Meeting of the Parties

E.H. v Matin

September 8, 2016

Charles Bailey: I am going to begin recording this meeting. I would ask everybody here when you do speak since Jenny doesn't know you, to just identify yourself on whose behalf you're speaking and that will help her somewhat, otherwise we'll have to fill in the blanks. Jenny, the leader of this meeting is going to be Mr. David Sudbeck. There are a number of people here in the room who may have something to say, and again, just identify whom you are, who you are, and who you represent and each time you speak, maybe do that until we figure out a better way to do this. Thank you.

David Sudbeck: Alright, let's get started. There was a new case here so let's start with introductions, and Jenny, this is David Sudbeck, and to my left...

Kyle Blackburn: Kyle Blackburn, Assistant to the Court Monitor.

Charles Bailey: Chuck Bailey, on behalf of DHHR.

Vickie Jones: Vickie Jones, Bureau for the Behavioral Health and Health Facilities.

Chris Doddrill: Chris Doddrill with the Attorney General's office.

Karen Villaneaua-Matkovich: Karen Villaneaua-Matkovich, General Counsel for DHHR.

Kelly Morgan: Kelly Morgan, on behalf of DHHR.

Bill Hicks: Bill Hicks, Assistant General Counsel for DHHR.

Cindy Beane: Cindy Beane, Bureau for Medical Service.

Sophie _____: _____, West Virginia Advocates

Teresa Brown: Teresa Brown, West Virginia Advocates

Regina Mayne: Regina Mayne, West Virginia Advocates

Lydia Milnes: Lydia Milnes, Mountain State Justice, on behalf of the Petitioners.

David Sudbeck: Alright, at this time, I don't think it's necessary to schedule another meeting. We are going to be in Court in November and we can touch base with each other in November if we need to schedule something for us to meet in December. But if something does come up, between now and that hearing date in November, just call my office and we can always schedule a special meeting. Alright, there were no grievances filed in my office since we were last together and I wanted to thank DHHR for submitting the information on the children from Potomac Center. When I reviewed it, there is only, I was aware of one, but there are only two that go past the 24 months. But what I would like to ask Vickie is, I don't know who put this together, but I am sure it was probably Beth or someone at Potomac Center, at Beth's request.

Vickie Jones: The Potomac Center put this together and BCF and BHHS worked together.

David Sudbeck: Ok. Alright. If I could have that updated every 60 days that would be real helpful for me.

Vickie Jones: Is there a title on that?

David Sudbeck: There actually isn't. No.

Vickie Jones: Ok. That's fine. I will make sure every 60 days, is that what you said?

David Sudbeck: Yeah. If I could have something generated maybe sometime in December. Some of these will be going over 24 months in December.

Vickie Jones: Ok.

Charles Bailey: Jenny, for your information, Vickie Jones was the female voice.

David Sudbeck: Alright, Kelly, could you provide us with an update on American Medical Foundation?

Kelly Morgan: Yes. I just spoke to them maybe twice in the past couple weeks. They advised me that they have begun the review, unfortunately, they were not able to have the review completed and a report provided in time for this party meeting, but they advised us that a review would be completed and a report should be finalized by the end of October. They provided me and I'll pass out a copy of a form that they are using as (inaudible) review each of the patient charts. And then these are kind of just their notes that they go through and review, then they will prepare an actual final report.

David Sudbeck: Is it fair to say that that report will probably be available to the Court by our hearing date, which I think is...

Kelly Morgan: Oh, yes. I have advised them of that hearing date and said that I absolutely must have that, you know. The end of October should be just fine.

David Sudbeck: Yeah, because our hearing is on November 30th.

Kelly Morgan: Yes.

David Sudbeck: So we'll have something hard copy to present to the Judge?

Kelly Morgan: That is what they have advised me. Of course, it is not in my control.

David Sudbeck: Good.

Kelly Morgan: But, yes, they have started the review and they are aware of the deadlines and they advised me just the other day that they fully anticipate the end of October.

David Sudbeck: Well that's good. So it will give us a chance to review it before we go into Court with it and if we need to meet after that report comes out, just call my office and we'll schedule something.

Kelly Morgan: And that's my hope that we get it by the end of October, within a week or two, of course I'll let you guys know.

David Sudbeck: Well even if it comes in the middle of November I am not worried.

Kelly Morgan: Right

David Sudbeck: As long as we have something by the 30th. Are there any questions on that?

Charles Bailey: David, I would like to comment. I, quite frankly, I think that we should schedule a party meeting prior to the Court hearing. I think it makes sense because at least from where I sit, one of our responsibilities here are to resolve issues that can be resolved here without inundating the judge with those issues, so, I don't know if anybody else objects, but I think it's just a good idea to meet before we go before Judge Bloom so...I just think it's a good idea.

David Sudbeck: Well, let's take a look at November and fill out some possible dates. The 21st and 23rd work for anyone? Of course, the 23rd is the day before Thanksgiving, that's probably not a good thing. What about the 21st or the 28th?

Lydia Milnes: Can you remind me of the hearing date?

David Sudbeck: The hearing dates is November 30th.

Lydia Milnes: 30th. That was Lydia Milnes.

David Sudbeck: What?

Lydia Milnes: I was just giving my name.

David Sudbeck: Oh, I see. Which one is better? 21st or 28th? Either one? Alright, let's do it on the 28th? At 10? Can we use this room?

Karen Villaneauva Matkovitch: Let me double check.

David Sudbeck: If not the 28th, the 21st. That is probably a good idea, with that report coming in.

Vickie Jones: The 28th may be better given that that is the week of Thanksgiving and it's going to be too far (inaudible) that week.

Charles Bailey: Yeah, I opened my big mouth and told my family we should go to the Macy's Thanksgiving Parade so they all chimed in and now they're all arguing about what we're going to do in New York. As they said in law school, equity never aids a volunteer. I am going to learn to keep my mouth shut. But the Mountaineer marching band is playing. So if you're sitting there watching on Thanksgiving and you see this poor person there with all my sisters and family. I would rather exchange e-mails with Lydia than have to put up with my two sisters fighting.

Unknown female: That's a lot.

Karen Villaneauva Matkovitch: David, on the 28th from 10-12 we can reserve the room.

David Sudbeck: Alright. So our next meeting, Jenny, will be October 28th, 10-12.

Unknown female: November 28th?

David Sudbeck: What did I just say? Yeah, November 28th.

Charles Bailey: The 28th at 10 a.m.

David Sudbeck: I have been told that BHHF has nothing to report so let's go on to Petitioners.

Lydia Milnes: Well, I sent around an email with some news articles I guess I should say, which indicate that there is some additional patients at Sharpe who were being prosecuted, for instance, involved with staff at Sharpe and I didn't get a change to send it around because I just go an email yesterday, but I guess there has been has a press article out of Huntington about a patient at Bateman that was just prosecuted, and I think, I am partly raising this just to follow up on the issue I raised before, which I know that I'm not suggesting that it be reopened, but just to point out that this appears to be occurring quite frequently and that, according to these articles, these patients are being transferred to the Regional Jail for periods of time and then being transferred back into the hospitals, which I really do find very concerning. I think that, you know, I understand that the DHHR's position is that you can't tell staff that they are not allowed to file criminal complaints, however, when patient names are being published in local newspapers and when, at least in the anecdotal accounts, where I have, you know, spoken with advocates, it seems like when the patients are getting charged, there is no communication happening with their court appointed counsel, who could probably step in to either ask for a closed hearing because this is an incompetent person and also, you know, possibly avoid them sitting in jail and compensating for a month or so until they end up getting sent back to the hospital. It seems like there should be some process in place so that an individual who is, you know, has been placed in state custody due to their incompetence, their mental incompetence, isn't going through this process and being publically, you know, have it published in local newspapers only to end up back in the state hospital, presumably because they were incompetent at the time. So, um, you know, if I hadn't just seen three more press reports about patients going through this, I wouldn't have raised this again, but it's clearly something that is happening with some frequency. And I know West Virginia Advocates has some concerns. I don't know if you guys wanted to add anything on this or not.

David Sudbeck: So this is going on at both hospitals.

Lydia Milnes : Yes, like I said, I didn't have a chance to email it around because when it came I was at home with sick kids, but I just saw a press release out of Huntington where our patient at Bateman had been prosecuted and has been, and I think is currently in the Regional, according to the article.

Regina Mayne: It's a September 2nd article.

Lydia Milnes: Yes.

David Sudbeck: Do you want to add anything to that?

Regina Mayne: No, but we definitely share that same concern. We're very concerned about people's names appearing in newspapers. There are mechanisms in place that allow the police to not, for instance, if they're arresting a juvenile, that juvenile's name doesn't go in the paper.

David Sudbeck: Right.

Regina Mayne: So there are mechanisms in place that would allow them to not reveal these people's identities, so I just, I am a little perturbed that those are not being used. And also, we share the concern that, you know, these people, the people that are being prosecuted, are, they're under extreme conditions anyway and they wouldn't be there if they hadn't been decided that they are a danger to

themselves or others, so, these incidents really should not be occurring like they are. It seems like an awful lot of incidents lately.

Lydia Milnes: At least one of these, the description again, is the description in the paper, I don't have any other knowledge, but, you know, it talks about grabbing and pulling the hair on the healthcare professional. The idea that somebody who is an incompetent patient and is there because they are a danger to themselves or others and they pull a worker's hair and they end up sitting in a regional jail, it's just, you know, this is not, I don't believe that this is the way this should work. I understand you could have extreme circumstances with, you know, very violent acts that might warrant some sort of involvement of a criminal prosecution. I'm not suggesting there is never the place for that but it's a fact it's pulling hair, that sounds to me like that is the sort of thing that happens in these environments.

David Sudbeck: I share your concerns. I really do. But when I look at Kelly's e-mail on this issue, I also think the Department's hands are kind of tied. I mean, you can't set up training when people are hired and, but, you really can't stop anyone from going to the police with a complaint like this.

Lydia Milnes: But couldn't there be discharge policies that when they're releasing a patient into police custody, there be a notification system to the court that this should be sealed, there be...

David Sudbeck: That is a good question.

Lydia Milnes: ...information provided to the public defenders being appointed to represent the individual. The individual should always have a guardian ad litem appointed. The individual's guardian should be notified, which I know doesn't happen in at least one incident. I feel like, I understand that the Department feels it can't tell staff that they are not allowed to file a complaint. I recognize that dilemma but it seems like there could be a process in place that when a staff member does file a complaint, because the discharges don't happen necessarily right away, so there is a lot of notice, at least according to what was represented ahead of time, before, because the hospital decides, the treatment team apparently decides when the police can come and pick the individual up. At least in some instances. I don't know if that is always that way. So it seems like there is ability to put in place some safeguards so that people don't end up, at least having their confidentiality breached, if nothing else, but also I would hope notification of guardians, appointment of a guardian ad litem, notification to the defense counsel. There is no indication in some of these that the defense counsel even knows what they're dealing with.

Charles Bailey: I got a question for you. Have any of you approached the State Police, the deputy sheriffs, you are the advocates for these patients and clients, the deputy sheriff, the prosecution attorney, they have down in Charleston, South Charleston, they have the entire institute of prosecuting attorneys, and consulted with them as to what steps they might be willing to take, because once they leave our facility, they're in the custody of the criminal justice system, and you know, I don't know whether the prosecuting attorney in Harrison County, or the prosecuting attorney in Cabell County, if you sit down and talk to them and express your concerns, talk to the sheriff of each of these counties, and talk to the state police barracks staff and his people and see what their response is, you know, you all are the advocates for these folks, you, so therefore, I would say if that is your concern, which if you have a concern, then I would suggest you speak to them about your concerns. Secondarily, if there is this issue, where are the advocates? If a person or employee, and I have a picture of the employee at Bateman. But anyway, so for you who are the advocates, I mean when these people are taken from the facility, what role do you all play? Do you intervene and say, you know, tell the deputy sheriff or the arresting officer that this should

be confidential or whatever? So, you know, while I see your point here, the question is that when that happens, what do you all do? I mean, are you down there at the court house? How do we know who the lawyer is for this particular individual? The person who may have been the lawyer for the commitment doesn't necessarily mean he is going to be appointed to represent. I don't do much criminal work anymore, but I know there are certain appointment systems. So, you know, I tell you personally, you all should talk to the prosecution attorneys foundation down there and ask him what protocols are in place and, I do agree that its, it doesn't, I agree that placing their names in the paper like that, but I can't do anything about the local newspaper doing that, but, you know, placing that burden and responsibility on us seems to be unfair to me. You know, you all are the patient advocates and our position is, and I did as much legal research as I could on it, I don't see how we can do anything about an employee filing a criminal complaint against the patient and also, it should be brought to the table, (inaudible) the employee's representatives. Our employees representatives, have pretty strong advocates and, quite frankly, some of the politicians up in that area support their position to file those complaints. I have been told that personally by a few of them. So, therefore, there is a political issue here too, and we can't, we're not going to be a political party, so my recommendation is, you should talk to state police, deputy sheriff, prosecuting attorneys and the employee representatives at the hospitals. You know who they are. The advocates know who they are and talk to them and say Hey, you know, what can we do here. That would be my response to it and then, you know, as we work through talking to all of these people, maybe something you know, could be in place. I'm sure that the deputy sheriffs, prosecuting attorneys are not sensitive to this. If they were, they would probably do something about it. I don't know. And you know, particular magistrates, I don't know. They have magistrate training, West Virginia Supreme Court of Appeals provides magistrate training and judicial training. Prosecution Institute gives training to prosecutors. So, there could be an education component to this.

David Sudbeck: Charlie, I agree with you.

Charles Bailey: Yeah.

David Sudbeck: I think that...

Charles Bailey: And I'm willing to talk to them too. I would be glad to go down to the state police, the head of state police, and say, you know, its an issue. I don't care. I'm just saying is that, you know, this is something that is controlled by the criminal justice system and the employee representative, and I didn't have a chance. I wish he or she was here so they could voice their concern and I could just say, but you're talking about...This is what... I'm just showing, Jenny, a picture, on an iPhone of what happened to an employee at Bateman recently.

Kelly Morgan: That was just this past weekend.

Charles Bailey: This past weekend.

David Sudbeck: Eww.

Charles Bailey: Yeah.

Lydia Milnes: So, this is Lydia. I would just like to respond. I think that some of these ideas are great ones and maybe we can do a joint meeting with local prosecutors and the police department. Umm. That looks...That looks bad. And again, for the record, I'm not saying that there is never a time or place

when having a complaint made is wrong and I'm also not saying that you all have the ability to tell employees that they are not allowed to file criminal complaints. What I'm suggesting is that there be discharge policies in place that are specific to what a patient is being discharged into police custody for prosecution and there's lots of discharge policies in place for all different scenarios. You guys discharge all the time and you have lots of follow up and lots of integrated mechanisms with the (inaudible) that you discharge to and I am suggesting that when there be a discharge of the patient into police custody in one of these scenarios, that maybe there is certain safeguards that need to be put in place. Chuck, you said well what are the advocates doing for those patients, and I think that's a great point. What I've been told is that the advocates don't know that they're being discharged to police custody.

Charles Bailey: Well, there at the facility.

Lydia Milnes: Right, but you all have raised a lot of objections to them having access to all of the information. So...

Charles Bailey: That objection, that objection wouldn't apply to that. They're notified that a patient is being taken into police custody. There is no.....

Lydia Milnes. If you can, I am totally on board. Let's have an official policy that when a patient is going to be handed over into police custody that the legal aid advocates at the hospitals and West Virginia Advocates receive notification a day or two in advance so that they can be present to help....

Charles Bailey: I don't understand where are they though, they're in the facility.

Kelly Morgan: Can I also add that the facilities don't always know until the police show up that they are being taken into custody.

Lydia Milnes. ...that might...

Kelly Morgan: Not every time, but at lot of times that.....

Charles Bailey: Let me just interrupt. There is one thing I don't know. I'm going to take a look and I don't know enough about discharge policies at either hospitals to comment intelligently about it. I don't know what protocols are in shape. I will talk to Vickie and others to figure that out. To me, the last thing we need is another rule or regulation or another book of regulations. What I'm saying is, is that, there is an education component here. I'll look at the discharge policies. I mean, I don't know whether or not in a patient's file or a client's file, as they say, whether the name of the attorney is there, but to ask someone working the 2 a.m. shift to call some lawyer at his home at 2 a.m., I don't see that feasible, but, again, the question is privacy here is, you know, I'm looking at this, and if I was a criminal defense lawyer and I'm appointed to this person, the first thing I'm going to ask is that if my client is incompetent to even be here. Ok. Or not competent of this kind of situation. But you know, in Harrison County, they have a very, very large public defender services. So, it might be, if we add to our list, probably Cabell County has a large public defender services and I am sure 99% of these persons who are being arrested are probably appointed a public service defender. He or she may not be, you know, they've got certain, they get appointed to cases, they go to court, they do their jobs, you know, you might talk to the public defender services folks who provide the criminal defense. Now, maybe some get criminal appointments through the appointment process. I'm not entirely sure. That would be another person to talk to because, I don't think there is anything you are ever going to do to stop the press from getting those names. That's easy.

You know, if you are arrested by a police officer, you know, who assaulted you, Bobby Brown. What did he do to you? He tried to strike me. That's in the police report and there is nothing confidential about those.

Lydia Milnes: As we pointed out. There is procedures in place. Juvenile names don't end up in the press. There are certainly court proceedings that happen that...

Charles Bailey: That's statutory, Lydia. Juvenile is statutory. I've tried to get, you can't

Lydia Milnes: Incompetent individuals...You have to redact. You have to, there is all sorts of....

Charles Bailey That's because its statutorily required, Lydia. Its, the statute is required under juvenile proceedings for all of that be redacted. Heck, they get a trial down in Kanawha County recently. The kid was 17 years old. He's now an adult. But even the victim's mother couldn't go to the trial.

Chris Doddrill: I just wanted to back up. I think there is a little bit of misunderstanding or mixing (inaudible) at the hospitals, (inaudible). Not every patient at the hospital is an incompetent. Some, several commitments might be incompetent, but not everyone is there is incompetent. Some person might be there for a drug problem, and is fully competent and is fully aware of what they are doing when committing crime. I'm going to let Vickie clear anything up there but just because somebody is in the hospital does not mean that they're mentally incompetent.....

Charles Bailey: I didn't mean that as a broad brush, but I mean....

Chris Doddrill: You keep saying that they're incompetent and a danger to themselves and others and I think that's kind of (inaudible) the patients here. So I don't know who these patients here. Maybe these are (inaudible) if they're (inaudible), at the hospital, but they're a patient there doesn't mean that they're incompetent for legal purposes.

Lydia Milnes: But if they've been civilly committed, they've been committed because they've been found to be a danger to self or others. That's the standard.

Chris Doddrill: Correct.

Lydia Milnes: So I, and ... they have to have, they have to have

Chris Doddrill: That doesn't mean that they are labeled as (inaudible)...

Lydia Milnes: I understand that it doesn't mean that there's been a separate legal competency determination, such as appointing a guardian...

Chris Doddrill: When you say they are a danger to self or others because you have a (inaudible).

Lydia Milnes: You're a danger to yourself.

Charles Bailey: Well, why don't we do this. I will do this. I will take a look at the discharge policies.

Lydia Milnes: Those I believe were actually circulated during our discussion on this in....

Kelly Morgan: Yes. They were.

Lydia Milnes: ....I'm not sure whenever that was. So we should all have them.

Charles Bailey. Well, my recommendation, this is my recommendation, because I thought about this. I suggest you go out and talk to these folks on the ground level and try to educate them to the sensitivity of this issue. You got the legal aid. You have the family advocates and they have you. So, I suggest you go out and speak to them. If you want me to, or somebody from my office, or someone from DHHR, to accompany you, we will be glad to do it.

Lydia Milnes: I would like to respectfully suggest that this should be a concern that we all share, not just the advocates for the patients. Because I would like...

Charles Bailey: But you've raised....

Lydia Milnes: ----all care about the patients and their well-being....

Charles Bailey: It's not that. You've raised the issue. We, ourselves, we sit in here somewhat handcuffed by the situation. What I'm saying is to you, you've raised the issue. I recommend highly that you set up meetings with these folks and talk to them. You can take the recommendation or not.

Lydia Milnes: I....

Charles Bailey: I would be glad, if DHHR is willing to me or someone from (inaudible) to accompany to discuss it.

David Sudbeck: I think it's a good idea. You have an advocate that covers both those hospitals, do you not?

Lydia Milnes: We have a.....

David Sudbeck: They're not on grounds, but you do have one that covers those hospitals?

Regina Mayne: We have someone who monitors.

David Sudbeck: Right.

Regina Mayne: And then, if somebody calls, we assign a unit service request. More than one advocate.

David Sudbeck: But don't you think this is an appropriate issue for your agency to deal with along with legal aid?

Regina Mayne: We, uh...

David Sudbeck: I think they both should be meeting with the state police, staff representatives, to talk about this issue. What are we going to do to put safeguards in place to keep people's names out of the paper? It's a starting point.

Lydia Milnes: I'm not trying to interrupt. I don't think, I think it's a good idea if we were to create some sort of meeting to the extent that anyone wants to participate, I mean, I don't know how likely, I don't know that the state police show up, or is it local sheriff departments, I don't know the answer to that. Certainly, we want to look at, I guess, local prosecuting attorneys and local public defenders, and I think that it's a good idea to address this with them. I think we would absolutely need someone from

DHHR in the hospitals who could speak to the logistics of what happens from the hospitals side of things because.

David Sudbeck: Well, if Susan. I believe it was Susan Given that brought this issue to the forefront. Correct? When she sent these first ones out.

Lydia Milnes: That was, I mean, she brought the new

Regina Mayne: She talked about...

Lydia Milnes: I had raised this issue prior.

David Subeck: So, why doesn't she spearhead something with legal aid and get something set up? Just start addressing this issue. I mean....

Lydia Milnes: Again, I'm certainly open to doing that but I don't think it will be successful if we don't have the participation and cooperation of DHHR because...

David Sudbeck: DHHR may want to show up at a meeting that Given is putting on with some of these representatives. I mean, I might even show up. I probably would actually.

Regina Mayne: Actually, she planned to be here (inaudible) She said last night

David Subeck: Oh, really.

Regina Mayne: So we can talk....

David Subeck: Will you talk with her and if she needs to call me and I mean, DHHR, you wouldn't have a problem sending a representative would you? To a meeting like this. Or would you? I don't know.

Kelly Morgan: I think if something is set up, most likely, someone would attend.

David Sudbeck: Ok. Well this has been a healthy discussion. We've got something done. So, we're going to leave it up to Susan to spearhead this group up and if she needs any help, I can be of some assistance if need me.

Charles Bailey: I would call the prosecuting attorney's institute which is over in South Charleston near the industrial area. They may be able to give us some suggestions or just call the prosecutors directly. They may be able to give some guidance on it.

David Sudbeck: Alright.

Charles Bailey: Ginny Grottendiek is the general counsel for the West Virginia State Police and Ginny could be a person to broach with. On the county levels, I'm not entirely sure.

David Sudbeck: Ok. Petitioner? Other issues?

Lydia Milnes: Yes. The other issue that I had mentioned before is this question about advocacy services at the diversion facilities. As we're all aware, under Title 64, the language, because I went back to look at it just to be clear, is that there shall be persons designated as clients (or patients or resident's advocates) who are independent of the facility management in every behavioral health facility.) Obviously, that exists in the form of the patient advocates at Sharpe and Bateman, which are currently

being contracted through Legal Aid of West Virginia. Legal Aid does not provide patient advocates at the diversion hospitals. When I raised this question last time, the response that Kelly sent around indicated that each hospital has their own advocates on staff. Now, what we found with that is that they are not independent of that hospital's administration, at least at one of them, it was a nurse who was designated. At other ones it was various people. And some of them they didn't even know and Legal Aid informed me that when they tried to coordinate with advocates at various diversion hospitals, there's a real, no knowledge of Title 64 rights and there seems like at some point Legal Aid wanted to make sure that an abuse and neglect application, or not application, but forms were being filed and they didn't have the forms on site. So, I think there is a real concern that the hospital designated advocates aren't performing the role that's required for persons who have been committed to the custody of BHHF at the diversion facilities. I know it was also raised that we have the West Virginia Advocates who possibly could fill that role, but as I understand it, you all have the authority to go out to those facilities but its not like you have assigned advocates who fill the functions of the Title 64 advocate.

Regina Mayne: No. we do not.

Lydia Milnes: So, I just wanted to raise this again for further discussion to find out, you know, what your all's position on this is and how you think these services, if you agree that they should be provided to these patients, and if so, how that should be done, ideas, etc.

Charles Bailey: I sent you that email and I guess maybe I wasn't clear enough. I asked if there were any particularized instances of this and you said no, just a general concern. Now had you written me an email and said, you know, Chuck, we've looked under the hood on this thing, and these are some issues we found, it makes it easier for me to prepare for things. One of my ongoing issues always is that it is hard to resolve issues when you learn them for the first. Next time I'll make sure my e-mails a little more expansive. I think Kelly's e-mail to you hits the nail on the head. Now, whether or not my understanding because I do a lot of medical work over joint committees and their accreditation, etc. The advocates there at the hospital do have an independent duty to advocate on behalf of any patient that has a grievance. I mean, you can't be accredited unless that occurs. Now, if a particular institution is not fulfilling its joint commission on hospital accreditation than that's a separate issue. But, I know CAMC and the larger hospitals, and I know at Highland, and obviously in order to get your accreditation those advocates must act, they're probably paid by the institution, must act independently. That's right in the advocacy situation. That's set up just like here to make sure patients do have an appropriate advocate. If you're saying that your survey reflects perhaps that there's a mis-education, I mean a misunderstanding, among the diversion hospitals about their role here, and that's something that could probably be addressed. I mean, obviously, people who we are diverting to these facilities ought to understand about patient rights. If that's your concern, that's a general... I don't believe, I believe that I would disagree with you about the the independence of them because they're statutorily and regulatory required to be independent.

Lydia Milnes: Does BHHF undertake any oversight to see whether the advocates at these hospitals are in fact insuring that Title 64 is being followed for the patients at those hospitals?

Charles Bailey: I don't know but, you know, had there been a particularized complaint obviously made by a resident, had that occurred, then obviously that is (inaudible) issue. That's how I usually, that's how I know... but Vickie can speak to it.

Vickie Jones: I think this was testified by Mike Casdorph when he testified in court and he is from Highland Clarksburg and he actually did say that they had advocacy services, etc. I think that was testified to in the hearing not too long ago.

Charles Bailey: Well, yes, I think Highland probably does. I think maybe Lydia might be referring to some other diversion facilities.

David Sudbeck: Who was the witness that came by phone, correct?

Vickie Jones: Yes.

Charles Bailey: No, he was not by phone. He came...was he on the phone?

Vickie Jones: He was on the phone.

Charles Bailey: He was on the phone and she cross-examined him.

Vickie Jones: That actually, that question was actually asked...

Charles Bailey. I think he answered that, but I think we have more than one diversion facility.

Kelly Morgan: Can I just add to clarify the question. Are you asking for all diversion facilities as in just mental health facilities, or are you talking about any hospital, acute care hospital, such as CAMC, that has a few psychiatric beds? Because there is a big distinction.

Lydia Miles. Again, I'm sort of open to discussion about this generally. I think my concern is that if you have a patient who has been committed to the Department's custody and they would be at Sharpe or Bateman, but for a lack of bed space, and therefore they are diverted out to any other hospital where they're going to be long term, I'm not talking about they're spending one night in a sort of holding status or something, whether there is any oversight of enforcement of Title 64 rights and also whether there's advocacy services available to them the same way that you would have advocacy services available if you were at Sharpe or Bateman. I am not suggesting this to be upfront, I'm not suggesting that there has to be onsite advocates at every single hospital through Legal Aid or something like that, I'm not suggesting that you'd have to have 24/7 advocacy at every site, but the, again, I don't have specific instances where I'm raising this specific concern, I think it is legitimate to raise a generalized concern. I think that's been the role of this case and I have had, as I told you all last time, letters from patients at various diversion facilities raising concerns of the nature that I would say that's a perfect thing to take up with an advocate. If they were at Sharpe and Bateman I would refer them to Legal Aid. But at these hospitals, either they feel like they don't know who it is or they don't feel like it gets addressed by the hospital. Often the concern is with the hospital and instead of saying well take it up with the hospital, I think probably feels insufficient. Some of these individuals, I don't even know that there concerns are legitimate because as we know, when working with individuals who don't necessarily have the same perspective on certain things that we have. You know, I'm not even saying that a major crisis happening at these places, I'm just saying who do they go to, how do they get that resolved.

Kelly Morgan: But are they not being referred to or, or are they saying they don't access to the advocate, the West Virginia Advocates? I mean, I'm just....

Lydia Milnes: I don't know how they get informed about the advocates or not, I know that (inaudible) advocates aren't the designated advocates under what's required under Title 64. I'm not

suggested that family doesn't have access to these hospitals. I'm saying is there somebody designated as required by Title 64 and.....

Charles Bailey: I disagree with your interpretation of 64 but I'm not going to get into that long discussion right now. But they have (inaudible) advocates who have absolute right to go into any hospital and advocate the position on behalf of the client. I mean, that's clear. They have a right to go into any hospital.

Lydia Milnes: And I don't disagree that.....

Charles Bailey: So, therefore, that's what I mean, so they have a right to advocate for the patient, the patient has their advocate, is your point that you don't believe that the hospitals understand that they understand their relationship with this patient or client, is that what you're saying, is that perhaps they need to be educated on, you know, what rights they should provide to these folks? Because joint accreditation people make it very clear what the responsibilities, whoever is in that hospital for any reason, the joint commission has regulation on it. So, there are regulations in place to provide advocate services. I think what I hear you saying is perhaps the hospitals or diversion facilities, or some of them aren't aware of what to do. Would that be fair?

Lydia Milnes: Again, I am raising questions because I'm not in the facilities to actually understand how everything works, but I'm suggesting that patients at those facilities.... A lot of times you'll have patients who have been in the hospitals at Sharpe and Bateman and then end up at a facility and in those hospitals they knew who to go to get help for something. They get transferred to a diversion facility, they don't feel like they have the same access to an advocate.

Charles Bailey: Ok. I'll tell you what I'll do. I'll talk to Vickie about this following the meeting. I think I understand your concern. I understand your concern and to make sure, well first, I'm going to go back and look at JCHA rules and regulations, I'll look at the hospital, you can go on line, I can look at the hospital, I can look at any diversion facility, hospital's rules and regulations and take a look at it. It might be an educational issue. I mean, I can see that the patient being transferred to a diversion, they end up in a hospital bed, and perhaps, you know, they might not know as much as somebody who has been there for a while. I get that. So, let me talk to Vickie and the others and see what I can figure out on that. But I mean I know what the duties of having represented hospitals before. I clearly know what their duties are.

Lydia Miles: Sure, and I don't dispute that the hospitals have independent accreditation duties. Does that, do the accreditation incorporate responsibilities under Title 64?

Charles Bailey: Well, I think they would. I mean, if a patient is mistreated, abused, or not provided the appropriate attention, I mean he or she is not given appropriate attention, whether or not it's a person at the hospital, (inaudible), joint accreditation, all of those things are really similar and source and if I'm sitting there and I haven't had anything to drink for 12 hours and I tell, and there are places in the hospital where you can make a complaint about that, it's taken care of. I mean, there is nothing unique about it. But I'll take a look, let me talk to Vickie and take a look at it and see what's....

Lydia Milnes: Ok.

David Sudbeck: A question to WV Advocates – Do you not have brochures in these facilities?

Regina Mayne: When people come in, they are given information about rights.

David Sudbeck: Ok.

Regina Mayne: And it is my understanding that we put posters in those facilities that should be always left up and I don't know...but we fought to make sure that they know us but the problem is, Davis, is a lot of times things come up in a day that they would like to file a grievance on and by the time they call us and they get an advocate out there, the issue that, you know, they wanted to grieve has maybe been resolved and maybe in a way that, you know, that they're not very happy with so then we have to get involved and, you know, start some sort of larger process and I just feel like, looking at some of the things and calls that we get, a lot of things could be easily resolved if there was just, if there is at the state hospitals with legal aid, a process of going through a quick grievance. You know, somebody that there issues, that they feel like their issues are being addressed right there.

Charles Bailey: Well hospitals aren't set up that way. That's not how they set it up. They don't have those type of grievance procedures in facilities like that. That's not how it works.

Regina Mayne: As I understand that section that Lydia is citing, it is saying that any place that has patients from the state hospitals....

Charles Bailey: Do you not want us to divert people anymore and be overcrowded again, I mean, I'm sorry.

Regina Mayne: No. I just think, I'm sorry....

Charles Bailey: I asked for a particularized situation. Is there an issue here that is manifested and the answer is no. So, you're saying that you do go in these facilities and give brochures, they are notified and that sometimes you get there and the problems either resolved or maybe you have to intervene. So, what's the problem?

Lydia Milnes: Again, under Title 64 there is a very specific advocacy process grievance process that is laid out for patients that is different from if I just went into the hospital for a broken arm. I agree completely the way a hospital typically works is not the way Title 64 requires it works for patients...

Charles Bailey: You keep saying 64 requires that kind of advocacy within a hospital setting. I disagree with that. I'm not going to argue the law right now but the bottom line of it is...What I'll do, I'll talk to Vickie and see, and take a look at this situation and make sure, I think that our diversion facilities understand that when these patients come in, they are entitled to the processes available at hospitals. We'll make sure that happens.

Kelly Morgan: I further ask that if you know a specific complaint or specific concerns raised by individual patients or whoever....

Charles Bailey: I already asked that question. I asked that question, Kelly. And the answer is no, but what they're saying is, it sounds to me, just like this other issue, it sounds like it's an education issue, you know, sounds to me is that the prosecuting attorney in Harrison County knows that this patient comes from Sharpe, maybe he or she might be a little more sensitive about it. I would assume that if they know we have diversion patients coming to a particular institution, they understand the diversion patient, perhaps they might be a little more acutely aware of what should be done. Sounds to me like an education issue that people need to be responsive. But I don't know enough about it. I'll talk to Vickie about it.

David Sudbeck: Charlie, thank you for following up on this issue for us.

Charles Bailey: Sure.

David Sudbeck: And depending on what you find out, will you bring that back to us?

Charles Bailey: Thank you, David.

David Sudbeck: Alright, respondents, I think you have one other issue, right? Or maybe more?

Lydia Milnes: I just wanted to ask real quick about something I saw on the news about Highland Hospital changing ownership.

David Sudbeck: They are.

Lydia Milnes: Is that going to have any effect on anything? Just curious.

David Sudbeck: I got a call from Tom Susman a couple weeks ago, giving me a heads up on Highland being sold to a Tennessee firm, and my question to him was, I mean, he was just giving me a for your information type of thing. I asked him, I said, you know, what happens to Cindy Kersley (?), because she is the CEO. He said according to him, everything was going to pretty much stay the same. They're not changing management staff or anything like that. Is that what you here?

KVM: I think as far as DHHR understands, nothing will change. If we should be told differently, of course, we will work with whomever the new MC is and at this point....

David Subeck: And it does not include Highland in Clarksburg is what Tom told me, because I asked that question. It's just this particular facility here.

KVM: I can't speak to that. I'm not privy to that information.

David Sudbeck: It was in the paper that the hospital is $26 million in debt.

Charles Bailey: My understanding, from my end of the thing, I would think the Clarksburg facility was on the table in the buyout...

David Sudbeck: It's not. According to Tom it wasn't.

Charles Bailey: I think it's the only Highland facility we refer patients to.

David Sudbeck: Ok. Anything else?

Regina Mayne: We were concerned about the census and it's really Bateman. Sharpe seems to manage the census fine. Bateman has consistently, lately, and I say lately and I mean the past couple weeks in particular, run significantly under census. On August 22nd for instance, their total census was 129 and we were worried about where could these patients be, what are their room arrangements when it's that high?

David Sudbeck: Well, I sent an e-mail...when it gets that high it's a real red flag for me and I sent Craig Richards an e-mail asking for an explanation and he actually called me back and we had about a 15 minute phone conversation. The C beds were not being used so what that means is putting three people in a room and so, I mean, everyone has a bed and he indicated to me that...I think it's really hard to put

an answer to why, you know, why is this happening now. But he did indicate that Kim Walsh and Beth were working with possibly setting up some kind of training with Robin Loudermilk.

Charles Bailey: Louderback.

David Sudbeck: Louderback. She's, I guess, a hygiene commissioner.

Charles Bailey: Yes. She is a mental hygiene...

David Sudeck: Can you shine any light on that Vickie, I mean, they both work for you?

Vickie Jones: We're always trying to provide education in terms of trying to prevent involuntary commitments that may not need to be committed and (inaudible) less restrictive environment, so, we are setting up training for various individuals. We're (inaudible) and the reason that we have additional beds, and I've actually testified to this before, when we're renovating and adding beds to our license to (inaudible), we actually have an extra 15 beds (inaudible), so when we're over capacity, we still have available beds for individuals, so, for the most part, we don't feel (inaudible) in the same way (inaudible). If Sharpe were 150 or 169 versus 100. That's why we had the conversation and why the advocates said that they had no concerns, no....

David Sudbeck: Well its nothing...its nothing like it was in 2008 when we have overbedding there.

Vickie Jones: Oh, no, no, no.

David Sudbeck: Because those three units were not open.

Vickie Jones: That's right.

David Sudbeck: And people were....

Vickie Jones: (inaudible) capacity of 90.

David Sudbeck: Right. And people were in C beds and make believe bedrooms that were...it's not like that anymore. And the other thing is that I'm not getting any calls and if things are really bad on a staff level, staff and morale type of thing, they'd be calling me. And, of course, I sent the email also to the advocate and asked if she's had any complaints from patients or from staff. She said no.

Charles Bailey: I would assume anecdotally, not any scientific basis that the drug problem in Huntington, West Virginia, probably promotes a lot of referrals to many folks, and you know, they just have a horrible, horrible problem.

Regina Mayne: When you talk about the 15 beds there. Are those, were those for the dual diagnosis patients? Is that what you're talking about, that you added the 15 beds?

Vickie Jones: No. Those are not. Sharpe used to be a 90 bed hospital.

Regina Mayne: Right.

Vickie Jones: And there were three 30 bed units. We added a 17 bed unit and an 18 bed unit, but where we increased our licensed capacity by 20 beds. So what that means, because we reduced the 30 bedrooms to 25 bedrooms in order to manage the census a little better. So what that meant was despite the fact that we created an additional 35 beds, we reduced the numbers from the three 30 bed

unit to three 25 bed units so that made several, 5, extra beds per unit that we just were not using but we kept because we didn't want to experience the situation that we did in 2008. So we've been very, well pretty successful with that because they were not a designated, you know, it was just 5 extra beds on three units.

Regina Mayne: But you are not going to try to have it officially recognized that you have the extra beds? You're not going to increase the official capacity from 110 to some higher number?

Vickie Jones: No. We, at the time, we made a conscious decision to have the census at 110 and we do not have any reason, at this point, and we do go over that 110 census occasionally, but for the most part, for the past several years, and we monitor it every day, for the most part we are staying under our census, and so, there is not any reason to have a licensed capacity of 125.

David Sudbeck: Yeah, I wouldn't want that either.

Vickie Jones: So, that's not something that we've entertained at this point.

Regina Mayne: Ok. I do agree though that education of the hearing officers who do the civil commitments could only help.

David Sudbeck: Oh, yeah.

Regina Mayne: You know, I've looked at the numbers in Kanawha County and some of them are, well, they're kind of, they're disturbing, and we've talked about it before. I feel like sometimes people are committed that could easily be diverted in somewhat before commitment, but, anyway.

Vickie Jones: We routinely, probably at least a year, sometimes more, we receive and educate our mental hygiene commissioners. In fact, (inaudible) at the judicial conferences, etc., from the (inaudible) perspective. It's not uncommon for us to educate on that issue.

Charles Bailey: The bottom line, actually doing it the wrong way. I know if you got in Robin's ear and explained it to her and (inaudible). She's a pretty proactive person.

David Sudbeck: Yeah, I've known Robert...Robin, for years.

Charles Bailey: I lost my first jury trial to her dad.

David Sudbeck: Well, I felt good about my conversation with Craig, and I knew that this training thing was in the process. Alright. Anything else?

Charles Bailey: Thank you David.

David Sudbeck: Ms. Cynthia? Yes? I will attach this to the hard minutes once the hard minutes come out of Charlie's office.

Charles Bailey: I am ending this tape now.

Cynthia Beane: So basically this is your, you....

David Sudbeck: This is Cynthia Beane.

Cynthia Beane: So what's new is that, as of July, we have all the slots filled. We had one person leave. If you look at the active (inaudible) and you'll be like all the (inaudible) at 70. With MSD (inaudible) to turn around, we have slots back to that program with this waiver and our (inaudible) waiver, so at the quarter is (inaudible) doesn't have a TBI, a person kind of, you know, (audible) transition from a nursing home, that's what will be given to that person who currently (inaudible). So this is new and we've never been able to fill all our spots before. Any other questions? This is the standard report that we always get that....

Regina Mayne: Could I ask something? Do you project that in the future this will stay at a constant number, the number of people getting these services?

Cynthia Beane: No. If you look at any of our waiver, as far as slots (inaudible) of state funds, our waiver, we had to do a 5 year projection, so the waiver application is on-line, it's on the VMS website, so anybody can look at it. You can see, because we have (inaudible) causing inflation and this is why I don't (inaudible) budgets. So unless we would get additional funding, the (inaudible) slots would go down a few each year. We have had a question because we aren't actually full, you know, what would happen if next year the slots we're approved are a 68 and we actually have 70 active participants. We do not kick people off the program. We would amend the (inaudible) individuals. So what usually happens is throughout the year would (inaudible) people to get a slot, you have that (inaudible) happen throughout the year and usually would not occur, but if it would occur, we would not, we've never kicked anybody off a waiver because of a (inaudible) issue with the application.

Regina Mayne: Are you anticipating then, because it's a line item under federal funding, but the slots are going to be fewer at the end of the year?

Cynthia Beane: Yeah. I didn't bring those numbers with me, but I can certainly provide that next time for the meeting of the parties, look at five year applications, or if anybody wants to go online, on the VMS website, it's there for anybody to look at.

Regina Mayne: Ok.

David Sudbeck: Any other questions for Cynthia? Cynthia, thank you. And those reports will be attached to the minutes. Alright, thank you all for coming.

Charles Bailey: Thank you.

Case #
Patient Initials:
Medical Record Number:
Date of Birth (Age):
Attending Psychiatrist(s):
Date(s) of Admission:
Date(s) of Discharge:

1. DIAGNOSIS(ES):

2. BRIEF HISTORY:

3. BASED ON THE DIAGNOSIS(ES), WAS THE MEDICATION ADMINISTERED MEDICALLY NECESSARY?

   Considering the following:

   - Was the medication used within the pharmaceutical parameters approved by the Food and Drug Administration (FDA) and the manufacturer for the indications that it is manufactured and labeled to address, including listed dosage parameters?

   - Does the use of the medication follows national practice standards established or recognized by the medical community, or professional medical associations or organizations?

   - Was the use of the medication to treat the patient's clinical condition based on that patient's symptoms, overall clinical situation, and on the physician's or other licensed independent practitioner's (LIP) knowledge of that patient's expected and actual response to the medication?

   - Did the use of the medication to treat the patient's condition enable the patient to be more effectively or appropriately function in the world around them than would be possible without the use of the drug or medication?

   - [All above factors based on the Centers for Medicare & Medicaid Services Manual Appendix A §482.13(e)(1)(i)(B) regarding restraints and seclusion] Oct 2008

4. WAS THE PATIENT SUBJECTED TO CHEMICAL RESTRAINTS?

   WV Legislative Rule 64 CSR 59-10 states "Clients have the right to freedom from seclusion or mechanical or chemical restraints." Chemical Restraints are defined in 64 CSR 59-3.10 as "The use of drugs or medication as a behavior control mechanism to substitute for seclusion or mechanical restraint."

WV Traumatic Brain Injury (TBI) Waiver Program
Implementation through July 2016

MNER Summary: Since February 1, 2012, the Utilization Management Contractor (UMC) has received, processed, and/or made initial determinations on three hundred (300) Medical Necessity Evaluation Request Forms (MNER)/applications.

- Of those three hundred (300) applications (submitted MNER):
  - 35 applications were closed - no evidence of a TBI
  - 54 applications were withdrawn
  - 4 application pending Financial Eligibility Determinations
  - 3 application pending assessment
  - **204 applicants received medical eligibility determination assessments**
    - 41 applicants did not meet medical eligibility
    - **163** applicants were considered medically eligible based on their PAS and Rancho Los Amigos Levels of Cognitive Functioning or Rancho Los Amigos Pediatric Level of Consciousness scores
      - 21 applicants were denied financial eligibility
      - 39 applicants withdrew their case after medical eligibility was determined
      - 2 applicants deceased prior to notification of medical eligibility
      - 30 program participants have discontinued their enrollment since 2/2012
      - 7 program participants deceased
      - 1 applicant on MEL
      - 63 Active program participants in July 2016

# MNER Applications Received Per Month									
2012	**#MNER Received**	**2013**	**# MNER Received**	**2014**	**# MNER Received**	**2015**	**# MNER Received**	**2016**	**# MNER Received**
Jan.	N/A	Jan	6	Jan.	9	Jan.	5	Jan.	4
Feb.	4	Feb	5	Feb.	6	Feb.	7	Feb.	8
March	2	March	10	March	4	March	5	March	11
April	4	April	4	April	8	April	5	April	8
May	3	May	9	May	9	May	3	May	2
June	1	June	4	June	7	June	6	June	4
July	2	July	10	July	6	July	7	July	3
August	5	August	10	August	2	August	4	August	
Sept.	7	Sept	5	Sept.	7	Sept.	6	Sept.	
Oct.	1	Oct.	10	Oct.	8	Oct.	9	Oct.	
Nov.	3	Nov.	5	Nov.	4	Nov.	3	Nov.	
Dec.	2	Dec.	4	Dec.	6	Dec.	8	Dec.	
2012 Total	**34**	**2013 Total**	**82**	**2014 Total**	**76**	**2015 Total**	**68**	**2016 Total**	**40**
Total since program implementation February 2012									**300**

Outreach Efforts Summary: In January 2012, the UMC 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 2470 Email contacts indicated below).

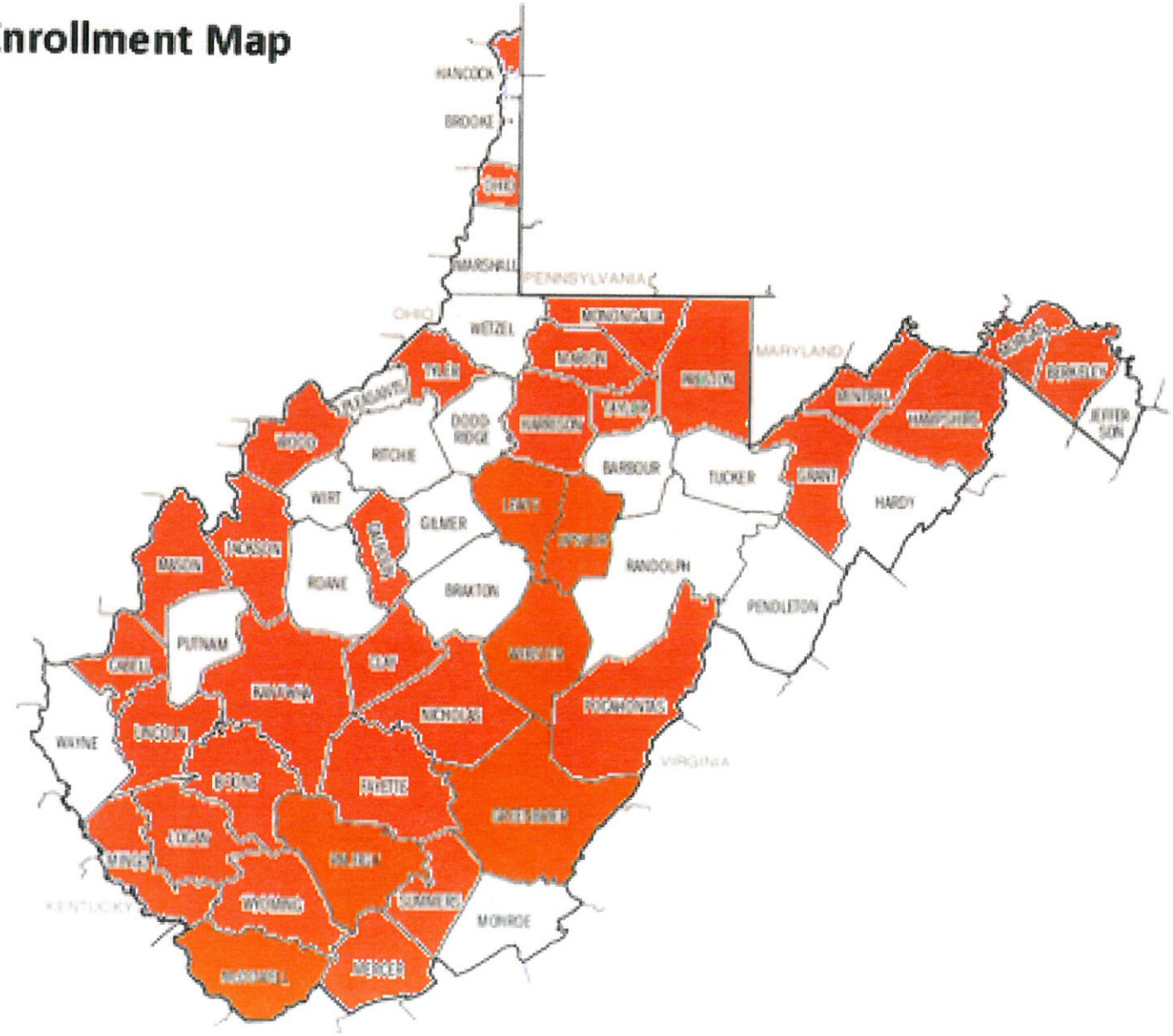
Since March of 2012, UMC staff has conducted statewide outreach efforts to include scheduled face-to-face meetings within the facilities, presentations at local and statewide settings and meetings with the directors of the Aging and Disability Resource Centers.

Additionally, the UMC offers/provides training and technical assistance to the fourteen (14) 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 UMC targets outreach for each agency selected to provide services for enrolled program participants. Outreach focuses on providing guidance in completing the financial eligibility-pre medical eligibility process and compliance with Medicaid forms. Additionally, the UMC provides technical assistance to resolve specific program participant needs.

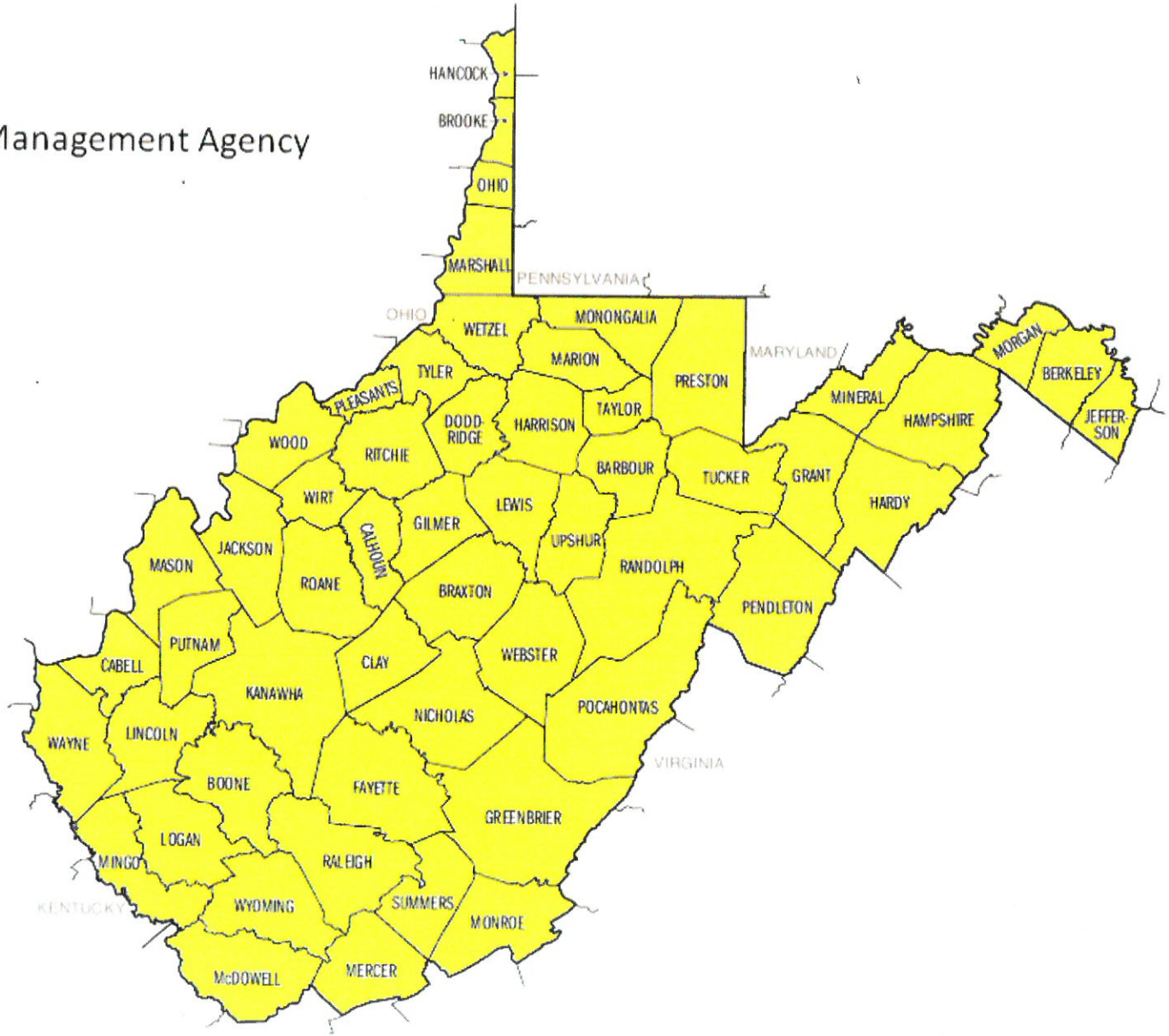
Types and Numbers of Outreach Efforts Made for the WV TBI Waiver Program	
Type of Outreach	**# Outreach Efforts**
General Outreach	
Email	*2470
Phone	1289
Face-to-Face	536
Presentations/Outreach (ex. WV NASW Conference, local DHHR)	62
For Enrolled Providers	
Training-Webinar	46
Trainings-Face-to-Face	4
Face-to-Face Technical Assistance	92
Phone Technical Assistance	440
Total	**4939**

Member Enrollment Map



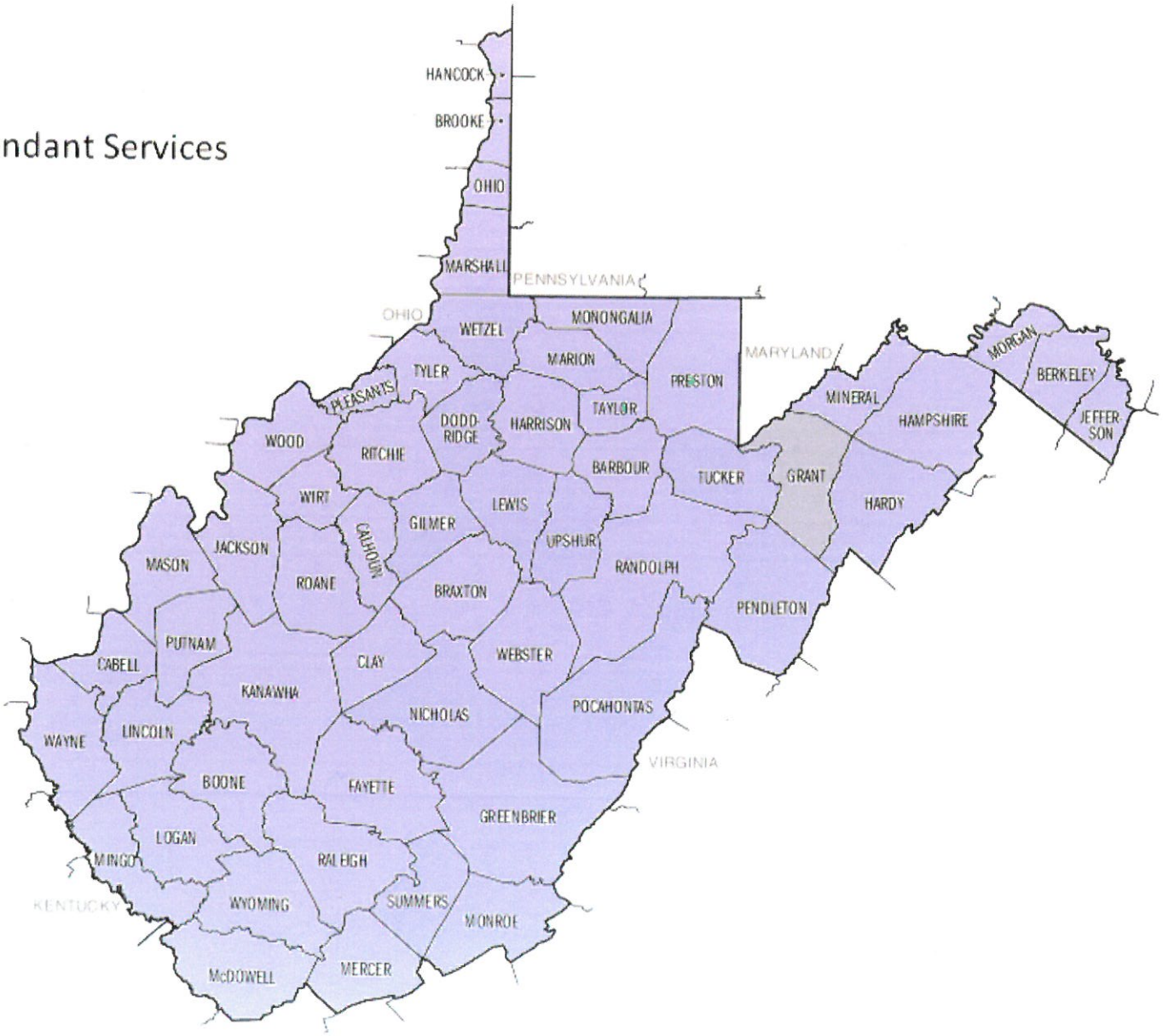
as of July 2016

Case Management Agency



as of July 2016

Personal Attendant Services



as of July 2016