

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, OCTOBER 19, 2011

MINUTES

PRESENT: Allen Campbell, Kevin Stalnaker, Cindy Beane, Jennifer Wagner, Wendy Elswick, Regenia Mayne, Ken Devlin, Susan Perry, Kim Stitzinger Jones, David G. Sudbeck, Sheila Kelly, dan connery

I. COURT MONITOR REPORT

David Sudbeck informed the Parties that the Office of the Court Monitor will be moving to a different location in the same building on Saturday, October 22, and that computer and telephone capabilities will likely be offline from Thursday, October 20 to Tuesday, October 25.

David expressed his satisfaction with the current census levels at Sharpe, which have been steadily decreasing over the last few weeks. He also informed the Parties of his visits to Prester's and Westbrook's Supported Living placements, Group Homes and Day Treatment programs and urged the Parties to perform visits of their own. He was pleased with the results of both providers' efforts, and was very impressed by those at Westbrook. He also intends to visit Prester's facilities in Charleston and Year-Two providers' programs once they are operational.

Sheila added that she had researched medical records for all the individuals in the residential placements visited by David. While Prester has a relatively high rate of readmissions in the Executive Outreach program, it appears that the agency is taking extremely challenging consumers with long histories of repeated hospitalization and a high probability of relapse. Several of Westbrook's consumers were not found in the Vista record keeping system but could easily have been in diversion facilities or not committed for the past five years, either of which condition would explain their not appearing in Vista. Westbrook also has several very challenging consumers.

II. BHHF REPORT

Due to Vickie Jones' absence, the issue of the use of leftover funding from the unused residential slots will be addressed at a special interim Meeting of the Parties. Jennifer Wagner emphasized the belief of plaintiffs that funding needed to be utilized for residential placement and suggested a clear plan to fund housing. Sheila reiterated her concern that funding has gone to support a relatively few individuals with persistent mental health/addictions issues but that this emphasis is not having the desired effect of decreasing admissions and diversions through the commitment system. She believes that short term treatment programs for addictions, similar to the small program operated by Highland and heavily utilized by Charleston emergency rooms may be a reasonable use for some of the funding.

In response to Sheila Kelly's concerns, Susan Perry expressed the hope that the Governor's Substance Abuse Advisory Councils will collect data and formally recommend solutions to the substance abuse treatment needs of the State, which seem particularly compelling in the Eastern Panhandle region, where there are few treatment options. The Regional Councils will begin another round of meetings next week.

Kevin Stalnaker mentioned a proposal that BHHF and BMS have submitted to CMS in response to the Affordable Healthcare Act. This proposal will allow Medicaid to pay for (nonforensic) inpatient care for consumers in Institutions for Mental Disease (IMDs). The IMD proposal is a demonstration project slated for only three years. Such payment has always been prohibited by CMS. This would allow a reduction in the state funding currently paying for treatment of patients in Riverpark and Highland Hospitals, both of which are IMDs. The Department is awaiting word as to whether the proposal will be approved.

He also informed the Parties that the Department has released requests for an Expression of Interest for architectural and planning services for the forensic extension at Sharpe. The current status of the CON proposal for Highland's Clarksburg proposal was discussed. Susan believes that the HCA should release a decision on the CON request by the end of November. At that point the Department will discuss the availability and use of the funds that were allocated by the Legislature for the additional 50 private forensic beds.

Kevin also stated that the heating and cooling repairs and improvements at Sharpe were progressing well within schedule, and that a system of internal valves had been installed to better address future issues.

He announced the employment of Joe Murphy as the new CEO of Bateman. Mr. Murphy has experience in the administration of private psychiatric hospitals and will begin in January of 2012.

In a handout distributed to the Parties, Kevin reviewed the status of the Legal Aid Advocacy Program at Sharpe and the hire of a new advocate to fill the vacancy created by the resignation of one of the advocates. Kevin explained that Legal Aid has been quite proactive in its handling of issues with its patient advocates since the Monitor's investigation.

David Sudbeck relayed the Potomac Center Inter-Agency Group's concern as to the employment of a Legal Aid Advocate at Potomac Center. The Group's concerns involve the required educational qualifications and salary for this position. Kevin stated that he would investigate the matter and report back at the next Meeting of the Parties.

Regenia Mayne raised concerns of Sharpe patients staying in improper hospital areas when the hospital is overly full and being moved from one unit to another for the convenience of the

doctors. Kevin assured the Parties that this practice was not occurring and that any movement of patients was strictly overseen by the head of nursing and/or the Clinical Director.

III. PETITIONER REPORT

Jennifer Wagner inquired as to the availability of funding for the agreed detox beds at Pretera. Kevin Stalnaker stated that he had no current information, but would have that information for the next meeting. He believes that the funding has been delayed by technical purchasing problems related to processing of grants and should be available soon, but he will research the question.

In response to Jennifer's question regarding the timing of the forensic unit construction at Sharpe, Kevin answered that groundbreaking would hopefully occur in early 2012 with an estimated completion date in late 2013. Jennifer also expressed concern that the funding for the private forensic beds might not be made available for community placements. Though Kevin agreed with the need for residential placements for forensic patients, he stated that the more immediate need is for inpatient beds. Jennifer asked if there was any plan for the allocation process for funding of the 50 additional beds, to which Susan Perry responded that the Department hoped to be able to make a decision on an allocation procedure for the funding by the end of November. Susan Perry confirmed that the Department would share the allocation procedure with the parties prior to making final decisions regarding the allocation of additional funds for forensic patients.

IV. BMS REPORT

Cindy Beane reported that the TBI waiver was on track and should meet the Court's timeline for submission to CMS by November 1, 2011. The BMS is almost ready to make an award on the Operating Agency and the Fiscal Intermediary for the program, which were the final pieces that needed to be in place for CMS review and approval. Cindy will prepare a letter for David to forward to Judge Bloom when the waiver application is submitted.

She reminded the group that because of the "same page" policy by CMS, the Community Focused Treatment option for providers has been under review by CMS. Stakeholder groups have been meeting to develop alternative and more satisfactory language for the program description which will be submitted by BMS for approval. She suggested that if that language is not acceptable, the state will need to find other alternatives for community focused treatment services for individuals with persistent mental illness.

BMS has also been conducting provider and Department meetings to review program descriptions and UM changes regarding ACT and Targeted Case Management. Sheila has been participating in those meetings.

Cindy also informed the Parties that a Medicaid Policy under review regarding Suboxone programs will now include an additional required psychotherapy treatment component. This has been rather controversial among some providers but the BMS believes that best practice for Suboxone treatment requires a combination of pharmaceutical and psychotherapeutic interventions.

BMS has also been awarded a grant for increasing provider access to the Criminal Background Investigation Registry. BMS will be working with the State Police to improve and accelerate responses to queries. This has been a major delay in hiring for providers.

V. SPECIAL ASSISTANT REPORT

Sheila stated that in response to testimony by the advocate before Judge Bloom, she had begun investigating the allegation that the hospitals had a number of patients that were described as being ready for discharge but without a placement. She obtained lists of such patients from both hospitals and researched the patients through the Vista system. Many, if not all, are extraordinarily difficult to place due to a combination of issues including sexual acting out, chronic psychosis, and medical difficulties that would require specialized placement. Those patients who appeared truly “ready” to leave were out on trial visit to one of the new group home or supported living placements. One obvious lack of placement option is nursing home that will accept patients that act out sexually or aggressively. Very few nursing home beds are available for this type of patient and their medical needs are too demanding for community based placement. An additional factor is the need for placements for people with intellectual disabilities and sexual offending. Many of these patients are quite aggressive as well and there may need to be capacity for locked community facilities. She suggested that it was not necessarily the advocate’s fault that patients described as “ready” for discharge may not truly be ready for discharge. She believes that the entire treatment team feels the pressure to try to get people out of the hospital.

Allen Campbell commented that this is the second meeting of the parties wherein testimony presented at the last Court hearing was investigated and found to be either untrue or at least an extreme statement. Allen asked that counsel do a better job of vetting testimony before presenting it at future hearings. Jennifer Wagner disagreed with this assessment and assured the parties that proper investigation is always conducted prior to putting on evidence. Jennifer further noted that the Department always has an opportunity to present its own evidence before the Court.

VI. OTHER

Next Meeting: Wednesday, November 30, 2011
10:00 a.m.-12:00 noon
Covenant House
600 Shrewsbury Street, Charleston, WV 25301