TESTIMONY FOR AGENCY PUBLIC OVERSIGHT HEARING FOR
THE DEPARTMENT OF BEHAVIORAL HEALTH
COMMITTEE ON HEALTH

Jaclyn Verner, Supervising Attorney

January 29, 2024

Disability Rights DC at University Legal Services (DRDC) appreciates the opportunity to submit written testimony regarding the Department of Behavioral Health’s performance in FY23. DRDC is the designated protection and advocacy program for people with disabilities in DC. Pursuant to our federal mandate, DRDC advocates on behalf of hundreds of DC residents with mental illness each year. I would also like to thank the DC Bar Foundation for supporting our efforts to address housing barriers experienced by District residents with mental illness.

My testimony is focused on (1) the importance of the Department of Behavioral Health (DBH) timely and adequately notifying the public, particularly DBH’s own consumers and family members of consumers, about the fee-for-service (FFS) Mental Health Rehabilitation Services (MHRS) carve-in to Managed Care Organization (MCO) contracts on April 1, 2024, (2) continued concerns with the adequacy of discharge planning for individuals who are discharging from Institutions for Mental Disease (IMDs) back to the community¹, and (3) continued concerns with staffing and oversight at the Psychiatric Institute of Washington (PIW).

¹ DRDC also continues to see a lack of a comprehensive, reliable, and effective transition assistance program for individuals who are residing in nursing facilities and who only remain in these facilities due to inaction or inadequate assistance on the part of the Department of Aging and Community Living, the nursing facility, and the Core Service Agency (if applicable) to assist with their discharge to the community. DRDC is plaintiffs’ counsel, along with AARP Foundation Litigation and Terris, Pravlik, Millian, in Brown v. District of Columbia. Brown is a
First, as of today’s hearing, there are 63 days left until the District’s FFS MHRS services are carved into MCO contracts on April 1st. Also as of today, the greater public is largely unaware of this pending change to the provision of Medicaid behavioral health services that is considerably the most substantial change to the District’s behavioral health service system that the District has seen in the last decade. As we also testified about last year, DRDC believes it is imperative to acknowledge this change, as it will impact how District residents access Medicaid behavioral health services, how consumers, family members of consumers, and advocates address concerns with access to and the quality of services, and how the District maintains oversight and accountability over these services.

DBH must publicly disseminate information to consumers as soon as possible, including an emphasis on the importance of identifying which MCO they are connected to and how to go about contacting that MCO when they have a new behavioral healthcare need or when they have a concern with the quality of their current services. As the State mental health authority, many consumers have a familiarity with DBH and its staff that they will not have with their MCO and its staff following the transition. It is important for DBH to prepare consumers for this change prior to it happening. Holding periodic virtual meetings that briefly touch on this matter, the notifications of which are posted online in an inaccessible way for many consumers, is not enough to educate DBH’s consumer base on this upcoming change. DBH must physically get out into the community to meet consumers where they are at. DRDC has already raised these concerns directly to DBH and we believe it is important to raise them to the Council as well.

Following the transition to managed care, DRDC also strongly urges that DBH must maintain accountability over the services being provided by MCOs and must ensure that rights

class action lawsuit under Title II of the Americans with Disabilities Act (ADA) on behalf of DC Medicaid beneficiaries in nursing facilities seeking assistance from DC government to transition back to the community with the Medicaid long-term care services they need.
afforded to behavioral health consumers under DC law and DC regulations continue to be protected.\(^2\) The District must make information and data public to inform the community about the effectiveness of the services being provided by the MCOs, including what community supports they are providing and how often institutional placement is being used. Whether managed and paid for on a fee-for-service basis or through managed care, DBH has a responsibility to ensure that appropriate and effective community-based services are provided.

Second, DRDC continues to see deficiencies in discharge planning practices when an individual is discharging from an inpatient psychiatric facility back to the community. When applying for and implementing the current Behavioral Health Transformation 1115 Medicaid waiver, the District sought to achieve a number of goals, including “improved care coordination, especially continuity of care in the community following episodes of acute care in hospitals and residential treatment facilities.”\(^3\) To remain in compliance with the waiver’s implementation plan that was approved by the Centers for Medicare and Medicaid Services (CMS) for SMI-related stays, the District required that “IMDs must assess beneficiaries’ housing situations and coordinate with housing services providers when needed and available.”\(^4\) PIW is the primary

---

\(^2\) For example, D.C. Code § 7-1231.12 and D.C. Mun. Regs. tit. 22A § 300 – 309 provide DBH consumers with a formal grievance process when they have experienced abuse and/or neglect by a provider and/or DBH or are facing a significant barrier to receiving adequate care. These regulations specifically allow consumers to grieve directly with DBH and to appeal unfavorable decisions to the DC Office of Administrative Hearings (OAH). DRDC is concerned that once MHRS services are carved into MCO contracts in April, the responsibility of holding providers accountable may get diffused, and that although these consumer protections exist in DC regulations, it may become more ambiguous as to whether the MCO, DBH, or DHCF is the authority to which consumers and consumer advocates should direct concerns. Similarly, the DC Mental Health Consumers’ Rights Act provides other important consumer rights, including but not limited to, the right to meaningful participation in service planning, the right to periodically evaluate their mental health services, including providers, and the right to receive mental health services in the most integrated setting to meet their individual needs. See D.C. Code §§ 7-1231.01 - 1231.15. These rights must continue to be overseen by DBH and enforced following the transition.

\(^3\) Centers for Medicare and Medicaid Services, Special Terms and Conditions, Awardee: District of Columbia at 4, https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/DC%20SMI-SUD_STCs%20for%201115%20Waiver%20110619.pdf.

\(^4\) Transmittal #19-31 (rev.), Services Provided in Institutions for Mental Disease for Medicaid Beneficiaries Aged 21-64 at 4, Transmittal 19-31- Services Provided in Institutions for Mental Disease for Medicaid Beneficiaries Aged 21-64.
IMD in the District and, through our in-person outreach and calls that we receive from consumers, we know that when housing and other needs are present, such as public benefits assistance and lack of transportation, they often go unaddressed. DRDC acknowledges that DBH now consistently meets with PIW to review involuntary admissions and that this is an increase in the level of support that DBH is providing. For any individual who remains as a patient who is voluntarily at the hospital, however, their ongoing needs are not being overseen and tracked by DBH, and even for those who are involuntarily admitted, discharge planning needs such as adequate connection to housing services are often still not well-addressed. DBH must ensure that its providers are engaging in the care coordination activities that the District has assured CMS will occur.

Finally, DRDC continues to have serious concerns about patient safety at the Psychiatric Institute of Washington (PIW). In 2022, DRDC released an in depth investigation report, Do No Harm, Multiple Incidents of abuse and neglect at PIW, [https://www.uls-dc.org/media/1259/piwreport72022.pdf](https://www.uls-dc.org/media/1259/piwreport72022.pdf), which detailed disturbing incidents of abuse and neglect by staff at PIW, as well as their failure to conduct internal investigations of allegations of abuse and neglect and report major unusual incidents (MUIs) to DBH. Recommendations in the report included PIW retaining a consultant with expertise in trauma informed care, as well as increased DBH oversight. These recommendations have not been implemented to the extent or in the manner DRDC had recommended. DRDC continues to receive numerous complaints from patients and former patients who report being subjected to verbal and physical abuse and who fear for their safety. PIW continues to fail to report MUIs to DBH. PIW also continues to fail to provide DRDC with PIW’s own internal investigations - if they perform them, and there is a high turnover rate in the PIW Risk Management Department.
PIW provides care to over 4,000 individuals annually. DBH, in conjunction with DC Health, must increase their oversight and ensure that the thousands of DC mental health consumers who are admitted to PIW each year receive the mental health care and services they are entitled to in a safe and non-traumatizing environment.

Thank you again for this opportunity to submit testimony on these important issues.

For further information:

Jaclyn Verner, Supervising Attorney
202-547-0198 ext. 112
jverner@uls-dc.org

Andrea Procaccino, Senior Staff Attorney (for questions regarding DRDC’s report on PIW)
202-547-0198 ext. 132
aprocaccino@uls-dc.org