
August	5	August	10	August	2	August	
September	7	September	5	September	7	September	
October	1	October	10	October	8	October	
November	3	November	5	November	4	November	
December	2	December	4	December	6	December	
<b>2012 Total</b>	<b>34</b>	<b>2013 Total</b>	<b>82</b>	<b>2014 Total</b>	<b>76</b>	<b>2015 Total</b>	<b>17</b>
<b>Total since program implementation February 2012</b>							<b>209</b>

**Outreach Efforts Summary:** In January 2012, the ASO 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 1549 Email contacts indicated below).

Since March of 2012, ASO 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 ASO offers/provides training and technical assistance to the twenty (20) enrolled provider agencies. Training topics include the Medicaid requirements for covered services (Case Management, Personal Attendant Services and Cognitive Rehabilitation Services) and general information about supporting individuals with TBI.

The ASO targets outreach for each agency selected to provide services for enrolled members. Outreach focuses on providing guidance in completing the financial eligibility process and compliance with Medicaid forms. Additionally, the ASO provides technical assistance to resolve specific member needs.

<b>Types and Numbers of Outreach Efforts Made for the WV TBI Waiver Program</b>	
<b>Type of Outreach</b>	<b># Outreach Efforts</b>
<b>General Outreach</b>	
Email	*1549
Phone	1213
Face-to-Face	519
Presentations/Outreach (ex. WV NASW Conference, local DHHR)	61
<b>For Enrolled Providers</b>	
Training-Webinar	33
Face-to-Face Technical Assistance	57
Phone Technical Assistance	418
<b>Total</b>	<b>3,850</b>



# Personal Attendant Services





