

# MAINE STATE LEGISLATURE

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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 16, 2014 to August 31, 2014.

### **Riverview Psychiatric Center**

To be fair, the current operation of Riverview Psychiatric Center can only be characterized as troubled. Although there have been signs of improvement in recent months and plans of correction are in place, the hospital has continued to experience critical incidents involving client and staff safety and from time to time has generated concerns about proper treatment. The Department has appealed from the order withdrawing certification by CMS and, alternatively, it has petitioned CMS for recertification as a 72 bed psychiatric hospital, leaving the most acute forensic unit, Lower Saco, as a free-standing and uncertified unit. The appeal has been denied within the administrative system but is now on its way to U.S. District Court. The petition for recertification was denied on June 25, 2014, although the request has since been renewed. The net result is that the hospital has operated since the Fall of 2013 without the approximate two thirds of its budget that is derived from Medicare, Medicaid and Disproportionate Share Funding. To the extent that it has received such funding, it may have an obligation to repay those funds upon audit unless the appeal is successful.

The hospital operates at 85% or less of its designed capacity while maintaining waitlists for those in need of service. It continues to house forensic clients in three of its four units, presumably because of concerns about behavior control, even though the two forensic units are not filled to capacity. There has been more staff turnover than usual in certain elements of the workforce since May. The Superintendent was terminated in March of this year and the hospital has since operated under an acting Superintendent and in all likelihood will continue under interim management for at least the next six months during this critical time of reorganization.

In view of the uncertainties of the situation, I have arranged for a site visit of the hospital in early October and I am currently gathering information to facilitate that visit. By October, the plans of correction and the management changes should have advanced sufficiently to allow a meaningful review of current operations, to check on progress and to make any

recommendations that may be necessary for compliance with the Consent Decree and the Consent Decree Plan.

### **Developments in Community Mental Health**

The project to update the performance standards and reporting requirements of the Consent Decree, as referred to in my last progress report, has moved forward with the cooperation of the parties and counsel. On May 8, 2014, I entered an order by agreement that eliminated reporting requirements for the performance standards set forth in the attached exhibit. These particular standards have consistently been met by the Department. In view of the fact that the data will remain accessible, the burden of reporting serves no useful purpose. On the same date, I entered an order making minor technical amendments to the compliance standards that were similarly designed to reduce administrative burden. In furtherance of the same goal, counsel for the Department have filed three motions with the Court as of July 31 and August 8, 2014. The first two motions are agreed to in principle and are designed to relax the requirements for an annual mailing to class members, to eliminate the semi-annual report of grievances, provided that an accessible database is maintained, and to increase the caseload ratios for public wards to forty. The final motion seeks to amend the definition of class members to exclude in the future persons admitted to Riverview Psychiatric Center solely for the purpose of forensic examination pursuant to 15 M.R.S.A. sec. 101(D). This latter motion is contested and will be submitted to the Court for decision once briefing is completed on September 23, 2014.

The other major area of activity during the past six months, relates to the associated subjects of the funding that is available for mental health services for those ineligible for MaineCare and progress in reducing the waitlists for those services, with particular focus on the most basic health service—community integration. The funding prospects for the current fiscal year, which will end on June 30, 2015, are improved. The legislature appropriated an additional \$2 million for mental health services to conform to the consent decree for FY 15. Although this sum falls short of the total of \$4.659 million requested, the Department has allocated an additional \$1.6 million from unexpended FY 14 balances and will request \$1.1 million in the supplemental budget for FY 15. If successful, the Department will have the total sum of \$4.659 million available for the year. The Department intends to request that the sum of \$4.659 million be included in the Department's base budget for the next biennium.

At this point, the Department has allocated \$2.847 million of the funds currently available to the FY15 provider contracts for a variety of mental health services, but primarily for community integration. Given the funds that are available, the balance of the fiscal years should provide an opportunity to determine the impact that improved funding will have on the unacceptable waitlists for services that exist and continue to persist. (In late August, as this report was being finalized, the Department announced a forthcoming reduction in contract allocations for mental health services for FY 15. Although the details of the reduction are unclear, I am hopeful that the impact on funding for community integration will be minimal.)

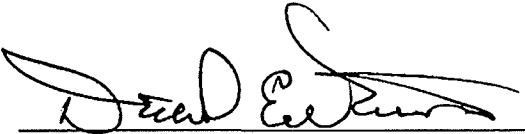
During the past year, the Department has devoted substantial attention to the community integration service waitlists that exist for MaineCare clients as well as grant-funded clients. The

timely assignment of caseworkers, within a maximum of seven days, is undoubtedly one of the most important requirements of the Consent Decree and to this point it has been honored only in the breach. Although there has been some improvement in the average number of days that people with severe and persistent mental illness must wait for services, currently standing at 29 days, the total number of people assigned to a waitlist for community integration remains at 544, and is essentially unchanged from six months ago. Masked within the average delay is the fact that many people, with or without MaineCare, wait more than half a year for services. Some of the larger provider agencies have an average wait approaching 50 days with a maximum wait exceeding 150 days. This state of affairs is unacceptable.

The Department's work on the waitlists, carried out in conjunction with the providers, thus far indicates that more than a question of funding may be at play. There is a suggestion that providers have difficulty in recruiting and retaining caseworkers in order to meet demand. As we proceed into a year with nearly full funding available, we may discover that there is a need for workforce development in order to significantly improve the waitlist problem. This is a topic that will be addressed at my monthly meetings with staff from the Department and referenced in my next report. In the meantime, staff of the Department continues to work with individual providers and make personal contact with clients waiting more than 90 days for the assignment of a caseworker.

Although progress is slow, the Department continues to address issues of funding and service delivery in a meaningful way.

Dated: September 5, 2014



Daniel E. Wathen, Court Master