

# Response to Grand Jury Report

Report Title: **4.2 Privatization of Mental Health Delivery Services**

Report Date: **June 9, 2014**

Response by: **Tom Allman, Mendocino County Sheriff**

## Findings

I (we) agree with the findings numbered: **F2, F3, F4, F9.**

*While we agree with F3, it is overly simplistic. It has been our experience that substance abuse acts similar to mental illness. We have found that a good percentage of this population that have been in-custody for a period of time and the illicit narcotics, alcohol and prescribed medication has left their system, the person does not present with a mental illness. On the other hand, we have also witnessed that the mentally ill are more likely to use illicit narcotics and alcohol. Hence, the long standing tug of war among treatment providers over the "chicken" (mental illness) or the "egg" (substance abuse). Whichever is thought to have come first is the organization responsible for treatment. It is our hope that these organizations merge and provide comprehensive treatment in order to avoid lapses in the treatment system.*

I (we) disagree wholly or partially with the findings numbered: **xxx**

*Attach a statement specifying the findings or portions of the findings that are disputed, and include an explanation of the reasons therefor.*

## Recommendations

Recommendations numbered **xxx** have been implemented.

*Attach a statement describing the implement actions.*

Recommendations numbered **xxx** have not yet been implemented, but will be implemented in the future.

*Attach a statement with the schedule for implementation(s).*

Recommendations numbered **R2 and R3** require further analysis.

### R2

*Upon release from jail, a process already exists with Ortner Management Group to do "warm handoffs" of the severely mentally ill. Creating an MOU requires additional analysis to determine if the current contract needs to be altered. This analysis would be the responsibility of County of Mendocino Department of Mental Health.*

R3

*The Sheriff's Office has had a preliminary meeting with Director Stacy Cryer about having County of Mendocino Department of Mental Health be first responders. This issue still needs additional analysis and assessment as to the feasibility of taking over calls for service involving a mental health crisis.*

Recommendations numbered xxx will not be implemented because they are not warranted or are not reasonable.

*Attach an explanation.*

Signature: \_\_\_\_\_

  
Thomas D. Altman, Sheriff-Coroner

Date: \_\_\_\_\_

08-05-2015

Number of pages attached: \_\_\_\_\_

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# PRIVATIZATION OF MENTAL HEALTH DELIVERY SERVICES

June 9, 2014

## SUMMARY

The Mendocino County Board of Supervisors awarded the contract for the administration of adult mental health services to Ortner Management Group at its meeting on May 21, 2013. The imprecise language and provisions included in the contract for privatization results in ineffective service for clients who are diagnosed as Level 3, the most severely impaired.

After nine months of transition, the contracted mental health services were not providing Level 3 clients with adequate wrap-around resources needed for the continuum of care, such as: housing, transportation, education, and job training.

In the 2009-2010 Mental Health budget, Medi-Cal reimbursement was expected to be \$14,845,688; but the actual amount received was \$2,815,457. The State has never reimbursed the County for the difference and it remains unknown why this disparity exists.

The 2013-2014 Grand Jury, in reviewing the provision of adult mental health services to the County through the privatization process, found a serious oversight in the preparation of the contract. The clients most in need of mental health assistance were specifically excluded from the language of the contract.

The County is required by Senate Bill 82, as amended, to establish investment to implement the Mental Health Wellness Act of 2013. The Act mandates every county to provide crisis care and recovery treatment for post hospitalization.

Regarding suicide prevention, conservatorship, and secure treatment, the Mental Health Board Report of December 18, 2013 stated that the response to consumers in crisis, before becoming a danger to themselves or others, took longer than anticipated.

The Grand Jury received several complaints stating that mental health clients were confused when they went to the access centers and did not receive the service they were expecting. The Grand Jury was informed that the staff did not know where to refer the clients because, "...we are in a state of transition." As of the close of this investigation, this still appears to be the case.

The Grand Jury recommends that a contract be written to include ongoing structured care provisions for Level 3 clients. The Grand Jury finds the County is not complying with the intent of State Law.

## GLOSSARY

ACA	Affordable Care Act
Access Center	Two locations, Fort Bragg and Ukiah, that provide access to mental health services
BHRS	Behavioral Health and Recovery Services (formerly the Mental Health Department)
HIPAA	Health Insurance Portability and Accountability Act of 1996

Level 1, 2, 3	Level 1, mild impairment; Level 2, moderate impairment; Level 3, severe impairment
Mental health service providers	County agencies, non-profit organizations, for-profit organizations, and private therapists
Ortner	Ortner Management Group

## **BACKGROUND**

The Grand Jury received several complaints about the implementation of the contract for the privatization of the administration of the mental health services. As a result of the complaints, the Grand Jury decided to review the implementation and look at whether the required benchmarks established in the contract were met.

## **APPROACH**

The Grand Jury investigated the County's adult Mental Health services. The Grand Jury reviewed documents, web information, conducted site visits, attended County Mental Health Board meetings, interviewed present and former County employees, various non-profit health service providers, and staff from Ortner.

## **FACTS**

The Board of Supervisors decided in 2010 to look into the possibility of privatizing the administration of the mental health delivery system in Mendocino County (County) including the financial management of the Medi-Cal billing system.

The privatization of the County mental health services administration was granted to the Ortner Management Group (Ortner) on May 21, 2013. The term of the Ortner contract is from July 1, 2013 to June 30, 2019, six years. Ortner began administration on July 1, 2013. Privatization is the most current attempt to correct the previous inefficient mental health administration and its delivery of services through multiple subcontractors.

The County funding of adult mental health services has been a concern for clients, their families, and mental health service providers for many years. This has led to the expression of concern that insufficient funds resulted in reluctance by the County to send any client to a psychiatric facility because of cost.

### **Medi-Cal Billing**

In November 2012, the Mental Health Department reported that they were not current on Medi-Cal billing.

The most recent State audit of the Medi-Cal billing showed an overpayment to the County from the State in excess of \$800,000. In some previous audits, the State owed the County similar sums.

In the 2009-2010 Mental Health budget, Medi-Cal reimbursement was expected to be \$14,845,688; but the actual amount received was \$2,815,457. The State has never reimbursed the County for the difference. Neither BHRS nor Health and Human Services could explain to the Grand Jury why this disparity still exists. The Grand Jury did not find an explanation.

Medi-Cal has expanded benefits for mental health Level 1 and Level 2 clients and includes coverage at health clinics.

Non-profit service providers are able to bill Medi-Cal for mental health services that prior to the Affordable Care Act (ACA) were ineligible for payment. Medi-Cal billing is rigorous, complicated, and difficult.

Ortner is now into their second half of the first year of responsibility for overseeing the billing of Medi-Cal and for providing subcontractors for adult mental health services in the County. The contract designates the responsibility to Ortner to verify who is an eligible client. (Appendix A)

### **Service to Level 3 clients**

The complaints received by the Grand Jury refer to Level 3 clients who were already in the system. The Health Insurance Portability and Accountability Act (HIPAA), a privacy act passed in 1996, hinders families from supervising their adult children's medical care unless the adult child signs an "Authorization to Release Information" form.

There were several incidents within the County regarding untreated mental health patients, who were classified as Level 3. These incidents included severe trauma, physical assaults, suicides, and murder.

The printed news frequently reports that when the most heinous crimes are committed, the person of interest is described as having drug-induced psychosis.

The ACA requires the inclusion of previously excluded health benefits covering mental health issues for all insurance policies, including Medi-Care and Medi-Cal. Also, the Mental Health Services Act (Proposition 63), as amended by California State Senate Bill 82, addresses financing for:

- 30-day housing (instead of psychiatric facilities)
- Post hospitalization
- Clients who are gravely disabled and cannot care for themselves
- Outreach and prevention
- Mobile services for outlying areas

North Valley Behavioral Health Center (NVBH) is a locked psychiatric health care facility.

Levels 1 or 2 (such as suicidal risk) or Level 3 (most severe) are transferred to NVBH or other psychiatric facilities by ambulance with Medi-Cal usually reimbursing the cost. Before the patient is transported back to the nearest access center, the case worker at the facility makes arrangements for someone at the access center to receive them and for their follow-up care.

The imprecise language and provisions included in the contract for privatization results in ineffective service for clients who are diagnosed as Level 3, the most severely impaired. (See Privatization of Services Contract, Exhibit A, Pg 8, first paragraph.)

After nine months of transition, the contracted mental health services were not providing Level 3 clients with adequate wrap-around resources needed for the continuum of care, such as: housing, transportation, education, and job training.

Under the Ortner contract, subcontractors are not required to provide services when a mental health client has "...gone into the system..." as Level 3. The contract does call for certain immediate needs to be addressed by subcontractors. (Appendix B)

There are no in-patient locked facilities in the County to provide continuing and ongoing structured services and/or shelter to mental health clients classified as Level 3 clients.

Currently, law enforcement is often the first responder to a mental health crisis situation. State law says county mental health is the first responder if no crime has been committed. Law enforcement may be called for backup. At the present time, no 911 calls are relayed directly to the access center in cases of mental crisis.

The Grand Jury visited an access center about two weeks after it was opened. Some of the things present were a crisis worker, psychiatric staff, and nutritional snacks. If a person needs a place to sleep, a motel voucher might be offered. There is no outdoor sign at the access center identifying it. The access center shares a building with a clinic.

## **County Jail**

The majority of the inmates in the County Jail are incarcerated for crimes relating to alcohol and drug abuse and for mental health issues. When incarcerated, inmates lose Medi-Cal eligibility. As inmates are released, they are encouraged to apply for Medi-Cal and they leave the County Jail with a list of available social services. With the advent of the ACA this gap in coverage may have been closed.

California Forensic Medical Group provides physical and mental health care for the inmates in County Jail. The Sheriff's budget pays for the cost of medical care at the County Jail. Twenty-two percent of the inmates at the County Jail are taking anti-psychotic drugs.

The medical cost for Juvenile Youth is the responsibility of the Probation Department.

## **Privatization Performance**

Complainants and witnesses stated that under Ortner care, "...it couldn't be worse than under the County." One of two amendments to the Request for the Proposal of adult Mental Health care stated that in November 2012 the Mental Health Department had no nurse and no psychiatrist.

Under the ACA, mental health service providers are reimbursed for services not previously covered by insurance. Mental health service providers stated to the Grand Jury that mental health services are improving, but the community still has a long way to go.

Ortner stated in a Mental Health Board meeting that they were in contact with Consolidated Tribal Health regarding resources available for the mentally ill. Two tribal police departments and one tribal security office contacted by the Grand Jury were unaware of the existence, availability, or location of the access centers.

A subcontractor of Ortner provides respite care for clients and their caregivers. The Mental Health Service Act provided funds to be used for alternative mental health programs. The subcontractor used those funds to provide several programs:

- "Peer Counseling
- Anger Management

- Dual Diagnosis
- Life Skills
- Women's/Men's Groups
- Wellness Recovery Action Plan
- Patient Navigation"

Another service provider, not under contract to Ortner, provides shelter for the homeless, alcohol and drug programs, and counseling. This service provider's Board of Directors decided to withdraw from its contract with Ortner because of an incident in which records kept by the County for a patient were not up-to-date. This led to a serious injury of a staff member and fear for the safety of other staff members and clients.

Behavioral Health and Recovery Services does not yet have a fully implemented electronic health record program for clients, a requirement of the ACA.

State law mandates that all counties, including Mendocino County, provide post-hospitalization transitional care and treatment for Level 3 clients.

Ortner subcontractors have no recovery programs that include counseling after Level 3 clients are discharged. A delegate from Ortner management stated at the January 15, 2014 meeting of the Mendocino County Mental Health Board that "...after evaluation for release the person is an adult and can make their own decisions."

Several witnesses stated to the Grand Jury that some clients released from a psychiatric facility may be incapable of following up with their care.

Since privatization and the opening of the access/crisis centers, law enforcement spends less time waiting for crisis workers to arrive at emergency rooms.

## **FINDINGS**

- F1. The Grand Jury, in reviewing the provision of mental health services through privatization, found a serious omission in the preparation of the contract. The current contract does not provide for the continuing care of Level 3 mentally ill clients.
- F2. Level 3 clients are often not capable of carrying out their treatment plans as set forth in "Continuing Care."
- F3. There is a connection between substance abuse and mental illness.
- F4. The County Jail is not a mental health facility, resulting in law enforcement having to deal with individuals they have the least training to assist.
- F5. Inmates, who have been successfully treated with anti-psychotic medication while incarcerated, cannot continue their medication or treatment until their Medi-Cal is reinstated, which is part of the release process.
- F6. The Grand Jury found the performance by Ortner to be improving the delivery of adult mental health services for Levels 1 and 2 clients, who are the least impaired.

- F7. After nine months of transition, Ortner is not contractually required to provide, nor does it provide, Level 3 mentally ill clients with adequate wraparound resources (housing, transportation, education, and staff training) for the continuum of care.
- F8. Documentation reviewed by the Grand Jury showed that routine services required to be in place within 30 days were not available six months after the Ortner contract was active.
- F9. Calls to 911 for mental health crises are not referred directly to an access center when no crime is reported.
- F10. Variation in the reimbursement for Medi-Cal amounts from year-to-year hampers efficient management of services to the clients.
- F11. The discrepancy of approximately \$12,000,000 between the billing and payment for the 2009-2010 Medi-Cal reimbursement remains unresolved.
- F12. The County is not complying with the intent of State law.

## **RECOMMENDATIONS**

The Grand Jury recommends that:

- R1. A contract be written to include ongoing structured care provisions for Level 3 clients. (F1, F2, F3, F7, F12)
- R2. Mendocino County Sheriff and Ortner execute a memorandum of understanding providing continuous care for Level 3 inmates when released from jail. (F2, F3, F4, F5, F9)
- R3. When no crime has been committed, dispatchers refer mental health Emergency 911 calls directly to an access center during the hours that the access center is fully staffed. (F9)
- R4. Behavioral Health and Recovery Services resolve the discrepancy between the billing and payment for the 2009-2010 Medi-Cal reimbursement. (F10, F11, F12)

## **RESPONSES**

Pursuant to Penal Code §933.05, responses are required from the following individuals:

- Director, Health and Human Services, Mendocino County (All findings and All recommendations)
- Director, Behavioral Health, Mendocino County (All findings and All recommendations)
- Sheriff, Mendocino County (F2, F3, F4, F9 and R2, R3)
- Chief of Police, City of Ukiah (F9 and R3)
- Chief of Police, City of Willits (F9 and R3)

Pursuant to Penal Code §933.05, responses are required from the following governing bodies:

- Board of Supervisors, Mendocino County (All findings and All recommendations)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.



## **BIBLIOGRAPHY**

Mendocino County Standard Services Agreement Contract, BOS 13-016

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

## **Appendix A. Definition of Eligible Client**

Definition: “Clients seeking services must be Mendocino County residents and meet eligibility requirements.” [Ortner LLC Brochure titled “Access to Mental Health Services” dated 11/8/13]

Eligibility Requirements:

1. Adult, age 21 and over
2. Resident of Mendocino County
3. Eligible for MediCal

**Appendix B.**  
**Partial List of Immediate Delivery Requirements**  
**Extracted from the Privatization Contract**

**Immediate needs to be addressed by Contractor (Ortner)**

The following is a list of those items that the contractor was required to provide on an immediate basis (within 30 and 90 days). Each is followed by a summary of the status of each item. Those items dealing with documentation, manuals, and reports are excluded.

**30 Day Requirements (due August 1, 2013)**

- g. Access  
30 Day Status (on August 1, 2013): Was not available  
Current (March 30, 2014) Status: Available but not publicly noticed. There is still no signage to those institutions for those most in need of the services.
- h. 24/7 Psychiatric Emergency Services (PES)/Crisis services  
30 Day Status (on August 1, 2013): Not available  
Current (March 30, 2014) Status: Available
- n. Routine outpatient services  
30 Day Status (on August 1, 2013): Met  
Current (March 30, 2014) Status: Available

**90 Day Requirements (due October 1, 2013)**

- a. Finalization of Housing Plan (permanent, transitional, respite, etc.)  
90 day Status (on October 1, 2013): Unknown  
Current (March 30, 2014) Status: Unknown
- b. Client Satisfaction Survey  
90 day Status (on October 1, 2013): Not available  
Current (March 30, 2014) Status: Not available
- c. Medi-Cal site certifications and re-certification  
90 day Status (on October 1, 2013): Unknown  
Current (March 30, 2014) Status: Unknown
- e. Integrated Care  
90 day Status (on October 1, 2013): Not available  
Current (March 30, 2014) Status: Available
- i. Contracts/network development  
90 day Status (on October 1, 2013): Not available  
Current (March 30, 2014) Status: Met