

DANIEL E. WATHEN

157 Capitol Street
Suite 3
Augusta, ME 04330

P 207.622.6311
F 207.629.5955
C 207.462.6720
dwathen@pierceatwood.com
pierceatwood.com

Admitted in: ME

January 21, 2021

Michele Lumbert, Clerk
Kennebec County Superior Court
1 Court Street, Suite 101
Augusta, ME 04330

Re: Paul Bates, et al. v. Commissioner, Department of Health and Human Services, et al.
Docket No. CV-89-088

Dear Michele:

Enclosed please find for filing Order Amending Compliance Standards dated January 21, 2021 in the above-captioned matter. I provided a copy to Justice Stanfill.

Thank you for your attention to this letter and enclosure.

Sincerely yours,



Daniel E. Wathen

DEW/jjq
Enclosure

Cc/w/enc: Phyllis Gardiner, AAG
(Via email) Mark Joyce, Esq.
Kevin Voyvodich, Esq.
Peter Rice, Esq.

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

ORDER AMENDING
COMPLIANCE STANDARDS

In furtherance of the parties' agreement dated January 20, 2021, attached hereto, and in accordance with Paragraph 291 of the Settlement Agreement, I do hereby adopt the attached Revised Compliance Standards in place of the standards adopted by Order dated October 29, 2007. These standards are adopted for the purpose of evaluating and measuring the Department's compliance with the relevant terms and principles of the Settlement Agreement. The standards shall be applied to the conduct of the Department from this date forward and shall remain in effect until amended.

Dated: January 21, 2021


Daniel E. Wathen, Court Master

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

**AGREEMENT OF THE
PARTIES**

Plaintiffs and Defendants, acting through the undersigned counsel, agree to the following as the conditions upon which the injunction entered as part of the Consent Decree issued by the Superior Court on August 2, 1990, in *Bates v. Glover*, Docket No. CV-89-88, may be dissolved:

1. The Department of Health and Human Services (“the Department”) shall continue to fund the Consumer Council System of Maine (CCSM) to enable the Council to carry out all of its functions as defined in statute, 34-B M.R.S. § 3611. Defendants shall make all good faith efforts as necessary to obtain appropriations sufficient to fund CCSM to provide these services in accordance with the terms of its contract.

2. The Department shall designate one or more staff persons at its Office of Behavioral Health (“OBH”) to serve as a contact point for adults with serious and persistent mental illness, or their guardians and advocates, who encounter barriers to obtaining timely access to services from mental health service providers under contract with the Department. It is understood that the role of the designated staff person or persons shall not be to serve as a case manager for individual consumers of mental services, but shall instead be to take appropriate

steps to ensure that providers meet their contractual obligations to serve those consumers.

Contact information for the point of contact will be made publicly available on the OBH website.

3. The Department shall contract with Disability Rights Maine, Inc. (“DRM”), as the protection and advocacy organization for Maine designated pursuant to 5 M.R.S. § 19502, to provide a range of advocacy services for adults with serious and persistent mental illness in Riverview Psychiatric Center, Dorothea Dix Psychiatric Center, and in the community. The expanded scope of work shall include: obtaining timely access to services, providing training and education regarding rights of mental health recipients; assisting with administrative hearings; and bringing any concerns to the attention of OBH regarding providers’ compliance with the Rights of Recipients of Mental Health Services, 14-193 C. M. R. ch. 1, and with any other obligations set forth in statute, rule or contract relating to providing mental health services to adults in Maine with serious and persistent mental illness. Defendants shall make all good faith efforts as necessary to obtain appropriations sufficient to fund DRM to provide these services in accordance with the terms of its contract.

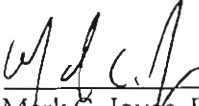
4. The Department shall submit quarterly reports and, if requested, the underlying data on which the reports are based, to Plaintiffs’ counsel and to the Court Master regarding each of the compliance standards agreed to by the parties and adopted by the Court Master, by Order dated January 20, 2021. These standards supersede the previous compliance standards adopted by the Court Master on October 29, 2007.

5. When Defendants have demonstrated compliance with each of the compliance standards during at least four (4) out of six (6) consecutive quarters, the parties agree that this shall constitute substantial compliance with the terms of the Settlement Agreement. The first quarter to be counted will be the first quarter in which the Department reports data on all of the


compliance standards reflecting MaineCare and/or OBH-funded providers of services named in the standards and subsequent to the adoption of relevant rules. Defendants shall file a notice of substantial compliance with the Court, and Plaintiffs shall have thirty (30) days thereafter in which to file any objections. If Plaintiffs object, the Court shall hold a hearing to consider those objections and determine whether Defendants have achieved substantial compliance. In the absence of any objections, or upon a finding after hearing that Defendants have achieved substantial compliance as defined in this paragraph, the injunction dated August 2, 1990 may be dissolved.

Dated this 20th of January, 2021

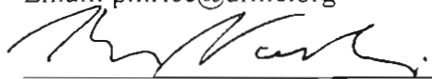
For Plaintiffs:



Mark C. Joyce, Esq.
Maine Bar No. 003660
Email: mjoyce@drme.org



Peter M. Rice, Esq.
Maine Bar No. 007277
Email: pmrice@drme.org



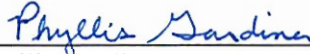
Kevin D. Voyvodich, Esq.
Maine Bar No. 004732
Email: kvoyvodich@drme.org

Disability Rights Maine
160 Capitol Street, Suite 4
Augusta, Maine 04330
Tel. (207) 626-2774

Counsel for Plaintiffs

For Defendants:

AARON M. FREY
Attorney General



Phyllis Gardiner
Assistant Attorney General
Maine Bar No. 002809
Email: Phyllis.gardiner@maine.gov

Six State House Station
Augusta, Maine 04333
Tel. (207) 626-8830

Counsel for Defendants

Revised Compliance Standards

January 20, 2021

Timely Access:

1. Measure: Days between referral to a Private NonMedical Institution (PNMI; MaineCare Section 97 Appendix E) and acceptance of Department referrals for clients who are inpatient.
Standards:
 - a) Acceptance decisions are communicated within 5 business days of referral for at least 80% of referrals.
 - b) Except in cases where Department approval for refusal is granted, at least 80% of referrals are accepted within 5 business days from referral or from rejection of authorization to refuse referral.
2. Measure: Days between referral and admission to PNMI for clients who are inpatient.
Standard:
 - a) Excluding situations when discharge is delayed due to inpatient adult not being clinically ready for discharge, at least 80% of referrals are admitted to a PNMI bed within 30 calendar days from the date of referral.
3. Measure: Length of time on waitlist for Bridging Rental Assistance Program Voucher.
Standard:
 - a) Vouchers are issued on average within 14 calendar days for eligible adults discharging from a psychiatric facility, those who are categorized as homeless based on United States Housing and Urban Development (HUD) definition of literal homelessness, and those who are being released from incarceration.
4. Measure: Days between referral and initial face to face assessment for Community Integration services.
Standards:
 - a) Face-to-face assessment occurs within 7 business days of referral for at least 60% of referrals, excluding those who agree to be put on hold for service.
 - b) Face-to-face assessment occurs within 30 calendar days of referral for at least 85% of referrals, excluding those who agree to be put on hold for service.
5. Measure: Days between referral and initial face to face assessment for Assertive Community Treatment services.
Standards:
 - a) Face-to-face assessment occurs within 7 business days of referral for at least 60% of referrals, excluding those who agree to be put on hold for service.
 - b) Face-to-face assessment occurs within 30 calendar days of referral for at least 85% of referrals, excluding those who agree to be put on hold for service.

6. Measure: Days between Department referral and admission for Medication Management.
Standards:
 - a) At least 75% of adults referred by the Department will be provided medication management service within 7 calendar days of discharge from psychiatric inpatient treatment.
 - b) At least 85% of adults referred by the Department will be provided medication management service within 14 calendar days of discharge from psychiatric inpatient treatment.

7. Measure: Response times to requests to Maine Crisis Line (MCL).
Standard:
 - a) In at least 90% of cases, phone calls are responded to within 10 seconds, and texts/SMS and emails are responded to within 120 seconds.

8. Measure: Time from determination of need for face-to-face contact or when adult in crisis was ready and able to be seen to Initial face-to-face contact as a result of a call to the MCL.
Standards:
 - a) More than half of adults determined to need face-to-face assessment are seen within 2 hours of referral to mobile crisis.
 - b) At least 85% of adults determined to need face-to-face assessment are seen within 3 hours of referral to mobile crisis.

9. Measure: Time between completion of Initial face-to-face Crisis Assessment contact and Final Disposition/Resolution of crisis.
Standard:
 - a) More than half of adults have disposition/resolution within 3 hours of completion of initial face-to-face crisis assessment.

10. Measure: Percent of adults involuntarily admitted for psychiatric treatment as the final disposition from a call to the MCL.
Standard:
 - a) Less than 5% of adults in crisis are involuntarily admitted for psychiatric treatment as the final disposition from a call to the MCL.

11. Measure: Percent of adults who are readmitted within 30 calendar days of discharge from Crisis Stabilization Units (CSU).
Standard:
 - a) Adults are readmitted to a CSU within 30 calendar days from discharge less than 20% of the time.

12. Measure: Psychiatric inpatient admission within 30 calendar days of discharge from Crisis Stabilization Units.

Standard:

- a) No more than fifteen percent (15%) of adults discharged from Crisis Stabilization Units are admitted for inpatient psychiatric treatment within 30 calendar days.

13. Measure: Days between referral and admission of adults to Behavioral Health Home (BHH).

Standards:

- a) Admission occurs within 7 business days of referral for at least 60% of referrals, excluding those who agree to be put on hold for service.
- b) Admission occurs within 30 calendar days of referral for at least 85% of referrals, excluding those who agree to be put on hold for service.

Contract Management and Enforcement:

14. Measure: Number of requests for rejection of referral granted for reasons other than staffing ratios, capacity, or not meeting eligibility criteria per MaineCare rule.

Standard:

- a) Less than 5% of requests to reject referral for reasons other than staffing ratios, capacity, or not meeting eligibility per MaineCare rule are granted.

15. Measure: Number of referral rejections or terminations of services without authorization that result in sanctions.

Standard:

- a) Violations of contract provisions or MaineCare rule provisions requiring prior approval before rejecting referrals or terminating services result in sanctions at least 95% of the time.

State Hospital:

16. Measure: Riverview Psychiatric Center makes effective use of its capacity for inpatient hospitalization.

Standards:

- a) RPC maintains licensing, accreditation by the Joint Commission, certification by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS), and maintains funding levels calculated to meet those accreditation and certification standards.
- b) Seventy percent (70%) of patients who remained ready for discharge were in fact discharged within 7 calendar days of a determination that they had received maximum medical benefit from inpatient care.
- c) Eighty percent (80%) of patients who remained ready for discharge were in fact discharged within 30 calendar days of a determination that they had received maximum medical benefit from inpatient care.

- d) **Ninety percent (90%) of patients who remained ready for discharge were in fact discharged within 45 calendar days of a determination that they had received maximum medical benefit from inpatient care.**

Reporting:

17. Measure: The Department provides timely quarterly reports on each standard to the Court Master and Plaintiffs' Counsel.

Standard:

- a) **Reports are provided no later than 60 calendar days after the end of each quarter.**