

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 SEPTEMBER 8, 2010

### MINUTES

**PRESENT:** Vickie Jones, Kevin Stalnaker, Charlie Dunn, Teresa Brown, Joshua Martin, Regenia Mayne, Cindy Beane, David G. Sudbeck, Sheila Kelly, dan connery

#### I. REVIEW OF MINUTES

Minutes reviewed and approved. It was also agreed that Minutes would be posted on the Court Monitor's website six business days after review by the Parties.

#### II. CSM UPDATE

CSM will be flying into Charleston on September 27<sup>th</sup>. The kickoff meeting will be held September 28 at 1 PM in Building three, Tiger Morton conference room (Room 522) at the State Capitol Complex. CSM will then spend the remainder of the week in individual interviews with stakeholders before leaving on October 1. The Office of the Court Monitor will assist in scheduling interviews and will notify individuals regarding time and place.

#### III. TBI WAIVER UPDATE

Cindy Beane stated that the TBI Draft Waiver has been posted for a comment period ending on September 28, 2010. It will then be submitted to CMS on October 1, 2010. She expressed her gratitude to Sheila Kelly for her assistance in meeting the tight deadline. Cindy also welcomed any comments and input on the Draft Waiver.

#### IV. BHHF REPORT

Vickie stated that the Bureau had tentatively identified the geographic areas selected for Years Two and Three of the Agreed Order. Comprehensive providers in those areas will be given first option to implement the programs and services designated for those areas. If the Comprehensive Provider declines, the Bureau will post an announcement inviting individuals to

submit proposals for the identified programs in the identified areas. BHHF has suggested that the Community Supports work group review proposals and make comments for the Bureau's review. The Bureau would like the group to make recommendations for services and programs that are needed across the state.

Vickie indicated that although the group homes and day treatment centers will be in targeted areas of high volume commitment, supported living "slots" will be distributed in all areas of the state.

Vickie Jones stated that two co-occurring (mental illness/substance abuse) residential units are being planned. One will be on the grounds of Jackie Withrow Hospital in Beckley with sixteen residential beds. The second will be a ten bed/ninety-day program for women in McDowell County. Both constructions will be funded through money provided by pharmaceutical companies as part of an agreed order. The state will have to identify operations funding.

Vickie also announced funding awards for substance abuse prevention programs in DHHR Regions 1, 2 and 3. An AFA will also be awarded in Region 4 but has not yet been released.

## **V. PETITIONER REPORT**

The Petitioners had no comments at this time.

## **VI. SPECIAL ASSISTANT REPORT**

Sheila Kelly had sent Cindy Beane a list of questions prior to the meeting in order that she could obtain responses in a considered manner.

The first question had to do with the Mountain Health Choices program. Providers continue to report challenges for consumers posed by this program, which the Parties believed was in the process of dissolution. Cindy stated that the BMS is in the process of removing behavioral health limitations and that the Provider Manual had to be changed to reflect those changes. There was a question also about the four prescription limit for Basic consumers. Cindy indicated that there is an over-ride procedure through Rational Drug Therapy and that all providers should be familiar with it. Sheila stated that she personally had seen at least one consumer who was attempting to prioritize his multiple prescriptions in order to meet the limit. Cindy pointed out that due to recent changes in federal regulation with regard to the waiver, consumers can "opt out" if already enrolled and must "opt in" if a new member. If they "opt out" they will default to an MCO for primary care management.

The State Plan Amendment regarding inclusion of individuals with intellectual disabilities into ACT eligibility has been submitted to CMS. There is a 90 day timeline for CMS to respond although if CMS has questions, the clock stops. Thus far, no questions have been asked.

Sheila had also asked a question about approval for new Intensive Services programs by BMS/APS. Cindy stated that APS is working on new standards which they will release to providers for review. The BMS is concerned that many IS programs are for children/youth. Medicaid cannot pay any expenses related to educational services provided through the IS. BHHF reported that they have several proposals before them at the moment for IS programs for individuals with co-occurring substance abuse, funded through targeted funding grants as provided in the Agreed Order.

Lastly, Sheila had asked for an update regarding network development for behavioral health services in the MCO implementation. Cindy responded that "If there is no network we cannot move forward" but added that this would simply mean delay in the project, not elimination. At the time of

the meeting, the TANF population was still meant to be moved into managed care for behavioral health on November 1<sup>st</sup>.

## VII. OTHER

David stated that he and Sheila had participated in a meeting with representatives of the WV Behavioral Health Provider's Association in the offices of Mountain State Justice on September 2<sup>nd</sup>. As a result of that meeting, he has offered to host a series of meetings to discuss issues in implementation and timelines for completion for Years One and Two (and Year Three at a later date) with both the Department and the relevant providers in attendance.

David Sudbeck stated that he will schedule the meetings as necessary in order to facilitate communication between providers and the parties. He requested that Vickie, Kevin, Craig Richards and the petitioners attend. Vickie Jones stated that she would forward information to the Court Monitor regarding the selection of target areas for Years Two and Three within the next week.

David Sudbeck raised the issue of section G in Article 64 of the Agreed Order which prohibits use of Charity Care dollars for payment of inpatient acute psychiatric care. This question had been asked by one of the community providers in the meeting at MSJ. Vickie Jones stated that Charity Care dollars are not used for in-patient care and that Charity Care dollars not spent within the fiscal year are added back in to the general fund and then spent as Community Supports dollars. She stated that the Bureau has increased its charity care commitment from 10.5 million dollars per year to 15 million dollars per year. Most charity care funding goes to treatment in Crisis Stabilization Units. The process allowing commitment to CSUs resulted in only one commitment in FY 09-10. David Sudbeck stated that he would like to continue this discussion when Jennifer Wagner is able to attend.

David Sudbeck asked Teresa Brown and Regenia Mayne if they were satisfied with the progress of contracted providers. Regenia stated that though she wished events were occurring more rapidly, she understood the time restraints and was generally pleased with the progress. WVA also asked for further information regarding the Highland/UHC project in Clarksburg. They are not opposed to the project but would like further information. Sheila indicated that information was available on the YODA website link at [www.hcawv.org](http://www.hcawv.org), the Health Care Authority's website.

David Sudbeck informed the parties that he had visited William Sharpe Jr. Hospital and would be issuing a report and formal recommendations within the next two weeks. He stated that he interviewed over forty individuals from both the client and staff populations. Regenia Mayne inquired as to whether he received sufficient and accurate information and documentation. David agreed that he had. Vickie and Kevin reported that a recent JCAHO review of the hospital had gone extremely well with no direct citations. JCAHO staff had commented that overcrowding in state psychiatric hospitals is a problem that they have seen across the states, and not unique to West Virginia. JCAHO had a major concern expressed privately that the hospital cannot rely upon medical clearance to occur prior to admission to the state operated facilities. Kevin indicated he is looking at statutory methods of compelling medical clearance.

Next Meeting: Wednesday October 27, 2010  
10:00 a.m.-12:00 noon  
Covenant House  
600 Shrewsbury Street, Charleston, WV 25301