UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Western Division

ROSIE D., et al., Plaintiffs, v. DEVAL L. PATRICK, et al., Defendants.	C.A. No. 01-30199-MAP

PLAINTIFFS' SECOND REPORT TO THE COURT ON DISENGAGEMENT CRITERIA

I. Introduction

At the last status conference on February 6, 2013, the Court ordered the parties to submit, by April 1, 2013, a status report describing their views on disengagement criteria as well as the outcome data necessary to assess compliance with those criteria. Since then, the parties have conferred several times, and reached substantial agreement on both criteria and data.[1] These discussions have been collaborative and the results encouraging. They should provide the pathway for disengagement of the Court's active oversight of this case, provided, of course, that the data reveals an appropriate level of system performance in each of the key domains identified by the Court: access to services, utilization of services, effectiveness of services, and quality of services. This report briefly describes that agreement and identifies, where applicable, remaining issues for discussion. It also sets forth the plaintiffs' view on the necessity for ongoing reporting and monitoring, albeit at a reduced and more focused level.

[1] The plaintiffs understand that the defendants' status report will include, as an attachment, a memorandum that reflects the disengagement criteria and data required to assess whether the criteria have been met.

II. Status of Development of Disengagement Criteria

A. Access to Services

The parties have reached substantial agreement on six areas, each with its own specific measures, to assess the adequacy of access to remedial services.

1. Youth Served by DMH

Given the plaintiffs' concerns, the defendants' own reports, and the Monitor's CSR reports that confirm that few youth who are served by DMH appear to be receiving any remedial service,[2] the parties have agreed to two measures for determining whether youth served by DMH have reasonable access to remedial services.

The first focuses on youth who receive DMH community services. MassHealth and DMH have agreed to generate reports that indicate how many of these Medicaid-enrolled youth receive each remedial service. The plaintiffs expect the correlation to be high, since DMH serves quite needy children, virtually all of whom would be eligible for, and benefit from, remedial services.

The second focuses on youth in DMH inpatient or residential services, and will measure how many of these youth received remedial services in the years prior and subsequent to their out of home placement. The plaintiffs expect that the percentage of DMH youth who receive remedial services (other than mobile crisis intervention) both before and after such placement to be high.[3]

---

[2] Specifically, Intensive Care Coordination (ICC), In-Home Therapy (IHT), In-Home Behavior Therapy (IBHT), and Therapeutic Mentoring (TM).

[3] While it is difficult at this juncture to project the correlation between youth who are hospitalized and the percentage of this group who received each remedial service, it seems logical and likely that these youth would have received some of the more intensive remedial services, like ICC.

2. Youth Served by DYS

Again, given the plaintiffs' concerns, the defendants' own reports, and the Monitor's CSR reports that confirm that few youth who are served by DYS appear to be receiving any remedial services, the parties have agreed to a measure for determining whether youth served by DYS have reasonable access to remedial services. This measure parallels that adopted for DMH-involved youth in facilities, with adjustments for data available from DYS and the Medicaid status of youth in DYS detention facilities. The plaintiffs expect there to be a significant correlation between DYS youth and the receipt of remedial services, both prior to detention and subsequent to release from a DYS operated or contracted residential program.

3. Youth Served in Inpatient or CBAT Programs

The same issues apply to youth served in adolescent units in private mental health hospitals and Community-Based Acute Treatment (CBAT) programs. MassHealth is willing to produce data reports on the number of Medicaid-enrolled youth who received remedial services in the year prior to and the 90 days following hospitalization or CBAT placement. The plaintiffs expect that most of these youth received remedial services both pre- and post-hospitalization.

4. Youth Served by DCF

The parties have agreed to similar measures for youth served by DCF. MassHealth and DCF will generate reports on the number of youth in DCF residential programs, and the number of Medicaid-enrolled youth who received remedial services in the years prior and subsequent to DCF placement. The plaintiffs expect to see a high correlation between youth served by DCF and those who receive remedial services.

5. Youth Served in In-Home Therapy

The defendants' creation of hub services assumes that for youth not in ICC, IHT and outpatient therapists will provide necessary care coordination and ensure the provision of necessary remedial services like IHBT, TM, and other needed treatment. Given that the number of youth in IHT is vastly greater than projected and constantly increasing, it is imperative to assess whether the defendants' operational assumption is accurate. The parties have agreed that the defendants' new client review protocol, the System of Care Practice Review (SOCPR), will be modified to probe the adequacy of IHT in ensuring access to needed remedial services. Case reviews will begin this spring, but data will not be available until late 2013 or early 2014. The plaintiffs expect that youth in IHT are receiving all medically necessary services and an appropriate level of care coordination.

6. Youth Served in Outpatient Therapy

A special review will assess a sample 50 youth with SED who receive outpatient therapy as their "hub." Using record reviews and interviews with families and professionals, the review will determine the adequacy of outpatient therapy in providing appropriate care coordination and access to needed services. Again, the plaintiffs expect that youth in outpatient therapy are receiving all medically necessary services and an appropriate level of care coordination.

B. Utilization of Services

The SOCPR approach will be adapted for youth in ICC, in order to determine if they, and others in IHT, receive appropriate assessments, treatment planning, and medically necessary services. SOCPR data for ICC will not be available until this time next year. The plaintiffs expect that most youth in IHT and ICC receive appropriate assessments, treatment planning, and access to needed services.

MassHealth and MCEs will also generate special reports on the duration of each remedial service. The plaintiffs expect that the intensity and duration of IHT will differ, depending on whether it is provided in combination with other services and whether it responsible for providing service coordination as well as treatment.

C. Effectiveness of Services

The parties continue to discuss methods for using CANS data to assess the effectiveness of remedial services. The creator of the CANS, Dr. John Lyons, has developed a standard methodology for using CANS data to assess effectiveness, which also allows comparison to other programs and jurisdictions. To date, the defendants have not adopted this methodology.

The parties have agreed to modify the initial MassHealth CANS analysis, and to include more variables, more youth, and more measures of effectiveness. The parties expect to continue this discussion in the next several weeks, and to hope to finalize an agreed-to methodology by the end of this month. The parties have agreed to jointly confer with Dr. Lyons during the next two weeks to consider his suggested approach to analyzing CANS data. If agreement is not reached, the Monitor or her consultant may be useful in proposing a reliable and useful method for using CANS data to measure the effectiveness of remedial services.

D. Quality of Services

The parties have agreed to develop quality standards for each of the remedial services by the summer or fall of 2013. To the extent necessary, the Monitor may retain consultants to assist in this process.

III. Ongoing Reporting

The parties have agreed that future reports should focus on the thirteen outstanding areas of compliance, as described in the plaintiffs' prior pleadings, and specifically will include reports

on certain issues, including screening follow-up, CANS compliance data, WIFI and SOCPR findings, and MCI and CBAT utilization and length-of-stay data, in addition to the currently provided reports on CSAs, CBHI utilization, and waiting lists.

IV. Ongoing Monitoring

As set forth in prior pleadings, the plaintiffs believe that the Monitor must remain in place beyond June 30, 2013. They agree that the duties of the Monitor should focus on the disengagement criteria described above, including coordinating ongoing communications between the parties; ensuring the completion of projected tasks, like the development of quality standards, the identification of CANS outcome measures, and the implementation of the SOCPR process; reviewing and analyzing the new data generated for each disengagement criteria; assessing the defendants' performance in ensuring reasonable access, appropriate utilization, effective and quality services; and, if necessary, retaining consultants to ensure the timely completion of tasks and the assessment of compliance with the disengagement criteria.

The plaintiffs believe that the Monitor may be able to reduce the time necessary to perform these responsibilities. While the defendants' commitment to fund the Monitor for next year at $200,000 may be sufficient, if consultant expenses are excluded, the plaintiffs rely upon the Monitor to make this judgment and to so inform the parties and the Court.

V. Conclusion

The plaintiffs will provide updated information to the Court at the next status conference on April 9, 2013.

RESPECTFULLY SUBMITTED,
THE PLAINTIFFS,
BY THEIR ATTORNEYS,

/s/ Steven J. Schwartz
Steven J. Schwartz (BBO#448440)
Cathy E. Costanzo (BBO#553813)
Kathryn Rucker (BBO#644697)
Center for Public Representation
22 Green Street
Northampton, MA 01060
(413) 586-6024

James C. Burling (BBO#065960)
James W. Prendergast (BBO#553813)
Christopher Zimmerman (BBO#653854)
Wilmer Cutler Pickering Hale and Dorr, LLP
60 State Street
Boston, MA 02109
(617) 526-6000

Frank Laski (BBO#287560)
Mental Health Legal Advisors Committee
26 School Street
Boston, MA 01208
(617)338-2345

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically through the Electronic Case Filing (ECF) system. Notice of this filing will be sent by e-mail to all registered participants by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic as a non registered participant. Parties may access this filing through the court's CM/ECF System.

Dated: April 1, 2013 /s/ Steven J. Schwartz