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May 18, 2007

STATE OF MAINE | SUPERIOR COURT

KENNEBEC, ss. | CIVIL ACTION
DOCKET NO. CV-89-088

PAUL BATES, et al.,

Plaintiffs

v.

COURT MASTER'S PROGRESS REPORT PURSUANT TO PARAGRAPH 299

BRENDA HARVEY, COMMISSIONER, DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al,

Defendants

The following Report covers the period from November 1, 2006 to April 30, 2007:

Managed Care:

At year end, after the expenditure of significant time and effort, the Department terminated its effort to obtain a waiver for an at-risk managed care program for behavioral services as discussed in my last report. To my knowledge, the actuarial studies needed to demonstrate that the system redesign would be cost neutral were not completed. The Department announced that in lieu of full managed care it would seek to engage an Administrative Service Organization and it issued a request for proposals on April 12, 2007. Completed proposals are due and will be opened on June 8, 2007. Any resulting contract will not begin earlier than August 1, 2007, and a later date would seem likely. The RFP seeks prior authorization and utilization review functions for adult and child mental health services as well as substance abuse services provided under MaineCare. The Department Plan calls for my approval of any final managed care

contract with respect to adult mental health services. Approval of an ASO contract will necessarily depend upon the operational compatibility of this new layer of authorization and utilization management with the terms and principles of the Settlement Agreement. At this point, it is difficult to assess whether an ASO will afford the enhanced level of management with respect to continuity of care that might have been anticipated from a full managed care program. Thus the alternative provisions of the Plan for continuity of care in the absence of managed care remain vitally important.

Budget Developments:

The biennial budget for the Department is under active consideration by the Legislature at the present time. There are three primary areas of concern created by budget discussions and I have been given a full opportunity to discuss my views with the Appropriations Committee. First, the Department has proposed budget reductions of $5.5 million in the first year and $8.5 million in the second year to capture the annual savings anticipated from the retention of an Administrative Service Organization. Second, the Department has proposed budget reductions of $10 million in each year of the biennium to reflect savings anticipated from the imposition of standardized rates for mental health services. It must be noted that both proposals are stated in terms of a reduction in the state portion of MaineCare spending. Under the Medicaid program, state spending is matched by federal spending of approximately $2 for every $1. Therefore the total reduction in spending on community mental health services could be on the order of $100 million over two years. At a minimum, I am not convinced that such reductions could be accomplished so quickly without adversely affecting the Department's efforts to

implement its comprehensive plan and achieve compliance with the Settlement Agreement.

The savings attributed to the ASO appear somewhat optimistic considering the timing and the fact that some of the higher cost services, such as inpatient treatment and hospital services, will not be subject to prior authorization. When savings are booked and not achieved they become reductions in service, With regard to standardized rates, the Department takes the position that rate reductions will not necessarily result in service reductions or a degradation of quality—some providers may withdraw but others will come forward with the same services at the reduced rates. It is difficult to completely accept that conclusion. Some of the critical services affected by the proposed rate reductions, such as medication management, are already operating with wait lists and a chronic shortage of qualified personnel. Very substantial cuts are also proposed for the provision of caseworkers, the core service for the community mental health plan. I would anticipate that rate reductions would result in reductions in service and quality. At the very least, a phased implementation would seem prudent.

There is also a legislative proposal that the non- categorical MaineCare program for childless adults with income below the federal poverty level be capped at a caseload of 13,333 members or $60 million. This represents approximately a one-third reduction in caseload and dollars from present levels of 18,700 with 4,400 waiting and $90 million. It should be noted that in 2004 this program was one of two that the Law Court suggested must be considered in evaluating "the good faith and seriousness of the State of Maine's commitment to provide and improve institutionalized and community-based treatment for individuals with mental illness." *Bates v. Department of Behavioral and Developmental*

Services, 2004 ME 154 ¶62. It is important to note that since the Law Court has spoken, this program has already experienced a freeze in enrollment, reduced benefits, the elimination of community support services and a limitation in the number of visits for mental health services. This latest proposal would represent a further and more substantial withdrawal of program funding for community mental health services.

As this report is being prepared, the budget has not been finalized but it is reasonable to anticipate that the final result will negatively impact the Department's prospects for achieving compliance.

<u>Implementation of Comprehensive Mental Health Plan</u>:

The Department's Report for the quarter ending March 31, 2007 is attached hereto and documents the progress made by the Department in implementing the Plan. After receiving the Report for the prior quarter ending December 31, 2006, I met with representatives of the Department on an informal basis and expressed a number of concerns regarding the content of the report and the progress that was being made with respect to (1) assessing and remedying service gaps (component 10), (2) constructing a housing data base (component 35), (3) forming consumer councils (components 43-46), (4) increasing crisis beds (component 62), (5) developing residential services for persons with complex health needs (component 80), (6) establishing forensic housing for ACT team clients at Riverview (component 85), (7) management of vocational services (component 88) and (8) managed care (component 100). The entries in the most recent quarterly report describe the changes that the Department undertook with respect to these components as a result of our informal efforts. For the most part my concerns related to delay in implementation. Although items 2, 3, 4, 6 and 7 will continue to experience

some additional delay despite the changes adopted by the Department, I am satisfied that the delay has been minimized and is unavoidable given the strictures of state government.

I am not satisfied with the progress being made with respect to item 1, assessing and remedying service gaps in the seven community service networks. Originally, the Plan called for the Department to assess the service offerings in each network by the end of October 2006, and to identify resource gaps and establish remedial measures with fixed time frames for implementation by January 15, 2007, later extended to February 9, 2007. In response to my objections to additional delay, the Department produced on March 16, 2007 a Summary Assessment of Resource Gaps in each of the seven networks. The Department now proposes a six-month review process, working with the networks, before finalizing remedial measures and an implementation schedule. The Assessment prepared by the Department reflects that out of eight core services offered in seven community service networks--a total of fifty six core service offerings--only twenty-two do not have gaps in service. For the most part, the Department acknowledges that the elimination of each of the identified gaps requires increased funding. I do not believe that the six-month review process with providers will be time wisely spent, particularly in light of the fact that it is occurring at a time when the Department is advocating for substantial reductions in the mental health budget for ASO savings and standardized rates. First and foremost, the resolution of the service gaps will require funding. The lengthy review process proposed by the Department will inevitably result in delaying any request for funding the remedial measures. Until the gaps in service are addressed, compliance can not be achieved. Reasonable access to core services is a key element of any comprehensive mental health plan.

Based upon the foregoing findings, I recommend that by July 15, 2007, the Department identify the resource gaps in each network, establish remedial measures with fixed time frames for implementation and request additional funding to cover those gaps.

Operation of Riverview Psychiatric Center:

The quarterly report for the operation of Riverview Psychiatric Center is attached hereto and documents the progress made by the Department in the hospital portion of the Plan. I would add that since my last report, Dr. Joseph Bevilacqua completed his review of security and staffing at the hospital. He presented his findings to the staff of the hospital, the Joint Committee on Health and Human Services and interested members of the Joint Committee on Criminal Justice and Public Safety. The hospital presented an action plan to implement his recommendations and is engaged in that process. Although Dr. Bevilacqua made a number of recommendations regarding staff training, site visits, direct care staff participation on hospital committees and staff communications, he concluded that Riverview compares favorably with other public psychiatric hospitals going through similar transitions.

I would also note that the no smoking policy was implemented fully on April 2, 2007 and seems to have been well managed thus far. I have participated in several spirited debates with clients on this subject while attending client forum meetings at the hospital. Although there are a variety of views, they have been presented civilly and respectfully.

I continue to attend weekly discharge meetings, client forum meetings and occasionally visit the wards. The hospital is a challenging environment, witness just the

recent forensic admissions reported publicly in the news, but as the quarterly report documents, it is appropriately managed and operates at a satisfactory level of performance.

Progress in Developing Compliance Standards:

Now that the Department has an approved Plan, I have consulted with counsel in accordance with paragraph 291 of the Settlement Agreement "to develop a process to evaluate and measure" the Department's compliance with the Plan and the Settlement Agreement. Draft language has been prepared and circulated. I anticipate that final compliance standards will be approved by July 15, 2007.

DATED: May 18, 2007

Daniel E. Wathen
Court Master