STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-89-088

PAUL BATES, et al.,

Plaintiffs

v.

COMMISSIONER,
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,

Defendants

COURT MASTER'S PROGRESS
REPORT PURSUANT TO
PARAGRAPH 299

The following report covers the period from February 1, 2012 to August 1, 2012.

**Riverview Psychiatric Center.**

Although the hospital is no longer under active supervision, given the pivotal role that it plays in Maine's mental health system, there are developments that should be noted. First Riverview continues to operate satisfactorily and has largely avoided any change in staffing or budget. There is a continuing concern about the relationship between forensic clients and federal disproportionate share funding but the Legislature has made provision for an alternate source of funding should disproportionate share funding be reduced.

From an operational perspective, Riverview has been challenged by a substantial increase in the number of forensic admissions. The hospital is divided roughly in half, with an upper and lower unit on one side with a capacity for forty five forensic clients and an upper and lower unit on the other side with a capacity for forty seven civil clients. In the past, the sides of the hospital have had sufficient capacity for each population of clients and only on rare occasions has it been necessary to house forensic clients in the civil units. In recent months, however, there has been a marked increase in the number of forensic admissions. As of August 1, 2012 Riverview housed fifty seven forensic clients and thirty five civil clients. Mixing these two populations on a permanent basis is not desirable and presents operational difficulties. At this point it is difficult to know whether this is a temporary situation or a more lasting shift in the demand for hospital services. I shall continue to monitor and report on the balance between forensic and civil admissions and the resulting shift of civil admissions to other hospitals.

In a related area of operations, Riverview has experienced difficulty in arranging housing for forensic clients once the court has granted permission for supervised placement outside of the hospital. In recent years, the State has leased state-owned residential units on the old AMHI campus to a private mental health provider. These units are used by the provider to house forensic clients who are authorized for community placement. The federal government has apparently taken the position in recent months that, because of the location of the housing, clients living in these units are still in an institution and thus ineligible for MaineCare and social security benefits, thereby leaving scarce grant funding as the only source of funding. In fact, it

was necessary to use part of the additional grant money discussed below to support forensic placements. Currently, the provider is locating alternative privately-owned housing units in the immediate area that have no connection to the old AMHI campus but has met with some local resistance. It is important to note that the existing housing units were instrumental in permitting the hospital to improve the effective use of its forensic capacity and to locate community placements once court approval was granted. The continued availability of alternative housing units with secure funding is vital if the hospital is to remain current with the demand for forensic services.

**Developments in Community Mental Health.**

In my last report, delivered in February of this year, I forecast that despite a slow start, the additional grant funding for mental health services would be utilized effectively in the remaining half of the fiscal year to meet the needs of those not eligible for MaineCare. I was hopeful that the Department could build a persuasive case for the Legislature to continue funding for these critical needs. My hopes were not fully realized. Although the Department belatedly allocated the additional grant funds to a number of mental health providers, the number of consumers receiving individual service types with State General Fund and Block Grant dollars grew impressively from 10,466 in FY11 to 15,558 in FY13. At the end of the fiscal year, however, the additional grant funds had not been fully expended. Most of the wait lists for services had been significantly improved, but 125 people remained on the wait list for the most basic mental health service, the assignment of a caseworker for community integration services. The Legislature did not appropriate additional grant funding for the second year of the biennium. The Department did secure budget language that prevented the unspent funds from lapsing and approximately $850,000 was carried into the current fiscal year. On this occasion, the allocation of additional grant funding was not a totally effective means of delivering needed services to waiting clients. In the current fiscal year, it appears that the Department will not have the funds necessary to satisfactorily address the need for grant funded community integration. This is a crucial area that will receive attention in the coming months.

A second topic in my prior report was an attempt to increase focus on community compliance initiatives. Having conferred with counsel, in February I proposed a series of work sessions to discuss performance in those areas where the Department is least compliant with the consent decree and to consider whether there might be a better means of accomplishing the same end while reducing the administrative burden on the Department. Work sessions were not scheduled and no meaningful progress has been achieved.

I understand that the Department had a lot on its plate, particularly during the last Legislative session. I also appreciate the changes and challenges that confront the staff assigned to adult mental health services. Those changes currently include the following: (1) The reorganization of DHHS that includes merging the Office of Adult Mental Health Services with the Office of Substance Abuse to form Substance Abuse and Mental Health Services with a single director and three divisions assigned to (a) prevention and intervention services, (b) treatment and recovery services and (c) data, quality management and resource development. Although SAMHS is not scheduled to sustain a reduction in staff, there could be changes in personnel as a result of reductions and bumping rights in other parts of DHHS. (2) Contracting for most of the services previously provided by state-employed Intensive Case Managers. (3) Implementation of the Affordable Care Act and the integration of behavioral health care with

physical health care. (4) Ongoing deliberations with CMS with respect to restructuring PNMIs and unbundling the rates for mental health services from charges for room, board and supervision. Although I understand the pressures that the Department confronts, it is imperative that the Department make every reasonable effort to meet the obligations that it accepted under the Consent Decree. In this respect, the Commissioner and I have recently agreed upon a series of monthly meetings between the staff of SAMHS and me to discuss issues regarding compliance.

In many respects the Department has met the terms of the consent decree, but in several vital respects the community mental health system has made little progress and has no definitive plan for improvement. In order to sharpen the focus on securing reasonable compliance with the remaining unmet obligations under the consent decree within the foreseeable future, pursuant to paragraph 292 of the Settlement Agreement I require the Department to respond to the following questions in writing within 30 days:

(1) How does the Department propose to assure that class members will have a case worker assigned within 2 days of a request if hospitalized and 3 days if not hospitalized, and that non-class members will have a case worker assigned within 7 days of a request? Provide detailed timeframe for implementation of the proposal as well as funding plans.

(2) How does the Department propose to assure the availability of core mental health services as defined in the Plan for persons with severe and persistent mental illness including those who are MaineCare eligible, those who are dual eligibles and those who are ineligible for MaineCare? Provide detailed timeframe for implementation as well as funding plans.

(3) How does the Department propose to separate housing from services, except in residential treatment facilities, so as to flexibly provide services to clients in their chosen, permanent home at the level of intensity, duration and type necessary to meet the individual client's needs? Provide detailed timeframe for implementation as well as funding plans.

Answers to these questions will lead to further discussions during our monthly meetings and should, before the beginning of the next legislative session, either result in the formulation of a viable plan to achieve meaningful progress in these critical areas or assist me in formulating recommendations pursuant to Paragraph 298 of the Settlement Agreement to reasonably assure substantial compliance with the remaining unmet terms of the settlement agreement.

Dated: September 10, 2012

Daniel E. Wathen, Court Master