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STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
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 June 1, 2008 to November 30, 2008.

Implementation of Recommendation Regarding Warmline.

On September 5, 2008, after investigating the operation of the Amistad Warmline, I issued a recommendation that the Department, within 30 days of the date of the recommendation, increase its funding for the Warmline in an amount sufficient to provide two staff for the 1 a.m. to 8 a.m. shift. As a factual matter, I concluded that under the terms of the approved plan the Department was obligated to expand the Warmline service with adequate staff to respond to calling levels. The office of Adult Mental Health Services complied fully with the recommendation, encumbering funds in the amount of \$50,669.03 for the remaining nine months of the fiscal year, and authorized the additional staffing for seven days a week. Amistad reports that a second staff person now works the second shift and the result has been a dramatic reduction in the number of abandoned and rerouted calls and an overall increase in call volume. It is reported that the Warmline handled about 2,500 calls in the month of October and referred only five of those calls to a crisis provider. I will continue to receive reports on the operation of the Warmline. It is a promising addition to the menu of mental health services and is valued by the clients.

Implementation of Recommendation Regarding Funding Obligations.

On October 29, 2008, I filed a recommendation that the Department reinstate service eligibility and resume state funding for persons who are clinically eligible for mental health services included in the State's Medicaid plan, even though they may be financially ineligible for MaineCare. This is an important development because much of the budget reduction imposed in the last legislative session was accomplished by eliminating funding of services for persons who are financially ineligible for MaineCare. The Department has not challenged this recommendation pursuant to paragraph 295 of the Settlement Agreement and therefore it has become binding. There are a number of unresolved questions and details regarding the implementation of the recommendation, particularly with reference to non-class members who

do not wish to have Community Integration services but who wish to access other mental health services. I have just begun the process of addressing implementation with counsel and should complete it within the next two months. It is my understanding, however, that the Department will no longer distinguish between class members and non-class members with regard to eligibility for state-funded services.

Consolidation of Crisis Services.

The consolidation of crisis services for adults and children, mandated by the Legislature along with a \$100,000 reduction in funding for FY09 and a \$300,000 reduction for FY10, has not yet been completed. The Department allocated the available funds between districts and issued minimum requirements for a crisis service system and memoranda of understanding. Providers within the various districts are required to produce a final proposed system design by January 9, 2009. In allocating the funds, the Department relied upon population factors and the miles of road within a district. The allocation formula results in significantly diminished funding for crisis services in Hancock and Washington Counties. I will continue to monitor developments as they occur.

Rate Standardization.

The Department has engaged the consulting firm Deloitte to assist it in achieving rate standardization for behavioral health services. On two occasions Deloitte has met with a provider work group and I have monitored those meetings. Two additional meetings are scheduled with the next month. The goal is to provide reliable data for a comparative analysis with other states and cost based data that could be useful in the process of proposing rate adjustments.

Budget.

As a result of the decline in state revenue, the Governor ordered a budget curtailment on November 19, 2008. The impact on the Office of Adult Mental Health Services is detailed on Exhibit A attached hereto. Although all of the funding reductions are important, the \$350,297 reduction for Community Integration and Daily Living Supports represents the most obvious deviation from the obligations imposed by the Settlement Agreement and the approved Mental Health Plan. Community Integration is the core obligation of the Settlement Agreement and, in eighteen years the Department has yet to fulfill its obligation to provide Community Integration in a timely manner. During the last legislative session, funding for Community Integration and Daily Living Supports and ACT services for non-class members who are financially ineligible for MaineCare was withdrawn. In accord with the policy attached hereto as Exhibit B, the Department proposed to use grant funds to provide these services to class members ineligible for MaineCare and a narrower subset of non-class members ineligible for MaineCare. The Department explained that the reduced grant funds would be sufficient to meet this need because the Department would administer the funds on a fee for service basis rather than the block grants used in the past. Unfortunately, experience thus far has not matched the Department's expectation. In early November, well before the curtailment order, the Department suspended new non-MaineCare enrollments for Community Integration for both class and non-class

members in Community Service Networks 3 and 6. Quite simply, the remaining funding requires that Community Integration Services be rationed. The caseworker assigned for Community Integration serves as the primary point of access for all other mental health services. The curtailment order and any further budget reductions that might be enacted by the Legislature, can only result in a further withdrawal and rationing of this critical service.

Court Monitor.

The monitor appointed by this Court on August 21, 2008 is actively engaged in the inquiry set forth in this Court's order of July 14, 2008. It is anticipated that the report of the monitor will be available near the end of the month of February, 2009.

Riverview Psychiatric Center.

David Proffitt, Superintendent of Riverview Psychiatric Center, resigned effective mid-September to accept the position of CEO of Acadia Hospital. Mary Louise McEwen, Superintendent of Dorothea Dix Psychiatric Center, was appointed as acting Superintendent of RPC and serves both institutions on a part time basis. Although the position of Superintendent at RPC remains open, I am not aware of any progress in finding a permanent and full time replacement for Mr. Proffitt. RPC and its predecessor AMHI, has a long and troubled history as an institution. Its operation is made more challenging and more critical to public safety by the fact that forensic clients make up one half of the hospital's population. During the last five years, RPC has undergone a major transformation and now operates as an effective therapeutic institution focused on recovery rather than custodial confinement. The position of Superintendent of RPC is one of the more challenging positions in state government. A permanent and full time Superintendent is required. Further delay risks deterioration in the hard won performance improvements that have been achieved.

DATED: December 4, 2008

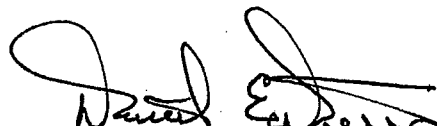

Daniel E. Wathen, Court Master

EXHIBIT A

FY 2009 Curtailment

Dept. Code (e.g. EXE)	Department/Agency Title	Fund (010)	Prog (e.g. 0057)	Program Name	Appr. Unit	Line Cat (1, 2, or 3)	Exp. Object (e.g. 3110)	2009 General Fund Approp. Adj.	Initiative Description	Program Impact (BFMS Justification)
BEH	Behavioral and Developmental Services	010	1100	Community Integration, DLS, Wrap		2	6401	(350,297)	Reduces General Funds for clients for Community Integration (CI) and Daily Living Supports. This funding covers persons who do not have MaineCare for these services.	The impact of the elimination of CI and DLS services would be a loss of services to approximately 96 CI clients and 5 DLS clients.
BEH	Behavioral and Developmental Services			Dorothea Dix Psychiatric Center Positions				(183,524)	Four positions have been identified as not being critical to the effective operations of DPC. An additional 4 positions have been identified by the Hospital Efficiency Report of the summer of 2008 as not impacting significantly operations. The savings is State General Funds	Impact is very limited as 4 of the positions are vacant currently and the other 4 positions were identified by the Hospital Efficiency Report of the Summer of 2008 as not having significant impact on operations.
BEH	Behavioral and Developmental Services			Dorothea Dix Psychiatric Center Revenue Account				(100,000)	Reduces the Dorothea Dix revenue reimbursement account	
BEH	Behavioral and Developmental Services			Riverview Psychiatric Center Revenue Reimbursement Account				(100,000)	Reduces the Riverview revenue reimbursement account	
				Maine Center on Deafness, Maine Medical Center Vocational Programming, NAMI Family Support and Public Information				(62,029)	OAMHS has a contract with Maine Medical Center to provide 7 employment specialists throughout the state to assist clients in being employed as well as funding two benefit specialists to help clients understand benefit impacts when considering employment. This curtailment represents a 10% cut in their contract for the remaining 7 months of the year and should have little to no impact on client services. NAMI develops on line training in a variety of mental health topics, provides packets of information regarding mental illness, operates a help line, and maintains support groups throughout the state. This curtailment represents 10% of their contract for the remaining 7 months. The Center on Deafness provides advocacy services on behalf of deaf, hard of hearing, and late deafened persons with psychiatric disabilities. One major initiative is maintaining a Civil Rights Program. This curtailment represents a 10% cut in their contract for the last 7 months of the year *	The impact of the 10% reduction in the 7 months remaining should have minimal impact on the organizations in the delivery of client direct services and will result in a reduction of some of the family support and public information of NAMI

FY 2009 Curtailment

Dept. Code (e.g. EXE)	Department/Agency Title	Fund (010)	Prog (e.g. 0057)	Program Name	Appr. Unit	Line Cat (1, 2, or 3)	Exp. Object (e.g. 3110)	2009 General Fund Approp Adj.	Initiative Description	Program Impact (BFMS Justification)	
								Total	(795,350)		

EXHIBIT B

Criteria for General Fund ("Grant") Funding of Community Integration (CI), Assertive Community Treatment (ACT), and Daily Living Support Services (DLS) for FY 2009

OAMHS will provide General Fund ("grant") dollars for CI, ACT, and DLS services as follows:

1. OAMHS will provide general fund dollars for CI services for AMHI Consent Decree class members who do not have MaineCare, who have a MaineCare spend down, or who have Non Categorical MaineCare eligibility
2. OAMHS will provide general fund dollars for ACT or DLS services for AMHI Consent Decree class members who do not have MaineCare, who have a MaineCare spend down, or who have Non Categorical MaineCare eligibility only if the class members also meet the clinical eligibility criteria for MaineCare section 17 for those services.
3. OAMHS will provide general fund dollars for CI, ACT or DLS services to non class members who do not have MaineCare, who have non categorical MaineCare, or who have a MaineCare spend down only if those non class members
 - a. meet the MaineCare section 17 Clinical Eligibility criteria except that OAMHS will only provide general fund dollars for CI, ACT or DLS services to non class members who have one of the following primary diagnosis on Axis I of the multi-axial assessment system of the current version of the *Diagnostic and Statistical Manual of Mental Disorders*:
 - i. Bipolar Disorder or Major Depression (DSM IV codes: 296 except codes 296.90)
 - ii. Schizophrenia (DSM IV code 295 inclusive of sub codes),
 - iii. Psychotic Disorder NOS (DSM IV code 298.9)
 - iv. Delusional Disorder (DSM IV code 297.1)
 - v. Post Traumatic Stress Disorder (DSM IV code)

AND

- b. are in at least one of the following priority populations:
 - i. Persons being discharged from the following facilities:
 - Psychiatric Hospitals or Psychiatric Units within General Hospitals
 - Jails or Prisons
 - Crisis Stabilization Units;
 - ii. Persons with categorical MaineCare spend down whose income is under 150% of the federal poverty guidelines; or
 - iii. Persons with Social Security Disability whose income is under 150% of the federal poverty guidelines.

The Mental Health Team Leaders with the OAMHS Medical Director may upon request in very limited situations waive the requirements listed above.