

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL ACTION NO.

_____)
SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL 509,)
Plaintiff)
v.)
DEPARTMENT OF MENTAL HEALTH OF)
THE COMMONWEALTH OF)
MASSACHUSETTS)
and)
BARBARA LEADHOLM, as she is the)
Commissioner of the Department of Mental)
Health of the Commonwealth of)
Massachusetts)
Defendants)
_____)

COMPLAINT

INTRODUCTION

1. This action for declaratory and injunctive relief is brought by Service Employees International Union, Local 509 (“Local 509”), to remedy the Defendants’ failure to comply with the requirements of G.L. c. 7, §§ 52-55, known as the “Pacheco Law,” prior to contracting out services performed by Department of Mental Health (“DMH”) case managers as part of Defendants’ implementation of a program known as Community Based Flexible Support (“CBFS”).

2. The Pacheco Law prohibits any agency of the Commonwealth from entering into a privatization contract, defined as an agreement by which a non-governmental entity agrees with a government agency to provide services which are substantially similar to and in lieu of services

theretofore provided, in whole or in part, by regular employees of an agency, without first meeting a series of requirements intended to protect the public, including: (1) preparing a specific written statement of the services proposed to be the subject of the contract; (2) preparing a statement of the minimum wage rate to be paid to employees performing the contracted work; (3) preparing a written estimate of the costs of regular agency employees providing the services, in the most cost-efficient manner, that the agency is proposing to contract out; (4) in consultation with the relevant employee organization, encouraging and assisting the agency employees currently performing the services at issue to submit a bid to provide the services; (5) publicly designating the bidder to which the agency proposes to award the contract; and (6) certifying that the quality of the services provided by the bidder will equal or exceed the quality of services which could be provided by regular agency employees, that the contract cost will be less than the estimated cost of having agency employees perform the work, and that the contractor has no adjudicated record of substantial or repeated willful noncompliance with any relevant federal or state statutes.

3. The Legislature passed the Pacheco Law because it found that “using private contractors to provide public services formerly provided by state employees does not always promote the public interest.” G.L. c. 7, § 52. The Pacheco Law requirements are intended to ensure that citizens of the Commonwealth receive “high-quality public services at low cost, with due regard for taxpayers of the Commonwealth and the needs of both public and private workers...” *Id.* The Pacheco Law does not prevent the privatization of public services so long as the privatization process complies with the requirements described above.

4. For many years, the DMH has employed professional case managers who provide services to clients throughout the Commonwealth with mental health issues. The job duties of

these case managers include initial assessments of the service needs of clients, development of individual service plans, and ongoing monitoring and regular direct contacts in order to determine that clients continue to receive needed services. In or about 2009, Defendants began implementing the CBFS initiative, portions of which resulted in the contracting out of many of these services, or substantially similar services, to private entities. The Defendants implemented the CBFS initiative without complying with any of the provisions of the Pacheco Law.

5. In or about September of 2010, the Auditor of the Commonwealth, who, operating under a “broad grant of power” from the Legislature, has the discretion to review proposed privatization contracts and to enforce the Pacheco Law (*Massachusetts Bay Transportation Authority v. Auditor of the Commonwealth*, 430 Mass. 783, 791 (2000)), determined that the implementation of portions of the CBFS initiative had resulted in the privatization of services substantially similar to those provided by case managers, and thus that Defendants had entered into a privatization contract for the provision of public services without following the provisions set forth in G.L. c. 7, §§ 52-55. September 15, 2010 Decision of the Auditor, Signed by James F. Driscoll, General Counsel for the Auditor of the Commonwealth (attached hereto as Exhibit 1). Accordingly, those portions of the CBFS contracts entered into by Defendants related to services which are substantially similar to those performed by employees with the job title of “Case Manager” are invalid as a matter of law.

PARTIES

6. Plaintiff Service Employees International Union, Local 509 (“Local 509”), is a labor union and an employee association which represents, and counts as members, individuals employed and formerly employed by the Commonwealth as case managers within DMH. Local 509 acts as the exclusive bargaining agent for hundreds of case managers employed and formerly

employed by the Commonwealth within DMH. Local 509 is party to a collective bargaining agreement with the Commonwealth of Massachusetts which sets forth the terms and conditions of these case managers' employment.

7. Defendant Department of Mental Health of the Commonwealth of Massachusetts ("DMH") is an agency of the Commonwealth of Massachusetts, established by G.L. c. 19, § 1.

8. Defendant Barbara Leadholm is the Commissioner of DMH, pursuant to G.L. c. 19, § 2, and is responsible for the exercise of all powers assigned to her office.

JURISDICTION

9. This Court has jurisdiction pursuant to the provisions of G.L. c. 231A, §§1 and 2, and G.L. c. 212, § 4.

FACTS

10. For at least the last fifteen years, DMH has employed case managers who provide services to DMH clients throughout the Commonwealth. The job duties of these case managers include initial assessments of the service needs of clients, development of individual service plans, and ongoing monitoring and regular direct contacts in order to determine that clients continue to receive needed services. The case manager job description is found as Attachment B to Exhibit 1.

11. Starting in or about late 2008 and early 2009, Defendants began contracting with private entities to provide CBFS services.

12. DMH has described CBFS in the following manner:

Community Based Flexible Supports (CBFS) is the cornerstone of the Department's community mental health system for adults. CBFS services provides rehabilitative interventions and supports in partnership with clients and their families to promote and facilitate recovery. Services include interventions and supports that manage psychiatric symptoms in the community, restore or maintain daily living skills, promote wellness and the management of medical

conditions and assist clients to restore or maintain and use their strengths and skills to undertake employment....

CBFS encompasses four key service components: Rehabilitation, Supervision, Support, and Housing/Room and Board.... In addition, CBFS contractors are responsible for: client screenings and enrollment; assessments and integrated treatment planning; quality and utilization management; data collection and reporting; service documentation and discharge planning.

Ex. 1 at p. 3-4.

13. Prior to contracting with private entities to provide CBFS services, Defendants did not comply with any of the requirements of G.L. c. 7, §§ 52-55.

14. For example, under G.L. c. 7, § 54: "Every privatization contract shall contain provisions requiring the contractor to offer available employee positions pursuant to the contract to qualified regular employees of the agency whose state employment is terminated because of the privatization contract and who satisfy the hiring criteria of the contractor." Defendants' contracts with CBFS contractors contained no such provisions.

15. Additionally, under G.L. c. 7, § 54: "After consulting any relevant employee organization, the agency shall provide adequate resources for the purpose of encouraging and assisting present agency employees to organize and submit a bid to provide the subject services." Defendants did not consult with Local 509 regarding the CBFS contracts and agency employees were not given the opportunity to submit a bid to provide the services provided under those contracts.

16. In or about 2009, Local 509 notified the Auditor of the Commonwealth ("the Auditor") of Defendants' actions related to the CBFS initiative and Defendants' failure to conform with the requirements of G.L. c. 7, §§ 52-55.

17. The Auditor, under G.L. c. 7, §§ 52-55, has the authority to review proposed privatization contracts and to carry out the provisions of G.L. c. 7, §§ 54-55.

18. During the 2009 fiscal year, approximately 100 case managers represented by Local 509 were laid off.

19. On or about September 15, 2010, James F. Driscoll, General Counsel for the Auditor, on behalf of the Auditor, issued a memorandum concluding that, by implementing CBFS, Defendants had privatized public services without following the requirements of G.L. c. 7, §§ 52-55. The Auditor focused only on the services provided by members of Local 509 with the job title of "Case manager." Ex. 1 at p. 4 The Auditor found, *inter alia*, that while the number of case managers decreased drastically following the implementation of CBFS, the case load of the remaining case managers also decreased. *Id.* at p. 6-7. Accordingly, the Auditor found that, "the introduction of CBFS has had a significant impact on the SEIU case managers case load." *Id.* at p. 7. Accordingly, the Auditor concluded that the contracts for CBFS constituted a privatization contract as, "the facts in general and the statistics in particular indicate that at least a portion of public services was moved from state employees to private contractors without following the provisions set forth in M.G.L. c. 7, section 52-57." *Id.*

20. As determined by the Auditor, the layoff of approximately 100 case managers represented by Local 509 in 2009 resulted from Defendants' privatization of the services they provided as employees of DMH.

21. Following the determination by the Auditor as outlined in paragraph 19, and despite ongoing requests by Local 509, Defendants have refused to comply with any of the provisions of G.L. c. 7, §§ 52-55, to reinstate the case managers who were laid off as a result of Defendants' actions, or to reinstate any of the services substantially similar to those provided by case managers who were laid off as a result of Defendants' actions.

COUNT I

Declaratory Judgment
(G.L. c. 231A, §§ 1, 2, and 5)

22. The Plaintiff repeats and incorporates herein by reference the allegations contained in paragraphs 1-21, above.

23. Under G.L. c. 7, §§ 54, “No Agency shall make any privatization contract and no such contract shall be valid unless the agency, in consultation with the executive office for administration and finance, first complies with each” of the requirements enumerated in G.L. c. 7, §§ 54.

24. Plaintiff asserts that by engaging in the complained of acts, Defendants have violated G.L. c. 7, §§ 52-55. Indeed, the Auditor, who has the authority to carry out the provisions of G.L. c. 7, §§ 54-55, has already determined that Defendants violated the statute. Accordingly, the Court should declare that the Defendants have violated G.L. c. 7, §§ 52-55 and that the portions of the CBFS contracts entered into by Defendants that relate to services substantially similar to those performed by employees with the job title “Case Manager” are invalid.

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully requests the following relief from this Honorable Court:

(1) A declaration that the actions and failure to act of the Defendants complained of above violated G.L. c. 7, §§ 52-55 and that the portions of the CBFS contracts which relate to services substantially similar to those performed by employees with the job title “Case Manager” entered into by Defendants are invalid.

(2) Order that there be a return to the status quo and that Defendants be required to conform with all of the requirements of G.L. c. 7, §§ 52-55 prior to contracting out services substantially similar to those performed by employees with the job title “Case Manager”;

(3) Order that all case managers who were laid off in connection with Defendants’ complained of acts be reinstated and made whole for all lost wages and benefits, including interest and restoration of seniority;

(4) Such other binding declaration of right to which the Plaintiff and the employees it represents are entitled to by law;

(5) An award to Plaintiff of its costs and reasonable attorneys’ fees; and

(6) Such other relief as this Court deems just and appropriate and appropriate.

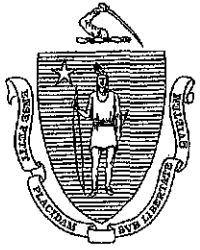
SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 509,

By its attorneys,

Katherine D. Shea, BBO# 549771
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Pyle Rome Ehrenberg PC
18 Tremont Street, Suite 500
Boston, Massachusetts 02108
(617) 367-7200

Dated: February 1, 2012

EXHIBIT 1



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DENUCCI
AUDITOR

TEL: 617-727-6200

September 15, 2010

Honorable Martha Coakley
Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Dear Attorney General Coakley:

Chapter 296 of the Acts of 1993 (see M.G.L., c. 7, sections 52-55) limits the use of private contractors hired to perform services formerly provided by state employees. The Office of the State Auditor (OSA) is responsible for investigating the facts and circumstances in which allegations have been made that the provisions of the law have been violated.

The OSA has concluded its review of the matter involving Service Employees International Union, Local 509 and the Commonwealth of Massachusetts, Department of Mental Health. A copy of my letter to the two organizations is attached for your review.

This case is being forwarded to your office to take whatever steps you feel are appropriate. John Parsons, First Deputy Auditor, and I are available to provide any additional information or meet personally with your staff if it would be helpful as you review this matter.

Thank you for your continued assistance and please call if you have any questions.

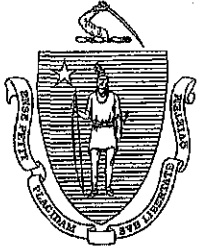
Sincerely,

A handwritten signature in black ink that reads "James F. Driscoll".

James F. Driscoll
General Counsel

CC: Peter Sacks, Esq., Office of the Attorney General
John Parsons

Enclosure



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DeNUCCI
AUDITOR

TÉL: 617-727-6200

September 15, 2010

Michael Grunko
President
SEIU, Local 509
400 Talcott Avenue
Watertown, MA 02472

Lester Blumberg, Esq.
General Counsel
Department of Mental Health
25 Staniford Street
Boston, MA 02114

Re: Chapter 296 of the Acts of 1993 - - Transition to the Community Based Flexible Support Program

Dear Messrs. Grunko and Blumberg:

Chapter 296 of the Acts of 1993¹ establishes a process that many state governmental agencies must follow in an effort to assure that decisions to move public services from state employees to private contractors is fiscally responsible and in the best interests of the taxpayers of the Commonwealth, (see M.G.L., c. 7, section 52). To that end, the Office of the State Auditor (OSA) is authorized to review the facts and circumstances of a particular matter when requested to do so by a party who feels a violation has taken place or will take place if a public service is moved to a private contractor in violation of the the provisions of the statute. In this case, the OSA has completed its review of the matter brought to its attention by Service Employee International Union (SEIU), Local 509 concerning the Department of Mental Health's (DMH) initiative and new method of providing services to many of its clients.

¹ M.G.L., c. 7, sections 52-55

BACKGROUND

DMH -- Community Based Flexible Support

The DMH is a state agency within the Health and Human Services division of the Executive Branch of the Commonwealth of Massachusetts. It primarily provides and/or makes the appropriate arrangements to provide, critical mental health services to many of the most vulnerable members of the Massachusetts community. As noted on the DMH website:

Vision and Mission Statement

The Department of Mental Health, as the State Mental Health Authority, assures and provides access to services and supports to meet the mental health needs of individuals of all ages, enabling them to live, work and participate in their communities. The Department establishes standards to ensure effective and culturally competent care to promote recovery. The Department sets policy, promotes self-determination, protects human rights and supports mental health training and research. This critical mission is accomplished by working in partnership with other state agencies, individuals, families, providers and communities.
(www.mass.gov/eohhs/dmh)

In an effort to more efficiently and effectively accomplish this vision and mission, in early 2009, the DMH began the process of changing one of the primary methods community services were provided to its clients. In short, the DMH moved away from referring clients to individual contracted community programs with separate billing codes to a system DMH deems more user friendly. The new system is designed to allow a client to readily move within the bounds of a singular program that provides multiple services depending on the changing needs of that individual.

In meeting with representatives of the DMH and reviewing the written material submitted, the move from a "restrictive and cumbersome model of services" to a more "open system" has been described by DMH as extremely successful. This comprehensive model of services is called Community Based Flexible Support (CBFS).

Counsel for DMH summarized the need for the CBFS program as follows:

In reviewing its model of service delivery during the last several years, and in listening to input from an array of consumers, families, providers, DMH employees, and other stakeholders, DMH concluded that there were ways it could improve delivery of its community-based services. Specifically, DMH determined that there was insufficient flexibility for clients to move in and out of different programs as their needs changed. Since the activities codes were rigid, it happened all too often that services or supports would be maintained even if clients progressed or regressed such that they no longer were most appropriate.

With a goal of making provision of services more person-centered (i.e., empowering clients to direct their care towards meeting goals they have set) and more recovery-oriented (i.e., moving as expeditiously as possible towards full client recovery from mental illness), DMH determined to refashion its model of community services to give providers flexibility to tailor and adjust client services more readily in response to changing needs and client desires. (Attachment No. 1, page 2)

“Community Based Flexible Supports (CBFS) is the cornerstone of the Department’s community mental health system for adults. CBFS services provides rehabilitative interventions and supports in partnership with clients and their families to promote and facilitate recovery. Services include interventions and supports that manage psychiatric symptoms in the community, restore or maintain independent living in the community, restore or maintain daily living skills, promote wellness and the management of medical conditions and assist clients to restore or maintain and use their strengths and skills to undertake employment.”
(www.mass.gov/eohhs/dmh)

DMH believes that the new program was implemented in accordance with state law and therefore does not violate the provisions of M.G.L., c. 7, sections 52-55.

DMH argued that the SEIU case management function is a “non-clinical” service as opposed to the “clinical assessments” performed by the CBFS providers (Attachment 1, p. 3). Since clinical assessments require a “demanding level of clinical expertise” including license as a practitioner of Healing Arts, the two functions are completely distinct from each other. (Attachment 1, p. 3)

DMH - - Employees

Employee members of the SEIU work throughout the Commonwealth of Massachusetts both in the private and public sectors. Many of DMH employees are members of SEIU. In accordance with the statute noted above, the focus of the OSA review was on those SEIU employees of the DMH, who are members of Local 509 and carry the title of “Case Manager”.

Case managers perform a variety of functions and services as part of their daily routine and duties to assure appropriate services are delivered or provided to the DMH eligible clients. A copy of the complete job description of a case manager is attached. (Attachment No. 2)

In early 2010, DMH employed approximately 230 case managers. The Case Managers are assigned a fluctuating number of clients who are in need of the DMH services. The common term used to describe the number of case managers in relation to the number of clients is the “case load”.

At times existing clients may be removed from the case load while new clients are added. Each case manager creates an Individual Service Plan (ISP)² for the clients in his/her case load.

² An Individual Service Plan refers to the services needed for an individual.

Depending on the individual need, those clients may be referred to an outside vendor³ to provide specialized services, as described above, by a CBFS provider. These private companies have employees who have the training and education to develop an Individual Action Plan (IAP)⁴. In some instances, a DMH client has a case manager and CBFS services provided by an outside vendor.

Issue:

Did the implementation of CBFS by DMH have the effect, (whether intentional or not), of privatizing services previously performed by public employees in violation of M.G.L., c. 7, sections 52-57.

Discussion:

The CBFS plan may be the best approach to providing specialized services to individuals who meet the DMH standards. However, the OSA is obligated to examine if the DMH followed the appropriate statutory procedures in implementing the program, not the success or failure of CBFS.

Both DMH and SEIU presented argument regarding their respective positions. The issues are not easy to pinpoint and analyze due to the nature of the services each provides to their clients. There are inevitable and often times unavoidable overlaps in the work performed by SEIU employees and the CBFS providers. A complete analysis by the OSA based solely on the job descriptions, rules and regulations, and letters of opinion, etc. provided by the parties involved does not provide a complete answer.

On the other hand, there remains statistical data in which both parties agree is accurate and which this office finds compelling in reaching its conclusion. More specifically, prior to the implementation of CBFS, the DMH employed approximately 311 case workers who had a case load of approximately 27 clients each. During fiscal year 2009, two events were occurring virtually simultaneously; (1) Case managers were being laid-off due to 9(c) cuts imposed by the administration and, (2) CBFS was being implemented by the DMH.

The DMH has stated that the implementation of CBFS had nothing to do with the case managers lay-offs as they had fully intended to retain its full staff absent the 9(c) budget cuts. (Attachment 1, p.4) The OSA has no reason to dispute that statement.

However, as a result of the layoffs, the number of case managers was reduced from a high of 311 to approximately 230 by the Fall of 2009⁵. Assuming the demand from the public for DMH services is fairly constant from one year to the next, the case loads of the remaining 230 case managers should have significantly increased from 27 clients each per month to 36.5 clients each per month. Instead, the average case load of case managers dropped from 27 clients to 23 clients

³ Outside vendor refers to a private company providing CBFS services.

⁴ Individual Action Plans generally refer to the "action" planned for an individual.

⁵ This represents a reduction of 26% in case management staffing levels.

per month. "In DMH's view this represents neither a substantial increase nor a substantial decrease in case loads following CBFS". (Attachment 1, p. 1)

The OSA disagrees with that conclusion reached by the DMH. When the staffing levels for any service drop by 26% the workload for the remaining staff should increase by a corresponding percentage. Furthermore, and just as significantly, prior to the introduction of CBFS, approximately 8,400 individuals were receiving case management services from SEIU members. Subsequent to the implementation of CBFS approximately 5,300 individuals are currently receiving case management services from SEIU members. Therefore, today there is approximately 37% of the DMH client population who once received case management services, receiving their services elsewhere.

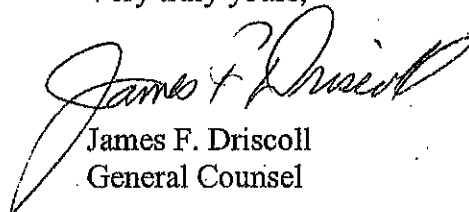
CBFS does provide an integrated package of clinical and rehabilitative services from a single service provider. Therefore, it eliminates or reduces the need for case managers to coordinate the movement of clients from one program to another. However, assuming this position is accurate, the DMH did not fully and adequately explain how and why case managers have far fewer clients if most of their duties and responsibilities were not shifted to a private vendor. The statistics are not in dispute and clearly indicate that the introduction of CBFS has had a significant impact on the SEIU case managers case load. If the explanation from the DMH is that CBFS has eliminated much of the need for the DMH clients to receive case management services, the DMH must follow the provisions of M.G.L., c. 7, sections 52-57.

Conclusion:

CBFS may be a very effective program and the best approach to meet the growing demands of the DMH client base. This may be particularly true in light of continued budget cuts and public employee layoffs. In this case however, the facts in general and the statistics in particular indicate that at least a portion of public services was moved from state employees to private contractors without following the provisions set forth in M.G.L., c. 7, sections 52-57.

Thank you for your cooperation with this office over the past several months. This matter will be forwarded to the Office of the Attorney General for their review.

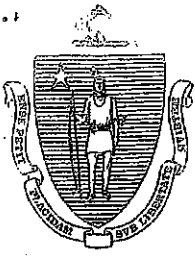
Very truly yours,



James F. Driscoll
General Counsel

CC: John Parsons

Enclosures



Attachment No. 1

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Mental Health
25 Staniford Street
Boston, Massachusetts 02114-2575

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

JUDYANN BIGBY, M.D.
Secretary

BARBARA A. LEADHOLM, M.S., M.B.A.
Commissioner

(617) 626-8000
TTY (617) 727-9842
www.state.ma.us/dmh

December 9, 2009

James F. Driscoll, General Counsel
Auditor of the Commonwealth
One Ashburton Place, Room 1819
Boston, MA 02108

Re: Information Request

Dear Mr. Driscoll:

I am writing in response to your recent letter requesting additional information related to the Department of Mental Health's (DMH) case managers, clients, and procurement of Community Based Flexible Support Services ("CBFS").

In your letter, you asked for the number of DMH case managers and their average "case loads" (defined as the number of active cases) for the two years preceding CBFS, and the current number of case managers and their average case loads. You also asked DMH to explain any substantial increase or decrease in case loads following CBFS. Lastly, you asked DMH to state whether approximately half of its community clients have continued to receive case management services post-CBFS, and, if not, to explain why not.

In the two years preceding CBFS, DMH had approximately 311 case managers, who on average worked with approximately 27 clients each month. For the several months following implementation of CBFS, DMH has had approximately 230 case managers, who on average are assigned to work with 23 clients per month. In DMH's view, this represents neither a substantial increase nor a substantial decrease in case loads following CBFS. During the period July 2009 through November 2009 an average of 31% of DMH clients were receiving case management. This represents a decrease in number of clients receiving case management services from the previous figure of approximately 50%.

The decrease in the number of clients receiving case management services is the result of a combination of factors. As we indicated in our previous response, dated March 27, 2009, some

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December 9, 2009

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clients who are receiving our new CBFS service no longer need case management, since they are receiving an integrated package of clinical and rehabilitative services from a single service provider. These clients no longer receive case management services. Also, as DMH began implementation of CBFS, it reviewed its entire roster of clients to assess their service needs. Clients who were enrolled in case management, but who, for a variety of reasons such as having either disengaged from services, or who had met their ISP goals such that they no longer needed case management, were also disenrolled.

It is important to reiterate the inaccuracy of the Union's assertion CBFS providers must be providing case management services to DMH clients enrolled in CBFS who no longer have a DMH case manager. As DMH has tried to convey, CBFS vendors do not provide case management services, just as case managers do not provide CBFS services. Our previous response laid out the background and explanation of this critical distinction. Please permit me to review some of the essential points contained in our previous response.

In reviewing its model of service delivery during the last several years, and in listening to input from an array of consumers, families, providers, DMH employees, and other stakeholders, DMH concluded that there were ways it could improve delivery of its community-based services. Specifically, DMH determined that there was insufficient flexibility for clients to move in and out of different programs as their needs changed. Since the activities codes were rigid, it happened all too often that services or supports would be maintained even if clients progressed or regressed such that they no longer were most appropriate.

With a goal of making provision of services more person-centered (i.e., empowering clients to direct their care towards meeting goals they have set) and more recovery-oriented (i.e., moving as expeditiously as possible towards full client recovery from mental illness), DMH determined to refashion its model of community services to give providers flexibility to tailor and adjust client services more readily in response to changing needs and client desires.

With the CBFS procurement, DMH is purchasing a service rather than distinct programs as it previously did. CBFS combines several current activity codes previously billed by vendors: 3049, Adult Residential Services; 3059, Community Rehabilitative Support; and 3013, Rehabilitative Treatment in the Community. As DMH stated in the issued RFRs,

CBFS is a new activity code for DMH. CBFS contractors are responsible for providing rehabilitation, support, supervision, and housing/room and board where needed to a defined set of DMH adult clients in the Area....CBFS is designed to increase clients' capacity for independent living and their recovery from mental illness. It is the role of CBFS contractors to individualize the delivery of services in partnership with each client. A contractor is required to adjust the mix and intensity of CBFS provided to individual clients to meet their changing needs and goals as they move toward recovery and to coordinate CBFS with the clients' other DMH services and, to the extent feasible, non-DMH services.

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Page 3

With the shift to an integrated full-service model from separate programs, CBFS contractors now have the responsibility and authority for making decisions about utilization, resource allocations, and service delivery. DMH will measure performance through client and administrative outcomes and through quality and utilization review. DMH also will be responsible for contract monitoring and auditing. In addition, DMH will work collaboratively with the contractor to manage high risk clients.

Although CBFS changes the way DMH purchases some community services, it does not change the DMH case management function. DMH case management is a service separate and distinct from CBFS and will continue as such.

The separateness of case management is recognized by Medicaid, which allows billing for case management services under the category of targeted case management. Billable CBFS services are categorized as rehabilitative services; none of the CBFS activities may be billed as targeted case management services under Medicaid.

Unlike CBFS, case management is a *non-clinical* service. DMH case managers coordinate services from, or make referrals to, a variety of service providers, many of whom are not DMH-funded and many of whom do not provide services offered by CBFS (e.g., the Department of Transitional Assistance and the Massachusetts Rehabilitation Commission). They also provide a non-clinical assessment of service needs; convene service planning meetings among distinct program providers; develop and review individual service plans (ISPs); monitor services provided to clients; and review Individualized Action Plans (IAPs) to ensure that DMH clients' IAPs are compatible with their ISPs.

Your office previously stated the union's belief that some of the services performed by CBFS vendors, including initial assessments and the development and monitoring of service plans, are functions that historically have been performed by DMH case managers. This is not the case.

First, the CBFS providers conduct *clinical* assessments, as opposed to the *non-clinical* assessment of needs compiled by DMH case managers.

Second, the CBFS-utilized Individual Action Plan (IAP) is not the same as the Individual Service Plan historically utilized by case managers. The IAP is a significantly different document and process, demanding a level of clinical expertise that has never been a part of DMH case management.

Third, "screenings" required under CBFS should not be confused with assessments of needs performed by DMH case managers. With respect to screenings, the RFRs for CBFS stated that,

A Licensed Practitioner of the Healing Arts...must meet and screen each DMH client who is referred to a CBFS contractor within 72 hours...of the referral. The purpose of the screening is to determine if any immediate interventions are needed to maintain the client's health and safety until a full Individualized Action Plan (IAP) is completed.

This is a clinical screening, beyond the scope of the function of DMH case managers. It is a new function that requires a licensed practitioner, and licensure is not a requirement for DMH Case managers.

Additionally, the clinical assessment that CBFS providers are required to perform is consistent with past practice. The RFRs stated that,

Each newly enrolled CBFS client must be assessed within twenty (20) days of enrollment and, at a minimum, annually thereafter. CBFS contractors are required to use the Adult Comprehensive Assessment tool developed by the Massachusetts Standardized Documentation Project....

This is wholly consistent with historical practice. Although case managers conduct non-clinical assessments of needs, vendors always have been required to conduct more sophisticated clinical and functional assessments in order to develop and periodically adjust individual treatment plans (Historically referred to as Program Specific Treatment Plans, these plans are referred to as Individual Action Plans or IAPs in DMH's new regulations).

When developing CBFS last fall, DMH fully intended to retain its full complement of Case managers. Prior to issuance of the RFR, however, the Commonwealth faced the precipitous decline in revenues occasioned by the recent economic downturn, and the Governor issued 9C cuts that required DMH to make deep cuts in its FY09 budget. DMH reviewed possible ways to make this enormous cut, and regretfully concluded that it would need to eliminate a variety of services and lay off approximately 125 employees. In assessing where to make employee cuts, DMH considered which positions were essential to its most at-risk clients. It was compelled, it believed, to maintain hospital and direct care clinical services to the maximum extent possible. This left DMH with a significant number of positions it needed to lay off in other areas, and DMH Case managers, who do not provide clinical services, bore a high percentage of staff cuts.

The unfortunate juxtaposition of unrelated events - the 9C lay-offs and DMH's procurement of CBFS - seems to be at the core of any misunderstanding regarding DMH's actions. The union apparently has concluded, erroneously, that there was some linkage between the CBFS procurement and the case manager lay-offs, apparently presuming that DMH laid-off case managers because it was procuring case management through the CBFS procurement. This is simply not the case. The fact that clients have moved to CBFS and case management has been terminated does not mean that CBFS vendors are performing case management.

Post-CBFS, DMH hoped to utilize its case managers to work more intensively with some non-CBFS clients, to work more often with high risk clients, to perform a role in assessing outcomes of CBFS clients, to ensure quality service through CBFS, and to perform the work that they historically have performed. The reduction in force necessitated by the 9C cuts has required that we be less ambitious in our vision relative to enhancing the role of case managers, as the remaining workforce must be concentrated on the traditional functions. Nonetheless, as we all

DEPARTMENT OF MENTAL HEALTH

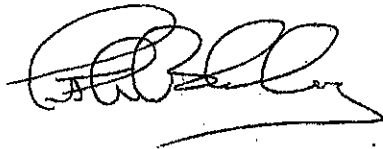
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adjust to the realities of the prolonged fiscal crisis we are facing, we hope to engage the Union collaboratively to secure the important role that case managers have in our community system.

I trust that this letter, together with our March 27, 2009 response, addresses any concerns regarding the CBFS procurement. Please let me know if you require additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "L. Blumberg", with a long horizontal flourish extending to the right.

Lester Blumberg
General Counsel

cc: Maureen McGee, General Counsel, EOHHS

POSITION TITLE CODE:

1. POSITION TITLE
Human Service Coordinator A/B

AGENCY: Department of Mental Health
Metro Suburban Area

2. APPROPRIATION OR AGENCY CODE: **5046-0000** POSITION NO: REQUISITION NO: SALARY: DATE PREPARED:

3. GENERAL STATEMENT OF DUTIES AND RESPONSIBILITIES
Human Service Coordinator A/B responsible for assuring appropriate services for DMH eligible clients, including; obtaining and completing assessments; developing Individual Service Plans (ISPs) in conjunction with the multidisciplinary team; coordinating the linkage of client services; monitoring the quality and quantity of services; advocating on behalf of the client and identifying barriers and gaps in the service system to those responsible for service planning.

4. SUPERVISION RECEIVED:

5. DIRECT REPORTING STAFF:

N/A

5B. THEIR STAFF:

N/A

6. DETAILED STATEMENT OF DUTIES AND RESPONSIBILITIES:

1. ISPs are planned, developed, implemented, monitored and updated annually or more often if required in accordance with ISP regulations and Area Office standards to ensure effective and efficient service delivery.
2. As coordinator of a multi-service team: organizes, schedules and facilitates treatment team meetings in order to negotiate and mediate the service system, as well as facilitate and monitor implementation of the ISP. Consults with team to ensure that ISP/PSTPs (Program Specific Treatment Plans) reflect opportunities for client movement to a less restrictive, more independent lifestyle.
3. Interaction occurs with consumers, families, guardians, LEAs (Lead Educational Agencies) and service providers through regular scheduled case conferences, individual meetings and telephone contacts to coordinate service delivery for an assigned caseload as indicated by case management status.
4. Administrative requirements are met through preparation, maintenance and timely submission of case records, narrative reports, statistical reports, tracking, and billing and other requested documentation to ensure accountability and effective and efficient delivery of services.
5. An ongoing awareness of all relevant issues, new programs and treatment modalities is maintained and a sharing of communication regarding individual consumers occurs through attendance at weekly supervisory and staff meetings, and participation in and sharing of knowledge acquired from trainings/conferences/workshops to ensure that appropriate, effective and efficient services are provided for all consumers.
6. Provide outreach, advocacy and support to encourage clients to continue in treatment or programs.
7. Levels of risk are continuously assessed and risk management plans are developed accordingly. Child and Adolescent Functional Assessment Scale (CAFAS) or Clinical Evaluation of Risk and Functioning (CERFs) are completed annually with ISP.
8. Monitor vendor programs and report relevant issues to ensure those programs are safe, sanitary and meet consumer needs.
9. Assist consumers in accessing all benefits for which they may be eligible.
10. Maintains contact with clients while in hospital settings and assures appropriate services linkage at time of discharge.
11. Attends and participates in ongoing supervision to review and plan for appropriate services for all assigned clients.
12. Attends and participates in staff meetings.
13. Attends trainings, seminars, conferences and continuing education courses to maintain and update current knowledge of the mental health field.
14. Patient information is communicated/documented according to DMH/MSA standards including documenting & reading MHIS medical records as required.
15. Performs related duties as requested.

Note: This form must be submitted to the Personnel Administrator for every new position title in your jurisdiction, and for any substantive change in an established position.

QUALIFICATIONS REQUIRED AT HIRE (List knowledge, skills, abilities):

1. Knowledge of psychosocial problems, types and symptoms and services available to those with mental illness.
2. Ability to supervise, including planning and assigning work according to the nature of the job to be accomplished, the capabilities of subordinates and available resources, controlling work through periodic reviews and/or evaluations, determining subordinates training needs and providing or arranging for such training, motivation subordinates to work effectively, determining the need for disciplinary action and either recommending or initiating disciplinary action.
3. Ability prepares statistical reports using computers.
4. Ability to develop and present procedure recommendations for assigned unit.
5. Ability to communicate clearly both orally and in written form.
6. Ability to think clearly and to demonstrate good judgement, especially around client centered situations, as they arise.

8. QUALIFICATION ACQUIRED ON JOB (List knowledge, skills, abilities):

1. Knowledge of the principles, practices and techniques of supervision.
2. Knowledge of Department of Mental Health contracting processes.
3. Knowledge of statistical and administrative reports necessary for agency program development.
4. Ability to assess Case Management process and results.

MINIMUM ENTRANCE REQUIREMENTS:

Applicants must have at least four years of full-time or equivalent part-time, professional experience in a public or private human service or health care agency working with clients having mental or emotional disorders or any equivalent combination of the required experience and substitutions listed on the HRD job specifications.

10. LICENSE AND/OR CERTIFICATION REQUIREMENTS:

None

Signature of Appointing Authority

The Department of Mental Health
Agency

Title

Prepared By

Initials of Incumbent

Date

Initials of Supervisor

Date