

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, MARCH 2, 2011

MINUTES

PRESENT: Vickie Jones, Allen Campbell, Susan Perry, Kevin Stalnaker, Teresa Brown, Cindy Beane, Jennifer Wagner, Wendy Elswick, David G. Sudbeck, Sheila Kelly, dan connery

I. PLAN OF ACTION (SHARPE OVER-BEDDING)

David Sudbeck requested an update on the completion of Action Plan steps from the chart of "Formal Recommendations and Plan of Action" related to the Sharpe Overbedding Report. Kevin Stalnaker stated that he had met with Parker Haddix, and that a plan of action would be submitted to the Court Monitor's Office by March 31, 2011. Kevin also stated that the problem of inoperative phones has been remedied and that the problem with excessive population has subsided through the efforts of the hospital however since many patients are being diverted (either to the forensic unit at Riverpark or to the private psychiatric facilities) there is definitely an increased cost to the state. David complimented the Bureau on maintaining population levels below licensed capacity in both hospitals over recent weeks. He has received positive comments from Sharpe staff as to the difference it makes in conditions for staff and patients.

David Sudbeck inquired as to a formal response by the state to issues raised by the Legal Aid Audit. Kevin replied that there was no official response yet, but that it would be forthcoming.

II. PROCEDURE FOR MEETING STAFFING REQUIREMENTS (MANDATORY OVERTIME POLICY)

Vickie Jones stated that a compromise was being reached with staff representatives as to rest and meal breaks, and that though there are no draft changes yet available for distribution, the hospital is still tweaking the content. Kevin Stalnaker agreed to submit a draft to the Court Monitor's Office by the end of the week (March 4, 2011).

III. CLINICAL SERVICES MANAGEMENT-DRAFT REPORT

David Sudbeck distributed copies of the Draft Report to the Petitioner and Respondent. He requested that the parties review and send comments to his office by March 17, 2011. He also suggested referencing the page numbers of the draft with comments for easier identification of referenced passages. David also requested the names of any individuals, in addition to the Project Committee, who should receive the draft document. After discussion amongst the Parties, it was decided that the document should be sent to the Project Committee for clarification and accuracy, but that a cover memo should stipulate that this is only a draft document- not a final version, nor is it appropriate for wide release until a final version is received.

IV. CRISIS STABILIZATION ACTION PLAN – FOLLOW UP

Sheila Kelly stated that the series of Workgroup meetings had been successful in clarifying the definition and issues surrounding Crisis Stabilization Units (CSU). Through the efforts of the group it is evident that there does not appear to be a need for additional CSU beds in the areas targeted by the agreed order, except for Pretera's Huntington division. The work group recognizes the need for Detoxification beds, and Pretera has been offered the opportunity to add five detoxification beds in their Huntington Center, rather than the five CSU beds the Center had previously proposed.

In addition to Detox beds, there is a need for Short-Term Step Down, Long-Term Step Down and Crisis Emergency Housing in areas that are not fully utilizing their CSU beds. Sheila formed a very small work group to develop per diem rates for those services so that Centers could provide them if they so choose. The work group will report out to the Court Monitor as scheduled on March 7, 2011.

She also stated that the real need is not for CSU beds but for an adequate level of payment for services that the Centers are providing at a loss (such as medication management). The vast majority of Center clients receive medication management only, and Centers have a very difficult time recruiting psychiatrists and paying them. Unfortunately the amount paid for this service is determined nationally and the BMS has very little control over reimbursement for some codes such as medication management.

Resolution of the charity care reimbursement issue is still undetermined, awaiting a recommendation from a group from the Provider's Association to the Bureau. The workgroup felt that a fee for service model would be preferable to the current methodology however the group also recognized that a fee for service model would damage rural and low volume Centers. This makes the reimbursement issue difficult to resolve.

V. BHHF REPORT

Vickie Jones distributed the Community Supports Funding Summary, a summary of the funds that the Bureau has made available to date because of the Hartley orders. She stated that the Department is working to finalize the dollars distributed to Group Homes. She also requested that

the Department be allowed to switch Year Two and Year Three Provider allocations so that those that are more ready to provide a service can proceed and those Centers that are not as ready can have more time to prepare. Because the levels of commitment tend to be fairly uniform once the large volume areas are awarded grants, it will make little difference if USC, for example, becomes a Year Two provider and Valley is postponed on some projects until Year Three. Petitioner stated that this was agreeable.

Vickie also stated that the BHHF and the BMS had met with a few providers to discuss the survey regarding rate review methodologies (BMS is attempting to establish a reasonable rate review methodology as required in the Agreed Order and in order to do so, is asking Providers to complete an extensive survey). She felt that the meeting was productive although the first go-round covered only the Waiver rate review survey. A followup meeting will be held in the near future to discuss the Clinic/Rehabilitation rate review survey.

VI. PETITIONER REPORT

David Sudbeck distributed a letter from John Russell concerning BHHF's decision to award co-occurring funds to four non-comprehensive centers. The Provider's Association argues that the funds were to be used for direct provision of intensive outpatient services and that the four programs awarded funds did not qualify under this definition. Jennifer Wagner expressed similar concerns, adding that she did not believe that the Healthways and Summit Center proposals were intensive outpatient services either. She expressed support for the projects the Bureau had funded but stated that the allotted funds are not being used as intended in the Agreed Order. Vickie Jones replied that the funds had been made available but only a partial amount had been awarded to the Centers due to a lack of proposals. Therefore the Bureau had allocated the funds to projects it believed addressed the concerns and needs of the co-occurring population. Jennifer requested that the Parties should revisit the intention of the funds provided and suggested that re-distribution of identified funds should be brought to MOPs for approval before re-distribution occurs. It is possible that this issue could arise again in discussing more flexible use of Supported Living Slots as recommended by the CSU workgroup. Jennifer requested that Vickie forward copies of the actual four program proposals for her review, and once she has done so, she will get back in touch with Vickie within a week. Vickie stated that she would get copies to the Plaintiffs and to the Monitor's Office.

VII. BMS REPORT

Cindy Beane stated that the BMS has responded formally to questions from CMS on the ACT State Plan Amendment and expects that the responses will result in rapid approval of the Amendment as modified. The Parties will be notified once received. She also explained that Community Focused Treatment has become an area of focus by CMS under the "same page" rule, and CMS seems to be concerned about the apparent "maintenance" nature of the service as described. BMS is expecting questions from CMS on this issue in the near future. Sheila pointed out that resolution of this issue will affect the new day treatment programs identified in the Agreed Order.

Cindy stated that there are ongoing conversations with CMS concerning the TBI Waiver in regards to Environmental Accessibility Adaptations. CMS would prefer to require every contractor

to be registered with BMS which is logistically impossible. There is an option that individuals can obtain EAA through the self-directed service model, and the Parties agreed to this option to remove a roadblock to the progress of the TBI Waiver. Cindy explained other smaller issues with the proposal: Cognitive Rehabilitation Therapists training and certification remains an issue. BMS would like to adapt the proposal to indicate that all CRTs will be either employees of licensed agencies or independently able to provide specialty services, which will limit the pool of independent providers to psychologists and speech therapists. Sheila expressed some concern that this will cause many potential providers to be unable to provide services including licensed social workers and professional counselors. She also stated that she believes that the Centers will not be too interested in providing this service because of the expense of training staff relative to the small number of consumers involved. The Parties agreed that there may be manpower issues. Sheila suggested adding hospital outpatient clinics to the group able to provide services as many teaching hospitals are likely to be interested in training staff and would be very competent providers of service. Cindy stated she would take this back and reword it to attempt to include hospitals.

Additionally, Cindy reported that BMS has been approved for the Money Follows the Person grant and will use some of these funds on the TBI waiver program.

VIII. SPECIAL ASSISTANT REPORT

Sheila briefly reported that in her visit to the new UHC in Clarksburg, she had been made aware that the hospital in the last week admitted three individuals who required vent care in ICU due to abuse of bath salts. Bath salts and K-2 are causing an increased rate of apparently psychotic behavior which requires considerable time to ameliorate. She suspects that many people are being mis-diagnosed with psychosis rather than substance abuse. She emphasized the drastic need for the system to adjust to a younger population with services for substance abuse.

She also expressed concern that supportive living slots are being used by Centers to support congregate living situations rather than supporting people in their own homes. She recognizes, however, the need for Centers to be able to operate cost effectively and their difficulty in locating suitable and reliable staff for this purpose. The group agreed that it was better to have eight people in supported living than in Sharpe.

IX. RFR-LEGAL AID REPORT

David Sudbeck distributed the Report on Legal Aid Advocacy at Sharpe. He stated that the report has been sent to Judge Bloom and that a meeting with Legal Aid occurred last week. Legal Aid has agreed to follow the Formal Recommendations and to develop Performance and Management Improvement criteria by April 1, 2011, with 120 days to implement. A formal review of progress will occur on August 1, 2011.

X. OTHER

David Sudbeck stated that a meeting with Year Three Providers had occurred. Southern Highlands and Summit Center will submit proposals to BHHF by April 1, 2011 for group homes

and supported living programs. Logan Mingo did not attend but may be interested in funding to re-open a group home in Mingo County. The BHHF is awaiting a proposal from them.

Jennifer Wagner inquired as to whether excess funds at the end of Year Three could be used for other/additional services. Vickie Jones agreed that this would be possible and the Parties will review such a possibility in the future.

Next Meeting: Wednesday, April 13, 2011
10:00 a.m.-12:00 noon
Covenant House
600 Shrewsbury Street, Charleston, WV 25301