UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| WILLIAM DIXON, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| v. | ) | Civil Action No. 74-285 (TFH) |
| | ) | |
| ADRIAN M. FENTY, et al., | ) | |
| | ) | |
| Defendants. | ) | |

COURT MONITOR'S NOTICE OF SUBMISSION OF REPORT

Court Monitor, Dennis R. Jones, respectfully submits the attached Report to the Court pursuant to the Court's May 23, 2002 Order requiring regular reports concerning the status of Defendants' compliance with the Plan.

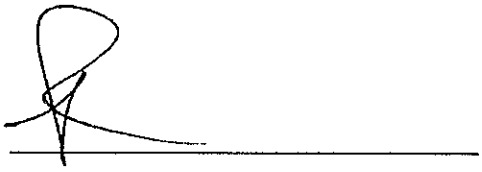
Respectfully submitted,

Robert B. Duncan (Bar No. 416283)
HOGAN & HARTSON, L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004
(202) 637-5758
(202) 637-5910 (fax)

Counsel for Dennis R. Jones,
Court Monitor

## CERTIFICATE OF SERVICE

I certify that on May 13, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record.



# Supplemental Report To the Court

**Court Monitor**
**Dennis R Jones**

**May 8, 2009**

## I. Context

Per the direction of Judge Thomas Hogan on February 26, 2009, the Court Monitor has prepared this Supplemental Report to the Court on three (3) areas of high concern to the Court. These include: 1) Progress on Transition of the DC CSA; 2) Status of the FY 2010 DMH Budget; 3) Progress on the Efforts at St. Elizabeths Hospital to meet DOJ Requirements. Each of these areas is reviewed in summary fashion for purposes of updating the Court in preparation for the special Status Conference before Judge Hogan on May28, 2009.

## II. Progress on Transition of the DC CSA

The Court Monitor has outlined seven (7) major elements of the transition. These seven (7) areas serve as a framework in evaluating progress.

### A. Overall Timelines for Transition

The DMH continues to work within the overall timeline of transitioning all of the over 4000 DC CSA consumers by March 31, 2010 – with 2500 persons to be transitioned by September 30, 2009 and the remainder from October 1, 2009 to March 31, 2010. The 1500 consumers (approximate) targeted for transition from October 1, 2009 to March 31, 2010 will either go to a DMH-run specialty program or be transitioned to a private Core Service Agency (CSA).

### B. Proactive Outreach to DC CSA Consumers

DMH has reached out to current DC CSA consumers in multiple ways. In addition to written communication, DMH has sponsored a series of Consumer Forums and Provider Fairs to give individual consumers (and families) the opportunity to receive information from different CSAs. The goal is to answer questions and provide information so that consumers can make informed choices about their new CSAs. Thus far it appears that Provider Fairs have been successful. The DMH is also beginning special outreach to consumer sites (e.g. Ida Mae Campbell Consumer Center, Independent Community Rehabilitation Facilities (CRFs) and Day Programs) to provide targeted information. As of April 29, 2009, 1049 consumers have made their choice of a new CSA. These numbers are well on track toward the goal of 2500 persons with a new CSA selected and transition begun by September 1, 2009. DMH has established June 1, 2009 as the cut off point for individual consumer selection. After that point, consumers who have not made a choice will be "auto-assigned" to a CSA that can best meet that consumers needs.

DMH published final rules for the new Consumer Transition Voucher (CTV) which have been in effect since January 29, 2009. DMH will pay $787.50 to the selected CSA for each consumer. Payments will

occur over a 3-month period to ensure that the transition is successful. These local dollars are intended to promote consumer choice and assist CSAs with the cost of recruitment, outreach and initial training of new staff. Direct clinical services would be supported via MHRS billings. The voucher concept appears to be well-received by both consumers and providers.

C. Transition Protocols

The DMH has created thirteen (13) Continuity of Care Transition Teams (CCTT) and a standard set of operating procedures to ensure the best possible transition for DC CSA consumers. The 13 CCTTs are made up of a combination of one mental health counselor and one peer support partner. The initial goal is to help inform individual consumers about choices and assist them in the selection and transfer to a new CSA. The CCTTs will refer the consumer to DMHs mobile crisis team or homeless outreach if they are unable to locate the individual or the individual needs extra assistance. DMH is in the process of developing an information system that will allow it to monitor when a DC CSA consumer has linked to a private provider. This system will also allow CCTT teams to be notified in a timely way when a consumer misses appointments so the teams can promptly respond to consumers who are at risk of not being linked to the private network. The Care Management Unit of DMHs Integrated Care Division will also become actively involved if it appears the individual consumer has not connected to the new CSA. The peer support partner will stay connected to transferring consumers for the initial 30 days of a completed transfer. It is anticipated that up to 10% of the total 2500 consumers will need the direct intervention of the Care Management staff and/or referral to mobile crisis or homeless outreach.

D. DMH-Provided Specialty Services

DMH plans to provide specialty services to at least 650 consumers who have specialized needs that cannot currently be met by the CSA private network. These Specialty Programs would be run by the Authority and would include pharmacy, psycho education programs, outpatient restoration, psychiatry resident's clinic, multi-cultural services and services to the deaf who also are mentally ill. In addition, DMH still plans to continue employing its current DC CSA psychiatrists to function as a psychiatric practice group. This group would have two major functions: 1) provide psychiatric support to the individual CSAs as needed and 2) provide medical management for those consumers whose medical needs are currently being met solely through periodic psycho-pharmacology checkups. DMH estimates that this could be 200-300 consumers, which would be in addition to the estimated 650 targeted for specialty services. The planning for the Authority-operated service structure and the Physicians Practice Group is currently underway.

E. Provider Capacity

The DMH issued a Request for Information (RFI) to providers in the fall of 2008 in an effort to determine provider interest and capacity to expand in a timely way to care for DC CSA consumers. The overall response was encouraging – indicating providers' willingness and capability provided that the financial realities of start-up funds could be managed. With the voucher system in place, it does appear that the provider system is gearing up to take in the increased demand. Overall indications are that the provider system is able to accept new referrals; in fact, some providers have been actively seeking referrals to match expanded capacity. However, it has been reported that some providers have had delays or temporary inability to take new referrals. How these delays in service are communicated to consumers will require attention and close monitoring going forward, and they underscore the urgency for DMH to implement its consumer-linkage oversight system.

The DMH is developing a planning model that will provide enhanced ability to measure provider capacity on an ongoing basis. This model will be done directly with providers and be updated regularly. This modeling will be particularly critical as DMH approaches the June 1, 2009 date for auto-assignment.

F. Systems Monitoring

In addition to the CCTTs, the DMH has begun a number of other mechanisms to track overall performance of the process. These include:

1. Consumer Satisfaction Surveys

The Office of Consumer and Family Affairs (OCFA) will conduct a stratified random sample of at least 526 consumers who have transitioned. There will be an initial survey within the first 90 days of a consumer's transition and a follow up survey after 9-12 months. The survey will answer basic questions about the consumer's experience and level of satisfaction with the new provider.

2. Continuity of Care Monitoring

The Office of Accountability (OA) will use the same sample as utilized for the Consumer Satisfaction Survey to do a record review to track issues such as the timely provision of services, frequency of service and any changes in diagnosis or medications. There will be a 90 day review and then a one-year follow up on the designated sample.

3. Consumer Transition Voucher (CTV) Claims Audit

The OA will audit CTV claims after the third visit to ensure that providers in fact provided the necessary MHRS services to draw down the CTV payments.

4. Provider Capacity Monitoring

In addition to the capacity modeling, the OA will survey all provider agencies every three (3) months throughout the transition process to track current capacity for new referrals, staff-to-consumer ratios, number of new DC CSA consumers served, new programs and the number of DC CSA employees who have been hired. These quarterly questionnaires will be done in early June 2009, September 2009, December 2009, and March 2010.

G. DC CSA Employees

The DMH has the very difficult task of balancing the downsizing of consumers and staff with the need to keep adequate staff on board to provide adequate services. The current plan is to do its first notice of Reduction in Force (RIF) no later than June 1, 2009 for those DC CSA employees to be separated. This notice will then trigger the ability of impacted employees to consider other job opportunities and to claim their severance pay entitlements. As of October 1, 2009, the DC CSA employed 267 people. Since then 63 DC CSA employees have left, through a combination of retirement (including the early or easy out incentivized retirements) or acceptance of other jobs. Another 70 DC CSA employees work in jobs that will be part of the government-operated specialty services described in paragraph D that will transfer to the Authority effective October 1, 2009. For the remaining employees, the DC CSA and DMH are working actively with current employees to assist in connecting to other job opportunities in District government (e.g. social work openings at CFSA), as well as the private sector. Workshops have been held for DC CSA employees affected by the transition regarding managing the job change process.

DMH sent out a communication on March 25, 2009 to all providers that interprets the District's privatization code to mean that any displaced government employee (due to privatization ) shall have a "right of first refusal" to employment with a private CSA in a comparable position for which the employee is qualified. To the Court Monitor's knowledge, this interpretation was not discussed during the multiple discussions with private providers leading up to the transition. Nor was it discussed with the Court Monitor, or plaintiffs' counsel. The memo indicates that any enforcement stage of this interpretation will be triggered only when task orders to individual providers are increased. DMH reports that the task order modifications are expected to take effect in June 2009. Hiring of DC CSA employees between now and then is being encouraged through monthly provider job fairs. It is not yet clear how many DC CSA

employees will seek employment with private CSAs. Given the significant salary differentials, it could be a relatively small number.

Overall, DMH has done an exceptional job of managing the DC CSA transition thus far. The level of detailed planning, safeguards, communications and clear processes is impressive. While it is still early in the process, it does appear that hundreds of consumers are responding and initiating the transfer process. Hopefully, the number of auto-assigned will be relatively small. Providers have also stepped up by adding staff in anticipation of new referrals. DC CSA leadership and employees have also risen to the task – with the prevailing view that consumer needs should come first. DMH has been very proactively attentive to DC CSA employees throughout the process. The next several months will be the most difficult as the actual transfers occur, the initial RIF happens and the multiple tracking systems come into play. The Court Monitor will continue to track progress in the July 2009 Report to the Court.

III. Status of FY 2010 DMH Budget

The Budget process for the District is still underway at the time of this Supplemental Report to the Court. The Mayor submitted his proposed budget to the District Council on March 20, 2009. The Council will complete its final workup and deliberations on the Budget bill by mid-June so that the 2010 District Budget can be submitted to Congress by June 19, 2009. The DMH had its budget hearing before the Council's Committee on Health on March 30, 2009. The Council's Committee on Health has completed its markup and recommendation regarding the DMH budget as of April 29, 2009. The full Council is scheduled to vote on the final FY 2010 Budget Request Act and Budget Support Act on May 12, 2009.

Hence it is important to recognize that the analysis below does not represent a final Council approved DMH budget; however, it does represent the considerable work of the Mayor's office and the recommendations of the Council's Committee on Health.

The overall Mayor's approach to the major revenue shortfalls by the District has been to target cuts to those areas that will have the least impact on direct services. The approach has also been to look at each agency's resources and needs separately – as opposed to any across-the-board cuts. This general approach appears to benefit DMH – which is obviously a major provider of direct services through SEH and its growing community services system.

The DMH budget as submitted by the Mayor to the District Council shows an overall reduction of 5.1% for FY '10 as compared to the FY '09 approved budget. In dollars, this represents an $11.8 million reduction. The proposed reduction in local funds is $9.1 million (a 4.3% reduction). The Mayor's budget reflects a significant reduction of 83 FTEs above and beyond the reductions

associated with the closure of DC CSA. Thirty one (31) FTEs are at SEH through reductions in support and maintenance staff and the outsourcing of portions of the laboratory and billing departments. The DMH Authority will need to absorb the FTE equivalent of 52 positions. These 83 total positions reduce expenses by nearly $5.9 million.

The proposed budget preserves the large majority of the current expenses for the DC CSA – with $1.077 million redirected toward closing the budget gap. The budget also identifies several areas for revenue enhancement and adds one-time expenditures of $2.4 million to cover the additional utility costs, moving costs and waste removal costs during the period of transition into the new Hospital at St. Elizabeths. During this period of approximately 3-6 months, SEH will be operating two Hospitals.

The District Council's Committee on Health (chaired by David Catania) reported out its draft Report and Recommendations on April 29, 2009. The Committee on Health draft does not differ from the Mayor's proposed budget for DMH in terms of total local funding and total funds ($200,712,000 in local funds and $216,752,000 in total funds). The Committee on Health recommends a restoration of 7.4 FTEs to the DMH Authority to allow full year staffing for the School Mental Health Program; the Mayor's budget had proposed a 10-month payment schedule for school-based employees.

While the total budget remains the same, the Committee on Health recommends that the fixed costs for DMH (energy, janitorial, security and occupancy) be rolled into a single account at the Agency Management Program level. The purpose of this is to get a much better handle on these costs as projected by other District-wide assessing agencies. This recommendation would result in an internal redistribution of over $14 million from the SEH budget to the newly centralized account. In addition, the recommendation would reduce the overall fixed costs by $1.1 million and reappropriate these dollars to DMH Authority to spend on other mental health programs and services.

The Budget Support Act (BSA) also recommends a number of required planning and progress updates to the Council from DMH on key initiatives. These include: 1) Report on progress of DC CSA transition (due October 1, 2009) plus an implementation plan for FY '10 and an assessment of space requirements as a result of the transition; 2) Action plan on two key children and youth Dixon requirements including the CSR requirement of effective and sufficient consumer services and the provision of children/youth services in natural settings. The action plan is due October 1, 2009 and an update on implementation by December 31, 2009; 3) By October 1, 2009 a report on compliance with the terms of the DOJ settlement agreement; 4) By October 1, 2009, a report to Council on the number and types of consumer grievances filed and an explanation of any changes with the grievance process; 5) By October 1, 2009, a complete analysis of fixed costs budgets for FY '10, including explanations of any adjustments and any cost-saving efforts.

Overall, it would appear that the District's cost-cutting measures to-date have been careful to avoid cuts that would directly impact service delivery in general and Dixon progress in particular. However, it should be noted that the budget process is not yet complete at the time of the Report. It is also important to underscore that the DMH has had to take significant reductions in FTEs and overall funding ($9.1 million decrease in local funds from FY '09 approved budget). Any further reductions bear significant risk of jeopardizing the progress DMH has made on multiple fronts. It will be critical that DMH analyze its fixed costs before the new budget year and be able to reprogram any savings to the necessary growth in community services as a result of the DC CSA closure and beginning efforts to restructure the overall community system. The Court Monitor will continue to track the budget process closely.

IV. Progress on Efforts at SEH to meet DOJ Requirements

The DOJ review team conducted its most recent visit to SEH during the week of March 30 – April 3, 2009. The written report out of this most recent visit will hopefully be completed by the end of May 2009. The Court Monitor did meet with senior Hospital leadership to review the Exit Interview findings of April 3, 2009. These findings should be viewed as preliminary to the official DOJ report.

The general message from this visit was consistent with the last visit and DOJ Report of December 18, 2008. There has been definite progress, but much more is needed. The reviewers noted important progress in the multi-disciplinary assessments that are to be done for each patient. The major step still to be accomplished is to fully implement all of the new assessment formats and begin internal auditing for compliance and quality.

The reviewers also noted progress in the development of a new seclusion and restraint policy. However, the policy needs to be clearer about the use of chemical restraint (i.e. use of psychotropic medications to achieve restraint). There also needs to be clear protocols/instructions on the appropriate use of seclusion and restraint to help reduce variability at the practice level.

The review team identified multiple areas within nursing that need concerted attention – including the need for more specific policies, better documentation and greater focus on nursing training. In addition, DOJ found that insufficient progress was made in implementing the requirements around Interdisciplinary Recovery Planning, and noted that more staff training is needed around setting of goals, objectives and interventions.

In discussion with DMH leadership, it is evident that the 3 year compliance target for SEH was a very ambitious timeline. Clearly the Hospital is behind its compliance schedule in spite of significant efforts to build capacity, leadership and requisite infrastructure to both implement change and monitor

improvement. The Court Monitor believes that the fundamental structural pieces are now in place; the open question is how quickly the implementation phase toward compliance can occur. The July Report to the Court will detail the latest DOJ findings and discuss other significant factors impacting on progress (e.g. census, budget and human resources).

## V. Recommendations

This Report is intended as an informational update to the Court on three critical areas. The Court Monitor does not make any additional recommendations at this time.