



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Behavioral Health and Service Integration Administration
PO Box 45050, Olympia, WA 98504-5050

September 11, 2014

Dear Legislators:

RE: Single Bed Certification of Mental Health Evaluation and Treatment Update

Background

On August 7, the State Supreme Court issued a decision in the case of *D.W. et al vs DSHS and Pierce County*. The court held that the Involuntary Treatment Act authorizes single bed certifications for specific reasons related to an individual's treatment needs, but that it does not allow single bed certifications to avoid overcrowding certified evaluation and treatment (E&T) facilities.

The Court's ruling put at risk the ability of the involuntary treatment system to safely hold people with serious mental illness who have been found to be a danger to themselves or others. Given this risk, two critical steps were taken:

- Governor Inslee, in consultation with key legislators, took emergency action by authorizing up to \$30m GF-S spending to acquire up to 145 additional psychiatric treatment beds; and
- On August 22, the Department of Social and Health Services (DSHS), along with several interested parties, filed a joint motion to stay the Supreme Court mandate for 120 days to allow time for an orderly and effective response. On September 5, the Court granted the stay until December 26, 2014.

The nature of this extraordinary action compels us to provide legislators with a report as to how the authorized funds are expected to be used to address the Court's ruling and reduce the risk to seriously mentally ill individuals and our communities.

Initial Plan

DSHS developed an initial plan in response to the ruling that was included in the motion for the stay filed with the Supreme Court (see attached). That plan focused exclusively upon identifying additional evaluation and treatment bed capacity. DSHS' declaration filed with the Court noted that "the exact location and nature of the beds added over the next 120 days may change as the Department identifies additional or alternative community beds."

Phase 1 -- August 7 – October 31, 2014

We are taking a two phase approach to our response. Phase I is our immediate response to the ruling. The goals of this phase are to:

- Immediately increase availability of evaluation and treatment beds,
- Ensure accountability for expenditure of these funds by Regional Support Networks (RSN's),
- Cost-effectively use these funds, and
- Improve reporting and data systems to better define bed need.

Since the initial plan was developed, DSHS has had the opportunity to receive thoughtful input from our stakeholders and legislative staff. We have modified the initial plan to reflect this valuable input, such as designating community hospitals that are willing and able to provide appropriate evaluation and treatment services as allowable sites for a single bed certification, updating our plan related to evaluation and treatment bed alternatives and moving to develop additional bed capacity at Western State Hospital.

Phase I actions include:

- DSHS has advised Regional Support Networks (RSNs) that the Department will cover the cost of providing E&T services to persons involuntarily detained at three psychiatric hospitals (Fairfax, Cascade and NAVOS) on the condition that these services are provided in beds that are new capacity that was not available to the RSN prior to issuance of the Court's decision on August 7. The RSNs must meet new reporting requirements and certify that the beds are new capacity. At least during this first phase, all funds will go toward the purchase of services, without any allocation to administrative costs. The three hospitals are all classified under federal law as "Institutions for Mental Diseases" (IMD facilities), and therefore not eligible for federal Medicaid match at the time of the ruling.
- Start-up funds will be provided to Pierce/Optum RSN to open a 15 bed E&T facility in Pierce County.
- Within days of issuance of the Court's decision, DSHS adopted an emergency rule (WAC) to allow residential treatment facilities that have appropriate staffing and capacity to provide E&T services through single bed certification. DSHS is preparing further revisions to that emergency WAC to identify additional facilities that can be a site of a single bed certification within the parameters set by the court, including community hospitals. These revisions to the WAC do not create additional beds. They allow facilities that already have, or are willing to develop, capacity to provide appropriate mental health treatment and may thereby reduce the need to fund new beds in the mental health system.
- DSHS is considering opening additional beds at Western State Hospital to admit people who have been ordered into longer term treatment at a state psychiatric hospital. The date that the beds will open depends heavily upon recruitment and hiring of new staff. On average, state funds pay for 75 percent of state hospital costs, with the balance of funding coming from Medicare, Medicaid and insurance coverage.
- DSHS will continue work already underway with several RSNs to take advantage of funding that the legislature provided for specialized adult family home and enhanced service facility placements to identify safe and appropriate community-based services for patients who are ready for discharge from the state hospital. Services provided at these facilities to Medicaid clients qualify for federal matching funds.
- DSHS is establishing improved data collection and reporting requirements to define the existing baseline of RSN bed capacity, identify new treatment capacity and better track timelines in the involuntary treatment process.
- DSHS will hire staff needed to support and manage this critical effort within the authorized funding.

Phase 2 – November 1, 2014 – June 30, 2015

For the period beginning November 1, we will continue to define the most effective means to reduce psychiatric boarding and the need for single bed certifications at a decreased cost to the state. Between now and November 1, with input from our stakeholders and the Legislature, we will be considering a number of options, such as working with interested RSN's to add community-based evaluation and treatment capacity in their service areas, whether in freestanding facilities or through partnerships with community hospitals, and identifying means to maximize the use of Medicaid funding to support evaluation and treatment services.

Federal IMD waiver

After much effort, we are very pleased to announce that on September 9, the federal Centers for Medicare and Medicaid Services approved the renewal of our DSHS mental health managed care waiver, which authorizes our use of managed care contracts with RSNs. Effective October 1, the waiver renewal will allow Medicaid funds to be used to pay for services in IMD facilities for short term stays when those services are provided in lieu of more costly hospital services. The Department is amending Medicaid contracts with the RSNs to reflect this new authority and conducting analysis to determine its fiscal impact.

Our obligation is to be ready to meet the mandate of the Court when the stay expires on December 26, 2014, but do so in a manner that increases our ability to serve individuals in need of E&T services in their own communities and takes advantage of federal Medicaid funding. We look forward to continued discussions on this very important issue with the Legislature, as well as counties, Regional Support Networks, mental health services providers, consumers, advocates and others in the coming months and through the upcoming legislative session. Our primary concerns are the safety and appropriate treatment of individuals with severe mental illness who are in need of acute mental health services and the safety of our communities.

Sincerely,



Jane Beyer
Assistant Secretary