

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

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

COURT MASTER'S PROGRESS  
REPORT PURSUANT TO  
PARAGRAPH 299

V.

## Defendants

The capacity of the forensic unit continues to present problems. The forensic waitlist at RPC has been kept within manageable levels of two or three on average, but that has been achieved by placing forensic clients at Dorothea Dix Psychiatric Center in Bangor. In recent months, twenty to thirty forensic clients have been housed at DDPC at any point in time. Forensic services at both hospitals have been reorganized and are now overseen by the former Clinical Director of DDPC who now holds the position of Chief of Forensic Services/Clinical

Director. It is too early to determine whether this change in organizational structure will improve the overall performance of the hospitals. In the past, DDPC did not house forensic clients and the facilities were not designed for that purpose. Nonetheless, DDPC has provided a level of service that is reported to be satisfactory and for the time being has relieved the lengthy waitlist that previously prevailed at RPC.

Plans for the development and operation of a twenty-one bed secure forensic rehabilitation facility on the former AMHI campus in Augusta failed to be implemented as a result of disagreement between the executive and legislative branches of Maine government. Having first proposed to build the facility in Augusta, in May, the Department of Health and Human Services then issued a request for qualifications from developers to purchase state-owned land in Bangor and construct a secure forensic rehabilitation facility on that site. In addition the Department issued a request for proposals to operate the facility. The proposed timeline for development calls for selection of the developer on or before August 15, 2017, with construction to begin April, 2018 and to be completed by March, 2019. The RFP for an operator calls for proposals to be submitted by September 13, 2017 and contemplates that a ten-year contract for services would commence on March 1, 2019. Neither of these undertakings is supported by an appropriation or funding mechanism other than the existing resources of the Department. During the time that the RFP was being formulated, I conferred with representatives of the Department to insure that adequate provision was made to honor and accommodate the mandates of the consent decree in any resulting contract for services. The RFP is designed to serve clients who no longer meet medical necessity standards for acute psychiatric hospitalization. If this plan goes forward, I will review the resulting proposed contract for compliance with the consent decree.

On the legislative front, a competing proposal, LD 162, was enacted by the Legislature which would have required the Department to develop, operate and maintain the twenty one-bed secure forensic step-down facility in Augusta in the Capitol Area and to staff it with state employees. LD 162 was vetoed by the Governor on August 1, 2017 and the Legislature failed to override the veto. Thus the proposal was not enacted.

The recently enacted biennial budget, on its face, appears to make adequate provision for the operation of the Hospital. The recent action of CMS, however, introduced a serious financial challenge. CMS terminated Riverview's provider agreement on September 2, 2013 and suspended federal funding as of October 1, 2013. To this date, Riverview lacks CMS certification. The Department, however, has continued to bill and receive payments from CMS for Medicaid services and for disproportionate share hospital payments from 2013 until the present date. On June 7, 2017, CMS disallowed those payments and demanded repayment of the sum of \$51,076,630. The Department has the right to request reconsideration and in addition has appeal rights. It also has the option of retaining the funds that were previously paid pending the appeal. If the appeal is unsuccessful, however, the demanded sum is due together with interest. Part EEEEEEE-1 of the biennial budget establishes a reserve for Riverview of up to \$65 million dollars from the budget stabilization fund if the request for reconsideration is disallowed. Seemingly, this sum should be sufficient to cover repayment of the federal funds and to fund the hospital's budget for approximately 9 months until recertification is obtained.

## **Developments in Community Mental Health**

The Department continues to make substantial progress in dealing with the waitlists for mental health services. The attached chart graphically illustrates the decline of persons waiting for a caseworker from a high of 656 in 2014 to 38 in June of 2017. In fact, at one point in June, it was reported that no one covered by MaineCare was waiting for the assignment of a caseworker. Overall, the average number of days for those on a waitlist during the month was reduced to 8 days from a high of 71 in 2015. The Office of Substance Abuse and Mental Health Services has improved the available data regarding waitlists and has begun to actively and aggressively manage the service contracts they have with community providers. In a similar manner, the Office has developed an improved tool for collecting information needed to effectively manage provider contracts for all services. The tool exists now in prototype form and counsel and I have witnessed a demonstration. The tool will begin to produce actual management information by October 1, 2017.

The Bridging Rental Assistance Program (BRAP) which provides housing assistance to persons with mental illness also operates at present without a waitlist. Although this represents an improvement over performance in the past, Plaintiffs' attorneys suggest that the program may be underutilized because of shortages in the available housing stock and the need to acquaint some community providers with the flexibility offered by the program. The degree of underutilization, if any, and remedies therefor will be explored in future months.

BRAP remains fully funded at \$6.6 million under the new biennial budget and so-called consent decree funding in the amount of \$5,797,300 for mental health services for those who are not eligible for MaineCare has been included in the base budget. This continued and consistent support for much needed housing and mental health services represents a significant improvement over years in the past.

Medication management is the mental health service that chronically remains in short supply. Community providers offer the service through the use of psychiatrists and psychiatric providers such as nurse practitioners and physicians assistants. Maine has a shortage of both psychiatrists and psychiatric providers. In 2016, the Department commissioned a rate study for behavioral health services that proposed to increase the rate for medication management provided by a psychiatrist and to phase in a reduction in the rate for a psychiatric provider from \$55.77 per unit to \$42.42. Because much of the service is provided by psychiatric providers, as opposed to psychiatrists, this proposed reduction was a matter of concern to many in the mental health community. In my own opinion, which I expressed to the Department and the Legislature, the proposed reduction was based on a wage assumption that was at odds with the market. In any event, the Legislature barred the promulgation of the proposed rates, including both the upward and downward adjustments. On balance, this should be helpful in maintaining medication management in its present state but will do little to improve the availability of this critical service.

By way of summary, I would observe that for those within the mental health system, progress is being made, although halting at times. An Adult Mental Health Well Being Survey conducted in 2017 by an independent organization commissioned by the Department found that a majority of consumers receiving mental health services responded positively (saying they agreed



or strongly agreed) to inquiries concerning access to services, perceived outcomes, perceptions of care and social connectedness. Plaintiffs' counsel also surveyed consumers and helpfully identified areas of dissatisfaction and made recommendations with regard to access and quality of specific services. Beyond consumer satisfaction surveys, however, is the fact many people struggling with mental illness fail to enter the mental health system and remain on the streets and in correctional settings. Counsel and I, together with representatives of the Department, continue to focus on the remaining steps that could conceivably achieve a satisfactory level of compliance, both at Riverview and in the community, hopefully within a time frame of two years or less. Maine's mental health system has been in recovery for a number of years and it is time for it to begin to operate independently without the strictures imposed by the Consent Decree.

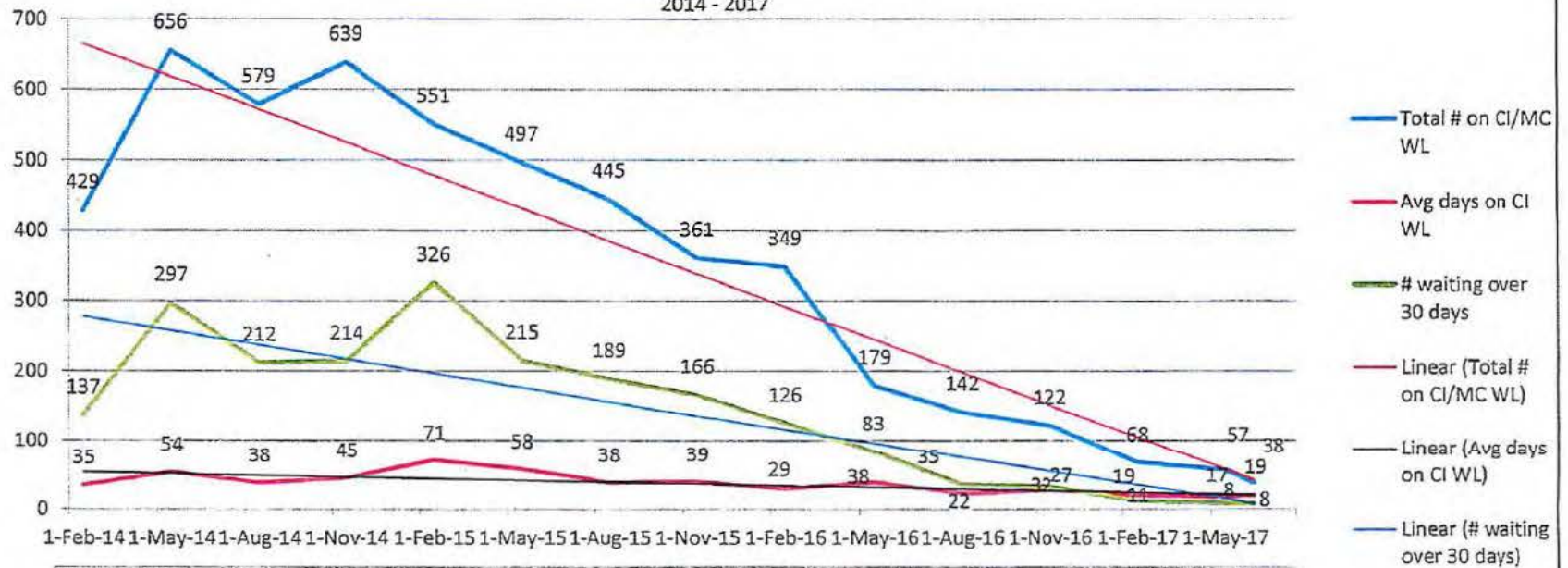
Dated: August 4, 2017



Daniel E. Wathen, Court Master

## Community Integration

Grant/MaineCare Combined Waitlist  
2014 - 2017



	24-Feb-14	26-May-14	25-Aug-14	24-Nov-14	23-Feb-15	25-May-15	24-Aug-15	23-Nov-15	22-Feb-16	23-May-16	22-Aug-16	21-Nov-16	20-Feb-17	22-May-17	30-Jun-17
Total # on CI/MC WL	429	656	579	639	551	497	445	361	349	179	142	122	68	57	38
Avg days on CI WL	35	54	38	45	71	58	38	39	29	38	22	27	19	17	19
# waiting over 30 days	137	297	212	214	326	215	189	166	126	83	35	32	11	8	8