

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, MARCH 19, 2013

MINUTES

PRESENT: Vickie Jones, Linda Dailey, Kim Walsh, Kim Stitzinger Jones, Lydia Milnes, Jennifer Wagner, David G. Sudbeck, Allen Campbell, Cindy Beane, Teresa Brown, Regenia Mayne, dan connery.

I. COURT MONITOR REPORT

David Sudbeck distributed a prospective Patient Grievance form and inquired as to the status of its completion and implementation. Vickie Jones stated that she had conferred with Legal Aid via conference call and that, aside from some minor changes to which all parties agreed, the document is being finalized and will be implemented April 1, 2013. Vickie also explained that the main changes to the document regarded the resolution of the grievance at the lowest possible level and that the CEO would only be involved if the grievance situation escalated. Jennifer Wagner inquired and was assured that the patient and advocate would receive copies of the grievance form and that the patient, advocate and CEO would all receive letters on the outcome of the grievance.

David also distributed a list of grievances [attached] that have been received in the Office of the Court Monitor and briefly explained the process by which he denies or grants the appeals. Of specific concern were the following:

- The violation of 64
- The process by which forensic patients are being transferred between the hospitals
- The lack or very limited notification when transferring patients between the hospitals

In his investigations he has discovered some systemic discrepancies between Bateman and Sharpe regarding the treatment of forensic patients. Vickie stated that systems are being developed to find a standardized level of treatment between the two hospitals. David stated that after further investigation he will assemble a group to discuss this problem and develop and implement a solution. David also raised concern over the decision by a physician to refuse all community outings for forensic patients even though this is in direct violation of a court order for some patients. Vickie replied that she would investigate this situation and report her findings to the Parties.

David inquired as to the effect of the federal sequestration on the Department. Vickie stated that meetings were occurring to plan for cuts in funding. At this time there is no specific information on the exact funds or areas where the cuts will take place, but plans are being made in the event that they occur. She explained that she will inform the parties as more information is made available.

David inquired as to the status of the programs by providers for Years One, Two and Three. Vickie stated that numerous changes have occurred to the original plans of the providers, and Kim Walsh offered to update the information and distribute it to the Court Monitor and Parties within 30 days.

David inquired as to a prospective date when Vickie would relinquish her role as Commissioner and assume her position as CEO of Bateman in a full-time capacity. Vickie responded that at this time there was no proposed date for this change. While no one questioned Vickie's knowledge or competence in either of her positions, the Parties agreed that a full-time CEO is an absolute necessity for the productive day-to-day operations at Bateman. Vickie assured the group that she would notify the Parties immediately once an official date has been determined. David requested that his concerns on this issue be shared with Secretary Rocco Fucillo.

II. BHHF REPORT

Vickie Jones explained that an analysis of funding use in the Department and Providers over the last few years has revealed an excess of unused funds. Vickie stated that these funds should be used and that the Department is in the process of pulling back a certain amount of these funds and allowing them to be reallocated for other services in their respective fields. She also revealed that after discussions with the Providers' Association that accountability on all sides is needed for the efficient use of these funds. She stated that a report on the specifics would be forthcoming and available to the Parties.

Vickie also stated concern over a newspaper article in which a quote was taken directly from the Meeting of the Parties' minutes although the minutes had not been finalized or released to the public. Though all members agreed that the Meeting of the Parties is a transparent group, it was agreed that information contained in the minutes should not be released until a final version is released to the general public allowing time for corrections and clarifications.

III. PETITIONER REPORT

Lydia Milnes was introduced as new counsel for Mountain State Justice replacing the role of Dee Weston. Jennifer Wagner expressed concern over past legislation that eliminated the involuntary commitment of children, thereby eliminating any payment mechanism for treatment for uninsured minors. She noted that bill number SB481 was introduced in the Health and Human Resources committee this session to rectify the problem, but that if it did not pass, this would have to be discussed by the parties.

She also inquired as to the status of the audits of the hospitals by Legal Aid and expressed concern over the regularity of the audits. After discussion it was agreed that an audit schedule of six-months is appropriate and that Legal Aid in conjunction with the hospitals could best arrange which months would be most beneficial to the process, but a regular schedule would be beneficial.

Jennifer requested that any information that the Department could supply to benefit the community placement of individuals would be appreciated and investigated. Vickie stated she wanted to move toward focusing on what is beneficial to the patient instead of focusing solely on the responsibility of the Department and that a culmination of information from both Parties could be used to achieve this.

IV. BMS REPORT

Cindy Beane stated that the amendment to the TBI Waiver had been approved by CMS dated February 1, 2013, and distributed a document [attached] explaining the TBI waiver implementation data.

V. OTHER

Next Meeting: Tuesday, May 7, 2013
10:00 a.m.-12:00 noon
Covenant House
600 Shrewsbury Street, Charleston, WV 25301



OFFICE OF THE COURT MONITOR

Document of Patient Grievances Filed with Office

Grievance	Date	Description of Appeal	Granted/Denied
#1	08/20/2012	Patient's boots lost/misplaced by staff at Sharpe.	Granted
#2	12/14/2011	Reasonable accommodation under the ADA regarding patient's use of Kindle at Sharpe. (Grievance not filed in a timely manner.)	Denied
#3	02/10/2012	Patient's artwork lost at Sharpe.	Denied
#4	01/23/2013	Patient searched after silverware is found missing from dining hall at Bateman.	Granted
#5	03/04/2013	Patient moved from Sharpe to more restrictive environment at Bateman.	Pending

**WV Traumatic Brain Injury (TBI) Waiver Program
Implementation through February 2013**

MNER Summary: Since February 1, 2012, the Administrative Service Organization (ASO) has received, processed and/or made initial determinations on forty-five (45) Medical Necessity Evaluation Request Forms (MNER)/applications.

- ❖ Of those forty-five (45) applications (submitted MNER):
 - 3 did not come from an approvable referral source
 - 5 legal representatives withdrew the application
 - 2 facilities withdrew the application

- **35 applicants received medical eligibility determination assessments**
 - 10 applicants did not meet medical eligibility
 - **25 applicants were considered medically eligible** based on their PAS and Rancho Los Amigos scores
 - 4 applicants were denied financial eligibility
 - 8 applicants are awaiting financial eligibility
 - 1 facility withdrew the application due to lack of home/community setting for the applicant
 - 2 applicants deceased prior to notification of medical eligibility
 - 1 applicant moved out of state
 - 9 applicants have been enrolled as members as of February 28, 2013

# MNER Applications Received Per Month for the WV TBI Waiver Program	
Month/Year	# MNER Received
February 2012	4
March 2012	1
April 2012	4
May 2012	4
June 2012	1
July 2012	2
August 2012	5
September 2012	7
October 2012	1
November 2012	4
December 2012	2
January 2013	5
February 2013	5
Total	45

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 the 326 email contacts indicated below).

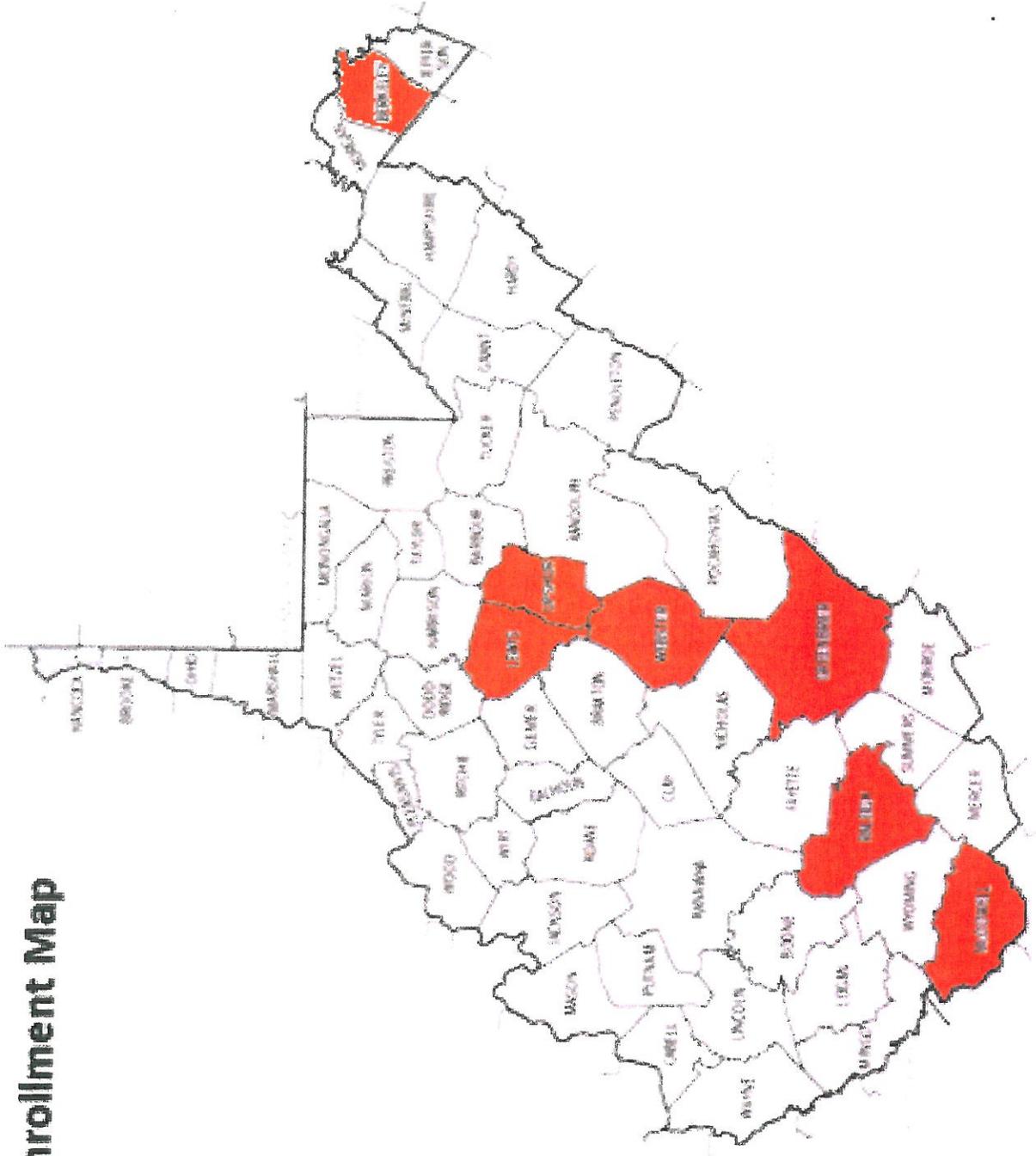
Since March of 2012, ASO staff has conducted statewide outreach efforts to include: scheduled face-to-face meetings within the facilities, presentations at local and statewide settings and meetings with the directors of the Aging and Disability Resource Centers.

Additionally, the ASO offers/provides training and technical assistance to the thirty-four (34) 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 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.

Types and Numbers of Outreach Efforts Made for the WV TBI Waiver Program	
Type of Outreach	# Outreach Efforts
General Outreach	
Email	*326
Phone	386
Face to face	342
Mail	59
Presentations/Outreach (ex. WV NASW Conference, local DHHR)	12
For Enrolled Providers	
Training-webinar	15
Face-to-Face Technical Assistance	36
Phone Technical Assistance	39
Total	1,215

Member Enrollment Map



as of 2/2013