

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

E.H., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 81-MISC-585

MATIN, et al.,

Defendants.

AGREED ORDER

Upon agreement of the parties it is hereby ORDERED that:

1. Care Coordinators: Thirty-five (35) additional care coordinators will be funded in fiscal year 2010 (salary ranges to be agreed by the parties, compensation will be reviewed annually to be competitive over time) to provide care coordination services. These care coordinators should be placed in areas with greatest numbers of commitments to state hospitals and diversionary placements with appropriate distribution of care coordinators between independent care co-coordinators and CBHCs and shall be utilized for prevention of inpatient commitment for individuals in crisis and/or for individuals who are being or have been discharged from inpatient psychiatric facilities and to prevent recommitment.
2. Residential Settings and Day Treatment for Discharges:
 - (a) Over a three year period beginning in FY 2010 (July 1, 2009) DHHR will provide the following additional resources each year for those discharged from inpatient psychiatric treatment:
 - i) In year one, \$5.35 million out of the DHHR budget for 3 group homes (24 beds), 39 residential slots, and 3 day treatment centers.
 - ii) In year two, \$3 million shall be provided out of the DHHR budget. DHHR shall, in addition to said \$3 million, direct any reductions in diversionary costs from June 30, 2009, up to \$2 million dollars, to this item. If said reductions total less than \$2 million, DHHR shall actively seek the additional funding necessary to reach a total of \$5 million from the legislature. With this \$5 million total, DHHR will provide an additional 2 group homes (16 beds), 52 residential slots, and 2 day treatment centers.

iii) In year three, \$3 million shall be provided out of the DHHR budget. DHHR shall, in addition to said \$3 million, direct any reductions in diversionary costs from June 30, 2009, up to \$2 million dollars, to this item. If said reductions total less than \$2 million, DHHR shall actively seek the additional funding necessary to reach a total of \$5 million from the legislature. With this \$5 million total, DHHR will provide an additional 2 group homes (16 beds), 52 residential slots, and 2 day treatment centers.

- (b) The locations of these group homes, supportive housing slots, and day treatment programs will be geographically dispersed through the state based on need. Funding will include ongoing operational costs.

3. Crisis Stabilization Services:

- (a) DHHR shall maintain with the CBHCs an adequate number of crisis stabilization beds in Bluefield, Princeton, Beckley, Charleston, Huntington and Parkersburg to meet the need.
- (b) At new and existing crisis stabilization units, DHHR will utilize State funds to reimburse all crisis stabilization services (at the Medicaid rate) that are provided to all charity care eligible individuals (this includes enrollees in the Mountain Health Choices Basic Plan).
- (c) The statutory CBHCs have a gatekeeping role at the probable cause stage, as specified in statute and BHHF has the legal ability to develop policy to further implement said role, which shall be exercised;
- (d) The statutory Community Behavioral Health Centers (CBHCs) shall receive patients at crisis stabilization units who have been taken into custody when deemed appropriate by the CBHC. Under West Virginia Code section 27-5-1 *et seq.* being taken into custody to a "mental health facility," "community mental health center," or "community mental health facility," may be made by a mental hygiene commissioner based on the client's needs without regard to the locked or unlocked status of the units.
- (e) DHHR shall allow crisis stabilization beds to be used also as step-down for individuals leaving inpatient facilities and for community diversions from inpatient care, to be reimbursed at an appropriate rate for these services.
- (f) Meetings will be held with representatives from providers, prosecuting attorneys, defense attorneys, mental hygiene commissioners and BHHF to develop a method for using crisis services in lieu of hospitalization.

A memorandum of understanding will be entered into between providers and the BHHF to develop understandings regarding the certification process; a collaboration between the hospitals and the comprehensive centers; assessment process between the legal system and providers; use of community supports; gate keeping role of the centers; needs for alternatives to crisis beds, such as detention units; reintroduction of housing coordinators; and prior authorizations.

- (g) DHHR will not use charity care dollars for hospitalizations where WVMI has denied authorization for continued stay. All care deemed not medically necessary by an independent utilization management vendor may not be reimbursed using charity care dollars. All use of charity care dollars will be subject to prior authorization.

4. Clinic and Rehabilitation Services:

- (a) DHHR shall dedicate a minimum of \$1.5 million in state funds to increase the Medicaid reimbursement rates for clinic and rehabilitation mental health services as identified in Attachment A. Thereafter, DHHR shall develop and implement an annual rate review process similar to the process used for RBRVS reimbursement.
- (b) Modify utilization management guidelines for clinic and rehabilitation services to maximize availability of those services within the federal regulations. To this end, DHHR shall (1) modify the state plan to allow individuals with a diagnosis of mild mental retardation to access ACT and (2) direct APS to roll back reimbursements only to the date that the patient stopped meeting reimbursement criteria and not for the entire authorization period.

5. Highland Center: Beginning on July 1, 2009, DHHR shall create the Highland Hospital Assessment and Evaluation Center to provide intensive assessment and referral services for 72 hours prior to commitment for those for whom the mental hygiene process has been initiated.
6. Oversight of Commitments: Beginning on July 1, 2009, DHHR shall provide oversight for individuals who have been committed to either public or private hospitals through (a) the implementation of a consumer tracking system; (b) a tracking Memorandum of Understanding, and (c) oversight by the Office of the Ombudsman for Behavioral Health, which will employ at least one full-time individual to oversee this function no later than September 1, 2009.
7. Co-occurring Disorders: In Fiscal Year 2010, DHHR shall provide \$1 million of dedicated state funds and any additional available Medicaid match funds dedicated to intensive outpatient programs for adults with co-occurring disorders.

8. **Prescription Practices:** DHHR shall formalize a process to ensure consistent prescribing practices between inpatient and outpatient physicians, including a doctor-to-doctor handoff protocol and a state regulation or policy statement, to be completed by January 1, 2010. The protocol will be developed with agreement by Petitioners and the Ombudsman.
9. **Benchmarks:** DHHR shall implement benchmarks to insure compliance with any agreements arising out of mediation. Said benchmarks include, but are not limited to: (a) reduction in involuntary commitments; (b) reduction in length of stay of inpatient hospitalization; and (c) reduction in inpatient readmission rate.
10. **Facilities:**
 - (a) DHHR shall provide for increased pay for direct care workers at Bateman and Sharpe in order to (i) be able to recruit staff and retain existing staff and (ii) preclude the practices of mandatory overtime and reliance on temporary workers (except in exceptional and infrequent contexts). (See Attachment B.)
 - (b) DHHR will use only full time employees working regular shifts or voluntary overtime except in exceptional and infrequent contexts.
 - (c) A separate unit will be developed at Bateman Hospital for dually diagnosed (substance abuse and mental illness) patients by September 30, 2009.
 - (d) Bateman and Sharpe Hospitals will fully comply with W. Va. C.S.R. sections 64-59-1 to -20. Periodic review shall be established for compliance with sections 64-59-12, -13, -14, -15.1.7, -15.1.12, -15.2, -15.3, -16.4.2.
 - (e) Five additional security guards will be hired at Bateman Hospital effective September 1, 2009.
11. **Implementation Oversight:** The implementation of all of the above will be overseen by the Ombudsman for Behavioral Health.
12. **Unresolved Issues:** There are three significant unresolved issues: (1) restoration of mental health services for Medicaid eligible patients, including Mountain Health Choices participants, to traditional levels; (2) modification of utilization management guidelines to maximize availability of those services within the federal regulations; and (3) reimbursement under Medicaid for clinic and rehabilitation services provided through telemedicine.

ENTERED this 2nd day of July, 2009.



Louis H. Bloom, Judge

Agreed by:



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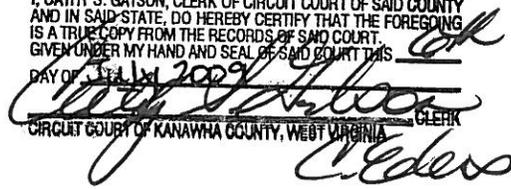


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Ombudsman for Behavioral Health



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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT,
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF July, 2009.
Cathy S. Gatson
CLERK
Circuit Court of Kanawha County, West Virginia



7/6/09

By: J. Wagner
D. Sudbeck
C. Dunn
C. Gatson
Deputy Circuit Clerk

ATTACHMENT

SUMMARY OF AGREED TO MEDICAID BEHAVIORAL HEALTH RATES

Service Description	Service Code	Place of Service	Last Effective Rate Increase	Current Rate	New Rate*
Targeted Case Management	T1017 Center		7/1/2004	\$11.12	\$14.35
Mental Health Service Plan Development by Psychologist	H0032 AH Center		6/1/1993	\$28.70	\$30.00
Behavioral Health Counseling, Professional, Individual	H0004 HO Center		2/15/1994	\$17.00	\$22.40
Behavioral Health Counseling, Professional, Group	H0004 HO HQ Center		2/15/1994	\$4.75	\$5.50
Behavioral Health Counseling, Supportive, Individual	H0004 Center		2/15/1994	\$10.00	\$12.40
Behavioral Health Counseling, Supportive, Group	HD304 HQ Center		7/1/2004	\$3.50	\$4.00
Crisis Intervention	H2011 Center		6/1/1993	14.70	\$19.90
Comprehensive Community Support Services Ix Ratio 1:12	H2015 U1 Center		4/1/2002	\$1.63	\$2.25
Crisis Stabilization - Community Psychiatric Supportive Treatment	H0036 Center		6/1/1993	\$13.13	\$13.40

* New rates effective as of July 1, 2009

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WV DHHR → 913043570333
OMBUDSMAN FOR BEHAVIORAL HEALTH → 93045584245

NO.534 D09
NO.377 D10

06-08-2009 02:58PM FROM MOUNTAIN ST JUSTICE

304-344-3145

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ATTACHMENT B

**Bureau for Behavioral Health and Health Facilities
Proposed Salary Increase - Bateman and Sharpe Hospitals**

Classification	Positions	Proposed Increase	Total Funding
Health Service Trainee	25	1,000	25,000
HSW, HSAst Classifications	195	2,000	390,000
LPN Classification	60	2,000	120,000
RN Classifications	125	4,000	500,000
ADON, DON Classifications	5	4,000	20,000
Psychiatrists	6	15,000	90,000
	416		1,145,000
		Benefits	220,000
		Total	1,365,000