MAINE COMMISSION ON MENTAL HEALTH

SECOND ANNUAL REPORT
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Maine Commission on Mental Health

Second Annual Report

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MAINE COMMISSION ON MENTAL HEALTH

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EXECUTIVE SUMMARY

The Commission notes that there have been several positive developments in Maine's mental health system in the past year. These include the negotiation and signing of the AMHI consent decree, the work and report of the Systems Assessment Commission and the ongoing Visions Conferences, all of which reinforce the need and build momentum for system change and movement away from institutional to community based mental health services. We would also commend these and other initiatives designed to empower consumers and develop a consumer driven system. We would commend the organized and concerted effort begun to plan for and implement a comprehensive system of care for children.

However, the Commission continues to have serious concerns about the slow pace of development of community services and other needed systemic changes. These are reflected by the fact that the recommendations presented in the Commission's First Annual Report have yet to be implemented in any substantial fashion, namely:

1) No community providers have yet been secured to be responsible for the consumer throughout the system.

2) No community hospitals have yet to establish involuntary commitment beds.

3) Minimal and insufficient residential and vocational alternatives, as well as respite care services, have been developed.

4) Minimal and insufficient crisis stabilization beds have been added.

Additional concerns of the Commission are as follows:

1) The proposed budget for fiscal years 1992 and 1993 threatens to reduce services to completely unconscionable levels, with significant institutional cuts and no new services.

2) The housing bond, passed in November, 1989, has yet to result in the purchase or construction of one facility. Additionally, while the bond money is now being made available, funds needed for operations and programming are not in the proposed budget.

3) Financial and systemic obstacles continue to exist to the development of needed services. This is evidenced by the failure of the Kennebec Valley Medical Center to gain approval from the Department of Human Services for its proposed dual diagnosis program, a service which is a high priority of the Department of Mental Health and Mental Retardation.

4) The state mental health institutes still require constant visitations by the Commission's subcommittee on institutes relative to numerous deficiencies which continue to exist.

5) The Division of Quality Assurance of the Department of Mental Health and Mental Retardation continues to have inadequate staff to assure quality of services to the public and should minimally receive the staff request contained in the proposed Part II budget. Nor have the contracts of community providers been adjusted to allow for quality assurance activities needed to provide necessary assurances to the public and meet increasing requirements which will result from forthcoming standards of care.

6) The system of children's mental health services remains woefully short of the need for services that currently exists.

In light of these and other related concerns, the Commission issues the following findings and recommendations:

- the proposed mental health budget for fiscal years 1992 and 1993, planning major cuts in the state mental health institutes, totaling a net loss of 131.5 positions at AMHI and 79.5 positions at BMHI with no new community services, is totally unacceptable, ignoring the requirements of the consent decree and threatening to reduce services to unconscionable levels. In light of this, the Commission recommends the following:

  1) that the Department of Mental Health and Mental Retardation's Part II requests for community mental health services be funded in the coming biennium.

  2) that no further cuts in institutional services of census reductions be implemented without prior development of additional community services.

  3) in accordance with the above, that the proposed institutional cuts be delayed until the second year of the biennium to allow new community services to be in place prior to further census reductions.

- that measures be taken to remove systemic and financial obstacles to the development of the capacity for community hospitals to treat involuntarily committed patients, which would relieve the load on the state mental health institutes and allow persons in need of these services to be treated closer to home. Among the measures we recommend are:

  1) that contracts between the Department of Mental Health and Mental Retardation (DMHMR) and community hospitals for new or expanded hospital based mental health services remain subject to the Certificate of Need (CON) law, where indicated, but that an expedited review process be developed, to be jointly performed by the Department of Human Services and DMHMR and to be completed within ninety days of receipt of the completed application.

  2) that these contracts for new or expanded hospital based mental health services be exempt from the CON Development Account so as not to be in competition with other needed health care services.

  3) that rates for such services be established to reflect the actual costs of such care and to provide incentives for the development of such services, as has been done in New Hampshire.

  4) that the hospitals not be able or required to cost shift any losses from the contract to its Maine Health Care Finance Commission (MHCFC) approved financial requirements.

- that all possible measures be taken to maximize the Medicaid program in the development and expansion of mental health services. We believe that the state's particular responsibility in these areas demand that these services be given special consideration in the administration of the Medicaid program. In order to expedite this expansion of service, we would strongly recommend that the executive and legislative branches implement measures to shift responsibility for Medicaid rule making, rate setting and auditing related to mental health services to the Department of Mental Health and Mental Retardation.

- that the School Age Initiative of the Bureau of Children with Special Needs is a critical element of remediating the existing problems of the system of children's mental health services, as well as meeting the criteria for addressing the consent decree. As a result, we would stress that it is imperative that this initiative be supported and implemented.

The Commission urges that the above stated recommendations be implemented as soon as possible in order to address the urgent needs of our mental health system.

MAINE COMMISSION ON MENTAL HEALTH
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The annual report of the Maine Commission on Mental Health is presented pursuant to 34-B M.R.S.A. 3903, which reads:

> By February 1, 1990 and each year thereafter, the commission shall present a report to the Legislature and the commissioner assessing the State's implementation of and compliance with the community and institutional standards and evaluating the state mental health institutes. The report shall set out the standards, the degree of compliance with the standards, identify any areas of noncompliance and suggest a plan of correction.

Due to the fact that the State has not yet completed the processes of development and implementation of standards for the mental health system, this report will focus upon the following areas:

A description of the STANDARDS DEVELOPMENT PROCESS to date, as well as the current plans for completion of the process.

An assessment of the Department of Mental Health and Mental Retardation's enforcement of and COMMUNITY PROVIDERS' compliance with the existing Regulations for Licensing Mental Health Facilities.

An assessment of the compliance of the STATE MENTAL HEALTH INSTITUTES with existing standards (state licensing, Medicare and Joint Commission on Accreditation of Healthcare Organizations) as well as the current assessment and recommendations of the subcommittee on institutes.

STANDARDS DEVELOPMENT PROCESS

The process of development of standards of care for Maine's mental health system continues, under the joint leadership of the Maine Commission on Mental Health and the Department of Mental Health and Mental Retardation. This leadership has been exercised through a steering committee of 10 persons, consisting of Commission members, Department employees and representatives of the community. In its work, the steering committee has had ongoing and constant input from consumers of mental health services.

Having completed the initial revision of the proposed standards developed by the Department in 1989, the Commission and Department committed to obtaining as broad based input into the standards development process as was practicable. As a result, approximately 75 consumers, families and providers were invited to participate in a review of the already developed standards as well as to develop standards specific to their areas of expertise and concern.

The initial meeting of this group was convened on March 29, 1990, after which the work was performed in work groups, most of which subsequently met on a monthly basis. The work groups which have contributed to this effort are:

case management services
crisis and emergency services
home based services
in-patient services
medication management
out-patient services
rehabilitation services
residential services

The participants in this process have contributed significant amounts of time to the effort and have offered important feedback and suggestions. In addition to incorporating these comments, the steering committee is working to insure that the standards meet the requirements of the AMHI consent decree from the perspectives of substance and time frames.

The steering committee plans to finish this stage of its work by June 30, 1991. Once the standards are complete, an implementation study will be conducted to determine the impact of the new standards and public hearings will be held through the rule-making process. Complete implementation of the standards is planned for 1992.

We wish to point out that we view implementation and enforcement as part of the continuing process of standards development. It is anticipated that, through quality assurance and licensing reviews as well as other forms of feedback, the standards will undergo intermittent revisions to insure maximum effectiveness.

COMMUNITY PROVIDERS

Community providers are currently held accountable to the Regulations for Licensing Mental Health Facilities. These are limited, general regulations, aimed at providing guarantees to consumers of services by establishing baselines to be met in the areas of organization and administration, physical plant, location, safety and health, personnel management, including supervision, training and development, client management, including medications and client records, client rights and professional qualifications. These regulations are rather basic and do not address the issues of quality of care and practice that are being dealt with in the development of standards.

In its First Annual Report, the Commission identified the Department's lack of compliance with 34-B M.R.S.A. 3606.5, which reads:

> Monitoring for compliance. Regardless of the term of the license, the commissioner shall monitor the licensee, at least once a year, for continued compliance with applicable laws and rules.

The Department continues to be unable to comply with this statutory requirement. In the past calendar year, the Division of Licensing was able to complete surveys of only 40% of licensed providers. Although some relief was granted in the second regular session of the 114th Legislature in the form of two additional licensing and quality assurance positions, it should be noted that one of these persons has been laid off in the current round of budget cuts.

This raises concerns in a number of areas. At current staffing levels, there is little chance that the Department will be able to perform licensing functions at a level required by statute, especially in light of the added quality assurance functions that will result from the AMHI consent decree. Of even greater concern is that over 33% of the agencies surveyed were issued either a conditional or provisional license, based upon violations considered serious enough by the Department to merit modifications of their licenses. While some conditions involved strictly administrative components unrelated to client services, most conditions identified were related to treatment of clients, service planning as well as documentation of treatment and services in client records, application of client rights regulations, especially around areas of informed consent and insufficient and poorly applied personnel practices. The seriousness of these violations demands a level of monitoring of and technical assistance to licensed mental health care providers currently beyond the Department's capabilities and raises serious questions about the capacity of the Department to guarantee the types of protections implicit in the issuance of a license.

The planned promulgation of standards of care further complicates this problem. The requirements contained in the standards are far more extensive than current licensing standards, demanding a more time consuming survey process and greater subsequent oversight. Implementation of the standards at the current licensing staffing levels calls into question the worth of the entire process as it would leave little hope of anything but ineffective enforcement and oversight.

The Commission has additional concerns related to the community providers. Noting the difficulty experienced by providers meeting the relatively low requirements of the regulations in place, it seems likely that far greater problems will be experienced once expectations are increased. Agencies are currently devoting little of their budgets to quality assurance activities, owing in part to a lack of state commitment to these activities in its contracting process. Effective quality assurance provides an added protection for consumers of services in the absence of sufficient licensing activities and the demands for adequate quality assurance activities will grow with the increased requirements of the new standards.

Noting the similarity of the Commission's findings to last year's report and the lack of significant progress in addressing these problems, we believe that it is important to reiterate our previously issued recommendations, needed to produce a system that can assure quality care among community providers:

- that the Division of Quality Assurance be provided with sufficient quality assurance and licensing staff to perform the activities necessary to insure quality of care to the public and that the staff needs be reviewed once the standards are in place to insure the capacity for implementation. We would note that the Department's Part II budget request contained two such positions in FY92 and one in FY93. While we do not believe that these positions are sufficient to meet the full range of responsibilities, we would strongly recommend their funding as a good initial step.

- that the budgets of providers contracting with the Department be supplemented with new funds to allow for quality assurance activities to be adequately performed, both to provide necessary assurances to the public and to allow them to meet the additional requirements which will result from the promulgation of the standards.

STATE MENTAL HEALTH INSTITUTES

The Augusta and Bangor Mental Health Institutes are currently held accountable to three sets of standards: the two Medicare conditions for psychiatric hospitals, the Joint Commission on Accreditation of Healthcare Organizations standards and state hospital licensure standards. In 1990, the 114th Legislature allowed the mental health institutes until July 1, 1991 to achieve compliance with the state hospital licensure standards and extended their conditional licenses until that date.

AUGUSTA MENTAL HEALTH INSTITUTE

The Commission has concerns in several areas relative to the Augusta Mental Health Institute (AMHI). Primary among these is what is seen as a **lack of individualized treatment,** both in the medical record documentation and the observed programming on the units. The Commission has also identified **weaknesses in discharge planning services,** a highlighted concern in light of census reduction initiatives within the past year. We would point out that the average daily census at AMHI has been reduced from 347 to 315 within the past year, a year which has seen the implementation of the Adult Patient Transfer Agreement and an expansion in the purchase of inpatient services in community hospitals and the Jackson Brook Institute. While protocols exist governing these procedures and mechanisms are in place to discuss implementation questions, the Commission notes that **serious disagreements continue to occur about the appropriateness of decisions not to admit persons to AMHI** and also has **concerns about the consistency of quality of services provided in these hospitals.** We believe that many of these conflicts have at their base the **very limited expansion of clinical and supportive community services,** straining the community system as the option of hospitalization at AMHI is reduced.

In regard to compliance with existing standards, AMHI was decertified for Medicare reimbursement by the Health Care Financing Administration in May, 1988 and remains decertified. In order to be recertified, AMHI will have to complete a survey without deficiencies and remain in compliance for 90 days. Thus, AMHI is likely to remain decertified until at least late 1991.

AMHI was surveyed by the Department of Human Services in October, 1990 under state hospital licensure regulations and pursuant to the conditional license granted one year earlier due to a "serious and substantial failure to comply with the provisions of the regulations."

Deficiencies cited during this survey include:

- inadequate staff to develop and maintain several areas of the risk management program;
- inadequate maintenance staff to maintain a safe and clean environment for patients, with cited instances including an odor of urine in several rooms, broken tiles and rusted, scarred and worn walls;
- lack of evidence of revision of treatment plans in 60% of the sample reviewed;
- lack of correlation between progress notes and treatment plans in almost 70% of the sample reviewed;
- lack of evidence of consistent psychiatric intervention in almost 70% of the sample reviewed;
- inadequate social work services documentation and evidence of intervention regarding psychosocial issues in 23% of the sample reviewed and
- lack of a current psychiatric evaluation in 11% of the sample reviewed.

It should be noted that, while these deficiencies are cause for concern, this survey represents major progress in several areas when compared with the 1989 survey findings.

Although subject to several focused surveys in 1990, AMHI continues to maintain its accreditation from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). **Compliance issues to be addressed in future surveys remain** in the areas of monitoring and evaluation of emergency services; granting of clinical privileges to physicians; documentation and actions regarding review of documentation of medical care and pharmacy and therapeutics review; seclusion, restraint and quiet room procedures; documentation of nursing assessments, plans and interventions and patient rights issues, while compliance has been achieved in safety and equipment management; pharmaceutical, rehabilitation and radiology services; governance; monitoring and evaluation of medical staff and several aspects of quality assurance.

This significantly improved picture with regard to standards compliance reflects several gains at AMHI within the past year. Primary among these is identifiable and committed leadership, both in the acting superintendency of Commissioner Glover and the hiring of Linda Breslin as superintendent. The Commission also notes improvements in the nursing department, resulting from the reorganization and new leadership and creating a much stronger emphasis on accountability. Although problematic staff behaviors and/or practices are being identified and dealt with, there has **not yet been sufficient effort to identify productive, therapeutic and committed staff, while consistent, supportive supervision and training remain lacking.** This appears to be having a negative effect on the morale of staff who are committed to performing their jobs effectively.

Overriding all of these concerns is the specter of the proposed budget cuts. The Commission emphasizes that **cutting 131.5 positions from AMHI without significant expansion of community services not only jeopardizes the gains previously noted, but threatens to reduce services at the institute to unacceptable levels.** The Commission cannot strongly enough state that **further service reductions at AMHI should not occur without commensurate enhancements of community services, in place in advance of the census reductions to insure that individuals receive the services to which they are entitled and not thrust upon an already overstretched community system.**

BANGOR MENTAL HEALTH INSTITUTE

The Commission has concerns about several aspects of care at the Bangor Mental Health Institute (BMHI). One element relates to the provision of individualized, active treatment. In reviewing treatment plans, the Commission found **only sporadic evidence of individualized client goals and approaches,** with boiler plate language found to be frequently in use on the units. Additionally, in multiple visits to most patient units, the Commission too frequently found that the only staff persons seen interacting with patients were the mental health workers, raising **concerns about the provision of active treatment** that are affirmed by documentation issues identified in record reviews. The Commission has raised these issues with hospital management and will be working to both reinforce certain programmatic changes that are being introduced and to insure that individualized, active treatment is provided in a manner that meets client needs.

Another area of concern raised by the Commission relates to the **involvement of the patients and families in the development of treatment plans.** In previously conducted and current reviews of medical records, little evidence of this was found. The Commission will be following up to insure that all possible efforts are made to offer clients and families opportunities for input.

Despite positive changes in BMHI's physical facilities, the Commission remains **concerned with hospital leadership's apparent inability to point out the need for and obtain the changes in staff behavior necessary to insure the provision of quality mental health services.** Specifically, we feel that the current **leadership has not demonstrated sufficient commitment to correcting treatment issues** raised during multiple site visits, despite clear communication of such concerns to responsible administration. We find this lack of commitment unacceptable.

In regard to compliance with existing standards, BMHI was surveyed in October 1990 under state hospital licensing regulations and pursuant to a conditional license granted one year earlier due to a "serious and substantial failure to comply with the regulations."

Among the conditions with which BMHI remains out of compliance are:

- lack of registered nurse coverage on multiple day and evening shifts;
- little or inconsistent documentation of active intervention and treatment by all disciplines and
- insufficient physician staffing to allow full interdisciplinary team involvement and timely documentation.

However, BMHI was found in compliance with multiple conditions previously cited, including nursing organizational structure and job descriptions; supervisory role of registered nurses; ratio of registered nurses to mental health workers; development and implementation of an orientation program for all persons with direct care responsibility; medical staff and credentialling procedures and physical environment deficiencies. This represents substantial progress in most areas and is reflective of a considerable effort on the part of BMHI staff.

BMHI currently has a full accreditation from JCAHO, having corrected all of a very large number of contingencies, affecting all areas of the hospital. **Compliance issues remaining that will be addressed in future surveys** include sufficiency of nursing staffing to determine patient needs and provide appropriate interventions and aspects of the system for monitoring, evaluating and improving quality of care. Finally, BMHI was found to have sufficiently corrected deficiencies identified in the survey of D-1, the admissions, to merit Medicare recertification. These again reflect significant progress and effort.

As with AMHI, the Commission's overriding concern is the proposed budget cuts. **Cutting 79.5 positions from BMHI without a significant expansion of community services, as with AMHI, jeopardizes the gains made at the institute and threatens to reduce services to unacceptable levels.** We would again state that **cuts in services at BMHI should be preceded by enhancement in community services, in order to insure that services are in place when individuals leave BMHI and that these persons are not thrust upon an already overstretched community system.**