

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 27, 2010

### MINUTES

**PRESENT:** Vickie Jones, Kevin Stalnaker, Belle Manjong, Joshua Martin, Regenia Mayne, Cindy Beane, Jennifer Wagner, Jacklyn Gonzales, David G. Sudbeck, Sheila Kelly, dan connery

#### I. REVIEW OF MINUTES

Minutes reviewed and approved. As it was previously agreed that Minutes would be posted on the Court Monitor's website six business days after review, it was decided that hard copies would no longer be distributed at the Meeting of the Parties. The website address is [www.courtmonitor.wv.gov](http://www.courtmonitor.wv.gov).

#### II. CSM UPDATE

David Sudbeck stated that the kickoff meeting with the project committee and CSM had occurred and that during this meeting Charlene Vaughan raised the concern that the Final Report from CSM should be sealed. Jennifer Wagner commented that the findings should be a matter of public record. After discussion on this topic, Vickie Jones clarified that the concern was on the initial report for issues of accuracy and not the final version. It was agreed that members of the Project Committee would receive the initial draft with the understanding that only the final version would be made public. Jennifer also asked if there was a new timeline identified for this project. David Sudbeck suggested a rough completion date by the end of the year (2010).

#### III. TBI WAIVER UPDATE

Cindy Beane stated that the TBI Draft Waiver had been submitted to CMS on October 1, 2010. She indicated that there may be two potential stumbling blocks. First, CMS expressed concern that the BMS was allowing providers fairly generous amounts of time to bring staff into compliance with the certification requirements for TBI. Apparently CMS does not favor a "phased in" approach for staff training. Cindy indicated that BMS may have to drop the certification requirements for staff in order to address CMS concerns on this issue. Secondly, CMS expressed a desire that all providers of environmental adaptation renovation and equipment follow specified

purchasing requirements that would be very cumbersome and would in all likelihood affect the other waivers, who also have environmental adaptation clauses. She stated that if CMS decided to “stop the clock” (meaning to go outside the 90 day decision guideline) during this process, David Sudbeck would be notified.

Cindy stated that CMS has asked BMS to identify the cost methodology BMS used in establishing the daily ACT rate in the agreed order. BMS is working on providing that information to CMS. CMS also had some additional questions about the revised ACT guidelines. Because of the “same page” rule utilized by CMS, the state Medicaid Plan for Community Focused Treatment also came under CMS scrutiny, particularly with regard to the apparent “maintenance” as opposed to “rehabilitation” qualities of that billing code. Cindy projects that there may be some additional restrictions imposed on the CFT guidelines as a result of CMS scrutiny. Considerable discussion occurred regarding use of Personal Care by behavioral health providers, most of whom do not directly provide this service. The parties agreed to explore this topic further at a future meeting.

#### **IV. BHHF REPORT**

Vickie stated that the Bureau will be co-hosting a Provider Retreat in Charleston in December to clarify and rework some of the objectives from last year’s retreat.

She expressed the opinion that the Year One and Two meetings held with the Department and providers was very helpful for everyone participating. In the future, she plans to meet individually with each Comprehensive CEO to discuss specific concerns of each Center as well as planning for future endeavors.

The BHHF has requested technical assistance from the Center for Substance Abuse Treatment (CSAT) in developing a long range treatment and prevention plan for substance abuse. The first meetings were held recently. The Bureau hopes to complete the initial plan by Spring, 2011.

The Bureau is in the process of hiring permanent CEO’s for both Bateman and Sharpe and is recruiting to fill empty positions within the Bureau’s Central Office, which has a 34% vacancy rate of staff. She stated that two new divisions within the Bureau, Monitoring & Compliance and Quality Assurance, are being overseen by Damon Iarossi and Connie Cantrell respectively.

#### **V. PETITIONER REPORT**

Jennifer Wagner expressed concerns regarding the problems and inconsistencies with regard to the commitment process and crisis stabilization services and expressed the opinion that not enough work had been done on either issue. She was also concerned about the reimbursement of costs for medical clearance as many patients are being directly billed and pursued for payment. Sheila pointed out that until the patient is actually admitted to a facility, he/she is legally in the custody of the County Sheriff which would mean that the County Commission is arguably technically liable for payment of costs. The group recognized the financial difficulties that most County Commissions face.

David Sudbeck suggested that this issue be addressed at the next Meeting of the Parties, giving the parties ample time to obtain sufficient documentation on the issues. He requested that Vickie Jones supply information on the Department’s progress with regard to an analysis of the allocation of CSU beds statewide. Jennifer reminded Vickie that Pretera had submitted a proposal for expansion of their CSU(s). Vickie stated that while there may be a need for additional beds in certain areas, including the Pretera catchment area, that she is unwilling to increase the bed capacity while there is still such a significant vacancy rate with the current capacity. Additionally David and Sheila Kelly will review her prior report and recommendations with regard to commitment issues to see if any of those recommendations can be of assistance.

The Bureau’s Fiscal office is working with providers on the five proposals for co-occurring programs that have currently been received and approved by the Bureau. She stated that she hoped this would be complete within the next month or shortly thereafter, but could not make a commitment on this date since BHHF is not the only entity involved in this process.

## **VI. SPECIAL ASSISTANT REPORT**

Sheila stated that she had received a response from the Department to her second letter asking for clarification on the implementation of the MCO Medicaid project. She feels that the response she received was inadequate and/or non-responsive in many instances and will be asking for further clarification in the future. She was given copies of unsigned contracts with the MCOs that did not include Appendix B referenced in the contract. This appendix delineates the payment methodology and analyses performed by the Lewin Group for BMS which are directly relevant to the questions she had asked.

The SA recently visited Bateman Hospital to discuss a recent rash of denials for admission by some area diversion facilities. The admissions officer at Bateman keeps very comprehensive records of admissions and denials of diverted patients and Sheila is reviewing those records. It appears at least initially that the hospitals are perhaps rejecting patients who have been admitted repeatedly in recent months or who have a history of being very aggressive with hospital staff or other patients.

Sheila further pointed out that the implementation of the MCO project has made the objectives of the CSM project increasingly unclear. CSM was originally hired to perform an analysis of Utilization Guidelines for Rehabilitation codes under Medicaid with the goal of identifying methods of expanding community based services in a more flexible but legitimate manner. If the MCOs are each using access, utilization and payment methodologies applied according to the unique policies of the three different individual MCOs, the work of CSM will be useless. Also the payment rates for Rehabilitation Services agreed upon in the order could quickly become irrelevant. It is likely therefore that the result of the CSM project may be to examine the impact of MCO implementation. This also will be difficult since CSM was expected to complete their work by end of 2010, before the implementation of the MCO phase-in. Therefore any conclusion regarding impact can only be speculative.

## **VII. Report on Over Bedding at Sharpe Hospital**

The Court Monitor's Office has released a report on Over Bedding at Sharpe Hospital (available on the Office website at [www.courtmonitor.wv.gov](http://www.courtmonitor.wv.gov)). David distributed a chart listing the Formal Recommendations contained in the report and requested an Action Plan with Target Dates be completed on the Chart for each recommendation. Kevin Stalnaker agreed to complete this task and David asked that the completed chart be returned to him by November 12, 2010.

## **VIII. Other**

Cindy reported that BMS is in the process of developing a Money Follows the Person project and that the first meeting of interested stakeholders will be held this afternoon, October 27, 2010.

Next Meeting: Monday, December 6, 2010  
10:00 a.m.-12:00 noon  
Covenant House  
600 Shrewsbury Street, Charleston, WV 25301