

Holding Patterns: Behavioral Health in Oregon 2016

Sharon C. Peters
Eric J. Neiman
Lewis Brisbois Bisgaard & Smith
June 8, 2016

Did you know this about Oregon?

- 51/51 for access to mental health services nationally --
 - *Mental Health America (11/15)*
- 46/50 for inpatient psychiatric beds nationally
 - *ACEP (2014)*
- 9th highest suicide rate in the country

Did you know this about Oregon?

- In 4th year of agreement with USDOJ requiring reform of state mental health system
- Police department of Portland under federal court supervision of settlement agreement to reform dealings with mentally ill

Did you know this about Oregon?

- Approximately 43% of Multnomah County jail population has some form of mental disorder
 - *2015 Report of the Multnomah County Corrections Grand Jury (12/15)*
- 50% of state prison population needs mental health treatment
 - *Legislative Committee Services report (9/12)*



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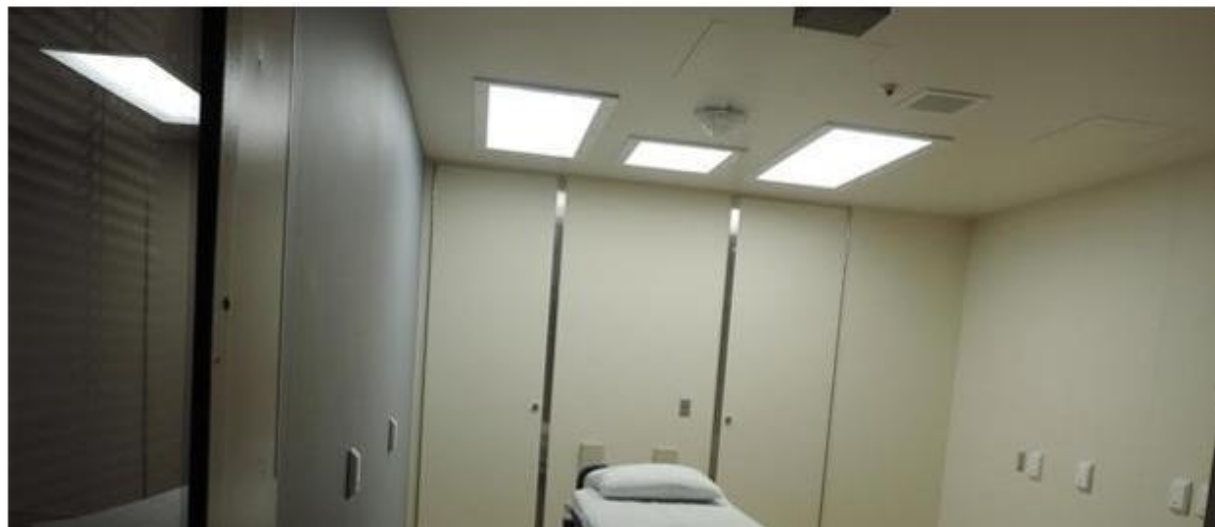
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July 16th, 2014 NIGEL JAQUISS | [News Stories](#)

All Stacked Up And No Place To Go

Psychiatric patients are being warehoused in Portland's emergency rooms in growing numbers.



Tuesday, January 06

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NEWS **BLOG**



Oregon Officials Would Like to Hear Your "Hopes and Concerns" About Weed

One option in the survey: Keeping the weed licenses for state residents.

News The Oregon Liquor Control Commission has less than a year to set up the rules for selling recreation... [More](#)

JAN 6, 2015 11:58 AM BY AARON MESH | 1 COMMENT



City Commissioner Amanda Fritz Says She'll Vote Against Latest Street Fee Proposal

She says City Council should send its plan to voters.

News Mayor Charlie Hales and City Commissioner Steve Novick's proposed street fee to raise money for Port... [More](#)

JAN 5, 2015 03:57 PM BY AARON MESH | 27 COMMENTS



Strip Club Owner, Target of Federal Prostitution Investigation, Dies From Gunshot Wounds

Tommy's Too owner Craig Desmarais was named as part of a crime ring involving several local bars

News A man who was a target of a federal prostitution and money laundering investigation has died after b... [More](#)

ED By The Numbers

- 136.3 million emergency department (ED) visits annually
- CDC, 2011



ED More Numbers

- 12 million ED visits for behavioral health
 - per AHRQ, 2011



32

comments

Woman with mental illness stashed in jail: 'Cruel' ordeal never should have happened



After a Yamhill County judge ordered a woman to be civilly committed because of her mental illness, the woman sat in jail for 10 days, awaiting an appropriate psychiatric bed in the state. Judges, her lawyer and mental health advocates stepped in to try to find a solution.

1 / 7

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By **Maxine Bernstein** | The Oregonian/OregonLive

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on February 20, 2015 at 6:03 PM, updated February 22, 2015 at 12:59 PM

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Originally published October 5, 2013 at 7:04 PM | Page modified October 8, 2013 at 4:24 PM

First of two parts

'Boarding' mentally ill becoming epidemic in state

TIMES WATCHDOG: Far more involuntarily detained patients are stuck in chaotic hospital ERs and ill-equipped medical rooms. They wait days, even months, for treatment. The practice traumatizes thousands of mentally ill residents, wreaks havoc on hospitals, and wastes millions of taxpayer dollars.

By [Brian M. Rosenthal](#)

Seattle Times staff reporter

Matthew Jones stripped off his clothes, kicked over a trash can and ran into Kirkland's Juanita Beach Park. He wanted to swim across Lake

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The Patients in the Hallways



Thomas MacDonald for The New York Times

Norwalk Hospital's emergency department.

By DAVID HOLMBERG

Published: June 10, 2007

STONY BROOK, N.Y.

In the Region

Long Island, Westchester, Connecticut and New Jersey

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University Hospital.

ON some chaotic days and nights, Dr. Peter Viccellio's system to control boarding — the hospital practice of treating patients in the hallways of overcrowded emergency departments — is still put to the test at Stony Brook

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8. Bess Myerson, New Yorker of Beauty, Wit, Service and Scandal, Dies at 90
9. The Upshot: How Nonemployed Americans Spend Their Weekdays: Men vs. Women

Local

Psychiatric patients wait in ERs as inpatient beds are scaled back



Rena Dubin at home during dinner with her children Mia Dubin, Sophia, husband Barry and son Noah in Columbia, Md. on December 27, 2012. Mia, who is autistic, has been boarded at several emergency rooms this year. (Linda Davidson/The Washington Post)

By Olga Khazan January 22, 2013

One day in October, Rena Dubin got a call saying her 15-year-old daughter, Mia, who has Asperger's syndrome and an anxiety disorder, had a panic

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- Many of region's schools opened in storm, drawing ire**
- Loudoun, Fairfax County schools failed by opening on time today, discounted important forecast information**



Topics in this article: [Health Care](#) [Health Care Extra](#) [Health care reform](#) [Hospitals](#)

Originally Published: November 18, 2013 2:25 PM **Modified: November 18, 2013 3:44 PM**

Psychiatric patients boarded in emergency departments create crisis for patient care, hospital finances

By Modern Healthcare



With the total number of psychiatric inpatient beds plummeting nationally, hospitals are devising innovative ways of handling mentally ill patients who come to the emergency department as an alternative to "boarding" them in holding rooms and hallways while they await treatment.

These strategies include collaborating with other hospitals to place psychiatric patients in open beds, using separate psychiatric EDs, setting up crisis triage centers, and referring patients to residential treatment centers. They're striving to get mentally ill people help before they hit a crisis, including arranging appointments with mental health care providers and contacting patients regularly to help with medication compliance. A few health systems, such as HealthOne in Denver, are even adding psych beds, at least partly to reduce ED waiting times.

Health systems recognize that they need to address the psychiatric boarding problem because EDs bring in a lot of paying patients. Delays in serving them because of the boarding of psychiatric patients can hurt revenue.

Hospitals also are hoping that more mentally ill patients will gain insurance coverage for behavioral care through the federal health care reform law and the new federal mental health parity rule. In addition, many

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BloombergBusiness.com
Launching January 20.
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South Carolina Psychiatric Patient Stuck 38 Days in ER

By Stephanie Armour | Jul 17, 2013 9:00 PM PT | [19 Comments](#) [Email](#) [Print](#)

When a mentally ill patient arrived **at AnMed Health Medical Centers'** emergency room in May, staff at the Anderson, South Carolina, facility scurried to find a hospital with enough room for an admission.

Everywhere was full, including a nearby psychiatric hospital. Unable to find any place that had available beds, the patient spent 13 days languishing in the ER. Such stays are increasingly common at the hospital -- in one case last year a patient was stuck in the ER for 38 days, costing the hospital



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A Dearth Of Hospital Beds For Patients In Psychiatric Crisis

By Jenny Gold | April 12, 2016

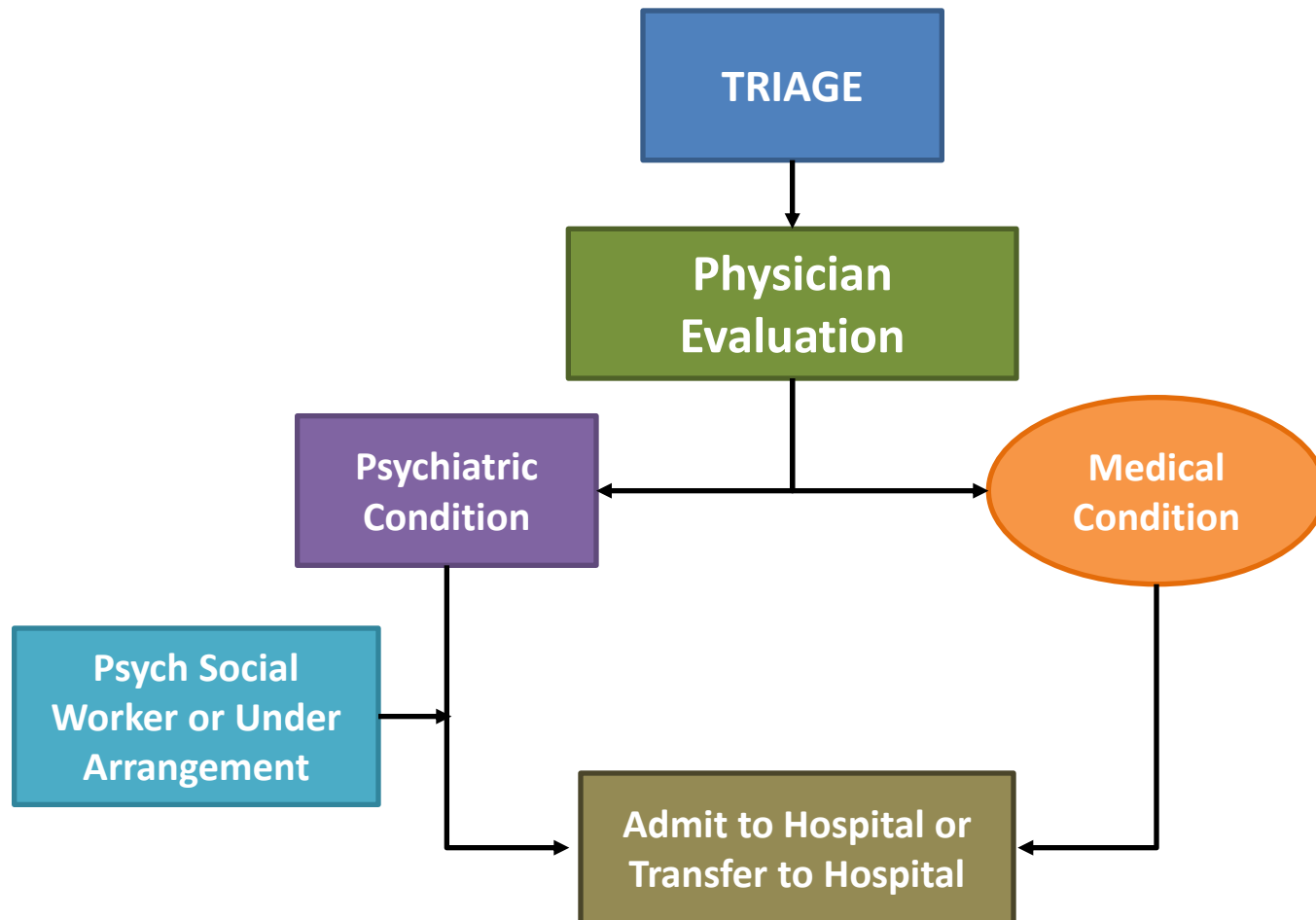


Pam and Amanda Lipp in Fair Oaks, California, in December 2015. (Heidi de Marco/KHN)

“Psychiatric Boarding”

“[t]he phenomenon of persons with mental disorders remaining in the hospital emergency rooms while waiting for mental health services to become available.”

Psychiatric And Medical Patients Use The Same Space And Staff

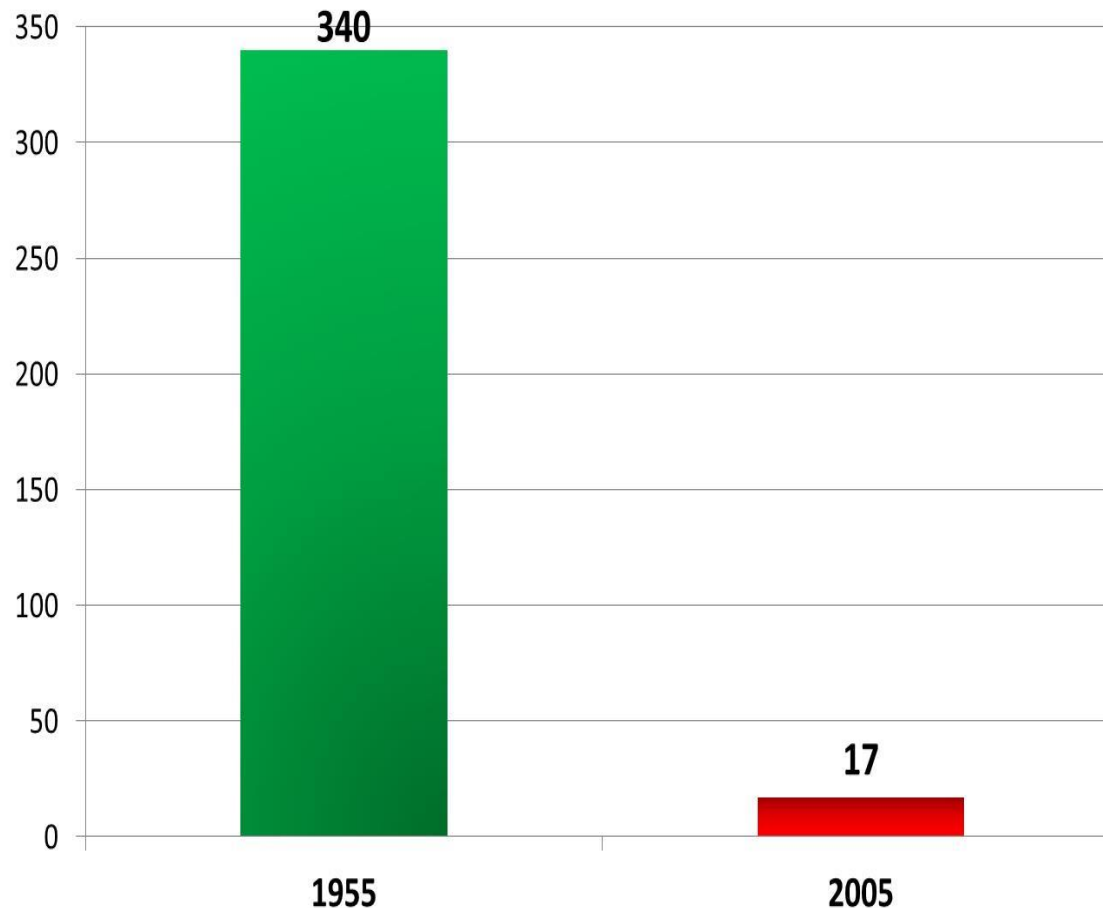


Identifying the Problems

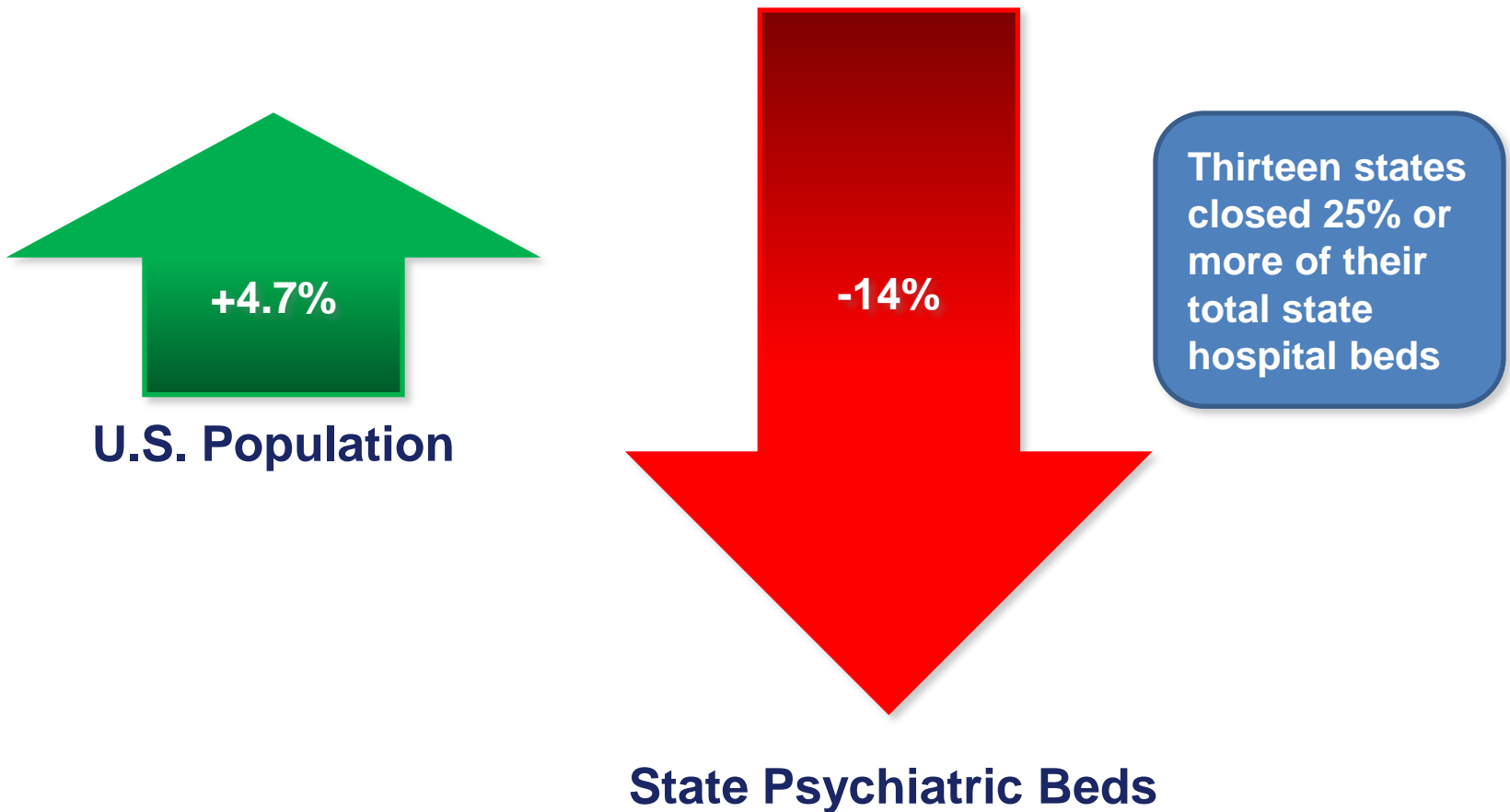
- Long waits
- Lack of access
- Spillover



U.S. Psychiatric Beds per 100,000 1955-2005



Increasing Need / Decreasing Funding United States 2005-2010



2009-2012: Mental Health Spending Cuts

- \$4.35 billion
- Trend expected to continue

National Association of State Mental Health Program Directors, Congressional briefing, March 22, 2014

“Psychiatric Boarding”

“...what's happening in California ERs is a public health crisis, and it's happening now.”

*Chris Van Gorder, president and CEO, Scripps Health,
January 11, 2016.*

Oregon Bed Capacity

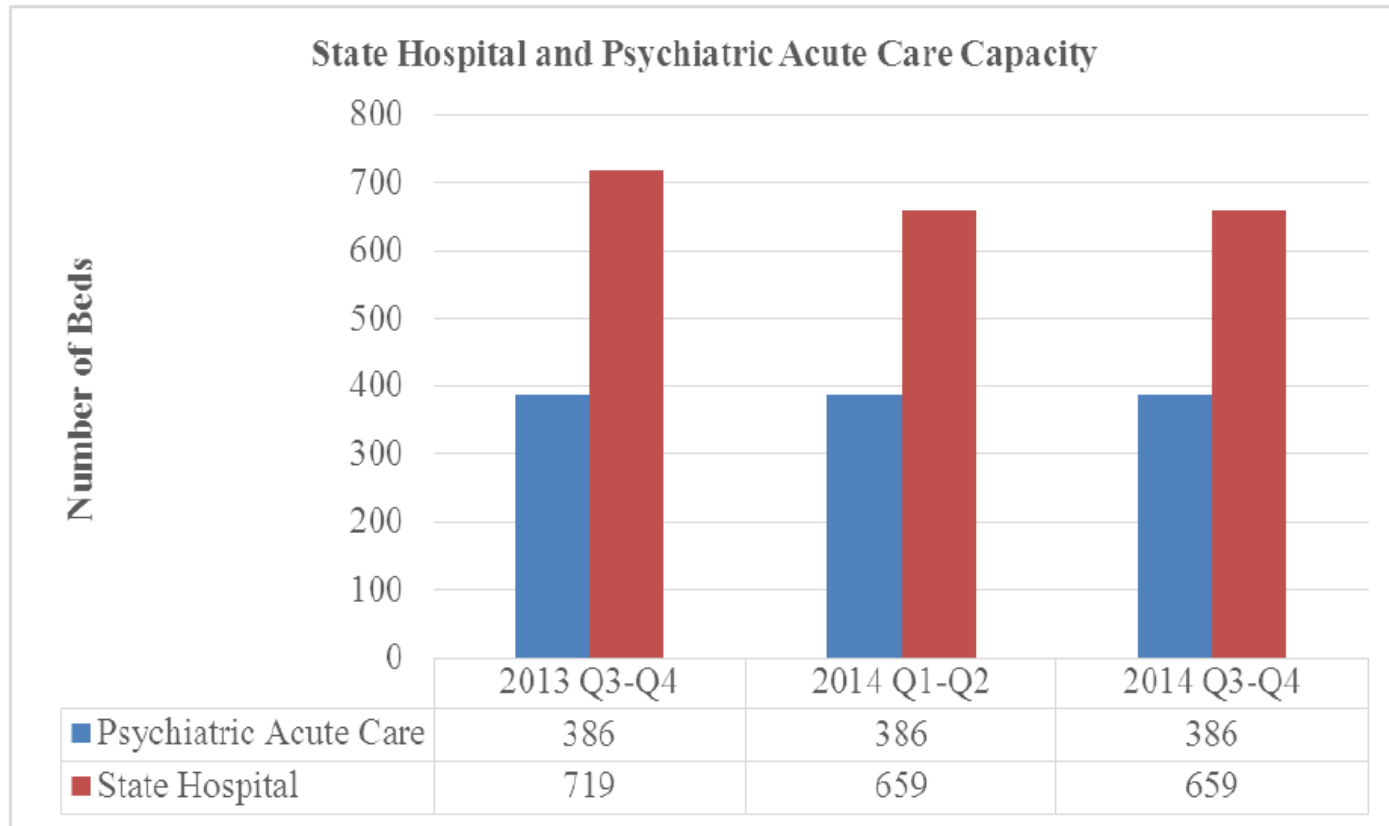


Figure 2(a)

OHA report to USDOJ, July 2015

EMTALA impact

- Facility with a dedicated ED must provide adequate medical screening.
- If emergency medical condition exists, then:
 - Stabilizing treatment
 - Appropriate transfer

EMTALA

- Emergency medical condition:
 - Places health of individual in serious jeopardy
 - Serious impairment of bodily functions, or
 - Serious dysfunction of any bodily organ or part (42 USC 1395dd(e)(1)(A))
- CMS confirms that an emergency medical condition includes psychiatric disturbances and symptoms of substance abuse (42 CFR 489.24(b)(1))

EMTALA

“In the case of psychiatric emergencies, an individual expressing suicidal or homicidal thoughts or gestures, if determined dangerous to self or others, would be considered to have an EMC.”

EMTALA Interpretive Guidelines, § 489.24(d)(1)(i),
Appendix V of State Operations Manual



Floyd Medical Center, Georgia

- OIG claimed FMC failed to evaluate and treat 32 year old mentally ill patient.
- Transferred from another hospital.
- In ED, became combative and violent. Security was called. Force used to subdue patient.
- Security determined that safety was beyond that which could be handled by the hospital.
- Patient was medically cleared and taken to jail, without a psych consult.



January 6, 2016: \$50,000 settlement

Springfield Hospital, Vermont

- OIG claimed hospital failed to stabilize psych condition of one patient, and failed to adequately screen another.
- Hospital sent both patients to jail.

September 3, 2014: \$50,000 settlement



Duke University Health System, North Carolina

- OIG alleged Duke failed to accept five appropriate transfers of individuals with unstable EMC who required the stabilizing specialized capability of Duke's inpatient psychiatric unit, called the Williams Unit.
- Duke refused the transfers because:
 - it only allowed admission during certain business hours (three patients)
 - patient was too aggressive (one patient)
 - the unit did not treat substance abuse and labs did not return yet (one patient)



September 5, 2012: \$180,000 settlement

Carolinas Medical Center, North Carolina

- Patient presented to ED with complaints of homicidal ideation and acute depression.
- Feared hurting himself and his wife.
- Patient presented two weeks prior with similar complaints.
- Hospital knew he had access to firearms.
- OIG alleged hospital discharged patient with a prescription for a mild anti-depressant without an adequate medical screening or stabilization.
- Shortly after discharge, patient killed his wife, two children, and himself.



December 3, 2013: \$50,000 settlement

Charges: Alexandria Man Choked St. Cloud Hospital Employee With Wires

By The Associated Press May 13, 2016 6:23 AM



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William Kern, Stearns County Jail

ST. CLOUD (AP) – An Alexandria man is facing a second-degree assault charge for allegedly attacking and trying to strangle a mental health worker at St. Cloud Hospital with an electrical cord.

Forty-two-year-old **William Chad Kern** is accused of attacking the woman while she was working with him Sunday. Kern had been civilly committed and ordered to complete treatment at the hospital.

The worker says Kern became upset after she wouldn't give him a CPAP breathing device and allegedly ripped a security card reader from the wall.

Authorities say Kern returned to his room with wires from the device, grabbed the worker and began to choke her. Hospital personnel eventually intervened.

A judge has ordered Kern undergo a mental competency evaluation. It's unclear whether he has an attorney.

CHAOS

Since October investigation, another 41 assaults in Florida's violent mental hospitals

Part of a series | Dec. 31, 2015 By LEONORA LaPETER ANTON, MICHAEL BRAGA and ANTHONY CORMIER
Times/Herald-Tribune Staff

DESPITE STATE LAWMAKERS' CALLS for emergency safety measures, violence continues at record rates inside Florida's state-funded mental hospitals.

Since October, when the *Tampa Bay Times* and the *Sarasota Herald-Tribune* first chronicled the growing violence, police and state regulators have investigated at least 41 injuries and attacks.

At one hospital, a patient hid scissors in his room, then used them to stab a hospital employee in the back. In another, a patient tore off a man's eyelid during a fight.

The *Times* and *Herald-Tribune* first revealed the chaos inside Florida's mental wards in October when they published the results of a yearlong investigation, **Insane. Invisible. In danger.** The newspapers found that state officials cut \$100 million from the hospitals' budgets and fired a third of their workforce. Violent attacks and other injuries doubled, leading to at least 15 deaths.

Assaults on staff at Western State Hospital costing millions

Originally published November 27, 2015 at 9:31 am Updated November 27, 2015 at 6:42 pm

Hundreds of employees at Washington state's largest psychiatric hospital have suffered concussions, fractures, bruises and cuts during assaults by patients, resulting in millions of dollars in medical costs and thousands of missed days of work.

By

MARTHA BELLISLE

The Associated Press

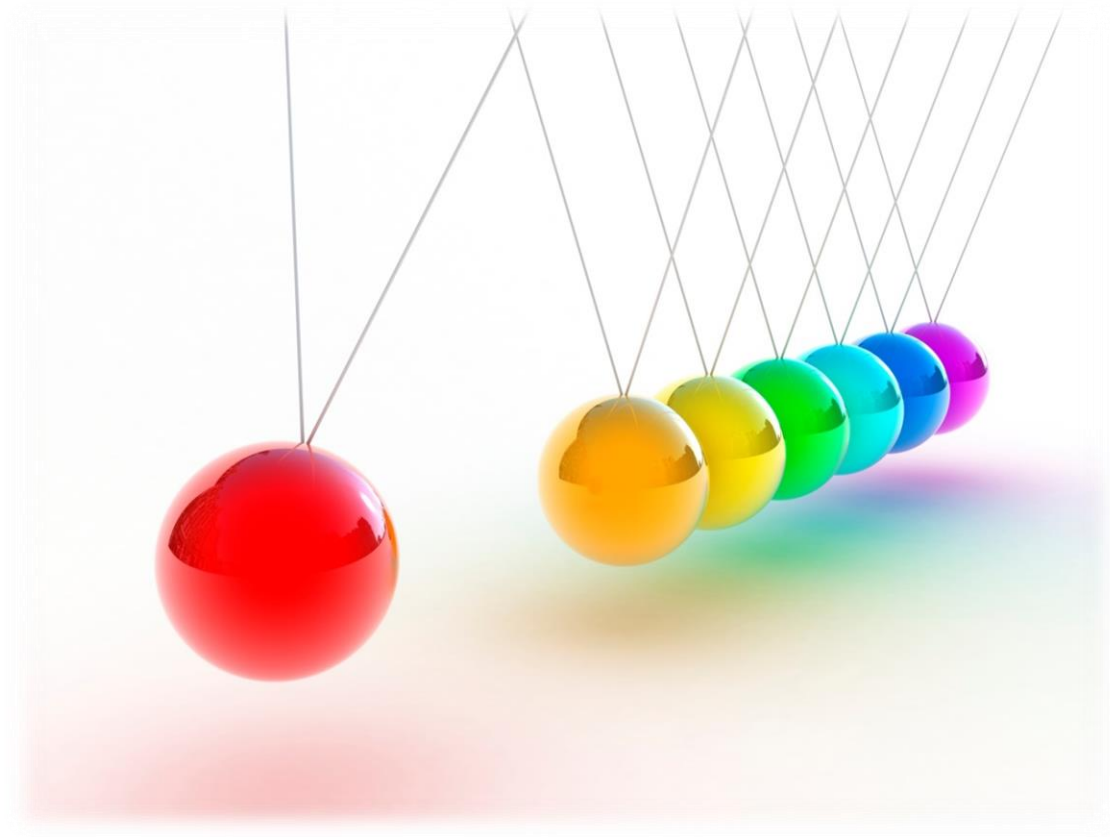
LAKEWOOD, Pierce County — A psychiatric patient “head-butted” a nurse so hard she fell back and her head was slammed against a door, causing injuries that kept her home for three months. An agitated patient knocked a nurse onto a concrete floor, causing injuries that forced him out of work for seven months. A nurse who tried to stop a patient attack was in hurt so seriously that her recovery took more than two years.

Hundreds of employees at Washington state's largest psychiatric hospital have suffered concussions, fractures, bruises and cuts during assaults by patients, resulting in millions of dollars in medical costs and thousands of missed days of work.

Kicked, beaten, shoved...

- Workers' compensation claims in Oregon healthcare and social assistance sector increased 78% from 2007-2013.
- In 2014, 275 accepted claims for assault against Oregon healthcare workers.
- Many incidents go unreported.

Inertia



United States Department of Justice

- Title II of Americans with Disabilities Act
- Olmstead v. L.C., 527 US 581 (1999)
- In 2006, DOJ opened investigation of Oregon State Hospital. In 2010, investigation broadened to statewide mental health system.



Oregon and DOJ Agreement

- November 9, 2012 voluntary agreement
- January 2, 2014 USDOJ Interim Report to the State of Oregon:

“Despite the stated commitment to transform to a community-based system, the data provided demonstrates that there has not been an increase in the provision of community mental health services.”



U.S. Department of Justice
Civil Rights Division

JMS: JP: JP: LL
DJ 168-61-30

Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

March 11, 2015

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

John Dunbar
Markowitz Herbold PC
1211 SW Fifth Avenue, Suite 3000
Portland, OR 97204-3730

Re: Oregon's Status Resolving the U.S. Department of Justice's Investigation into
Oregon's Mental Healthcare System

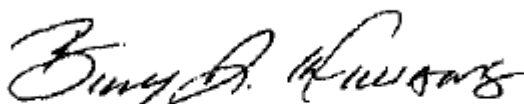
Dear Mr. Dunbar:

We write in connection with our ongoing negotiations with state officials regarding the U.S. Department of Justice's investigation of Oregon's compliance with the integration mandate of Title II of the Americans with Disabilities Act ("ADA") and *Olmstead v. L.C.*, 527 U.S. 581 (1999), as it applies to adults with mental illness. As anticipated in our November 9, 2012 letter, the Department and the State continue to work cooperatively to resolve our investigation. The

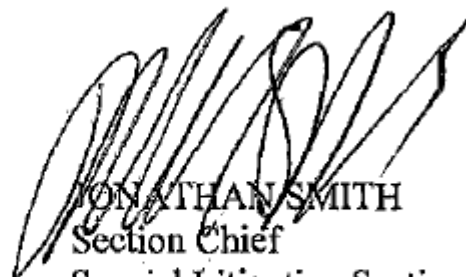
Conclusion

This is a critical time for the reform effort. While we are encouraged by some of the State's efforts, there are key areas of community-based services where the State needs to increase its efforts to achieve compliance with the ADA's integration mandate. Those investments are both evidence-based and provide the public health system a significant cost savings to institutional care. We urge the State to be ambitious in developing the high-intensity community services and supports that are necessary so that Oregonians with serious and persistent mental illness can live in the most integrated setting appropriate to their needs.

Sincerely,



BILLY J. WILLIAMS
Acting United States Attorney
District of Oregon



JONATHAN SMITH
Section Chief
Special Litigation Section
Civil Rights Division

Transformation and Innovation



Reimbursement and parity

- MHPAEA
- ORS
- ACA and EHBs
- Expanded Medicaid
- Medicaid parity



Reimbursement



Active Marketplace

Behavioral Health and Other Rumblings From JPMorgan 2015

After conversations with numerous health care private equity funds and lenders at the JPMorgan Healthcare Conference, we can report that the behavioral health sector continues to generate a great deal of buzz. In addition to some of the widely reported multifacility large investments, there is much more interest from funds in serial acquisitions of discrete facilities or operations, say attorneys with McGuireWoods LLP.

Active Marketplace

- “Bullish Behavioral Health Market Drives Investment”



As emergency rooms fail in treating mental health, systems create new plans, centers



Enloe Medical Center, a 298-bed standalone nonprofit hospital in Chico, California, is the only voluntary acute care mental health program for adults north of Sacramento all the way to the Oregon border. More than 80 percent of emergency room physicians say the mental healthcare systems in their regions are dysfunctional, and do not adequately serve patients, according to a survey done in December by the



JoNel Aleccia

State's psychiatric care changes still not enough, say some experts

Originally published March 21, 2015 at 6:45 pm | Updated March 22, 2015 at 10:49 am

Nearly three months after the start of a ban on psychiatric boarding in Washington state, critics say the fix is no more than a “Band-Aid,” but advocates say it’s the most progress they’ve seen in decades.

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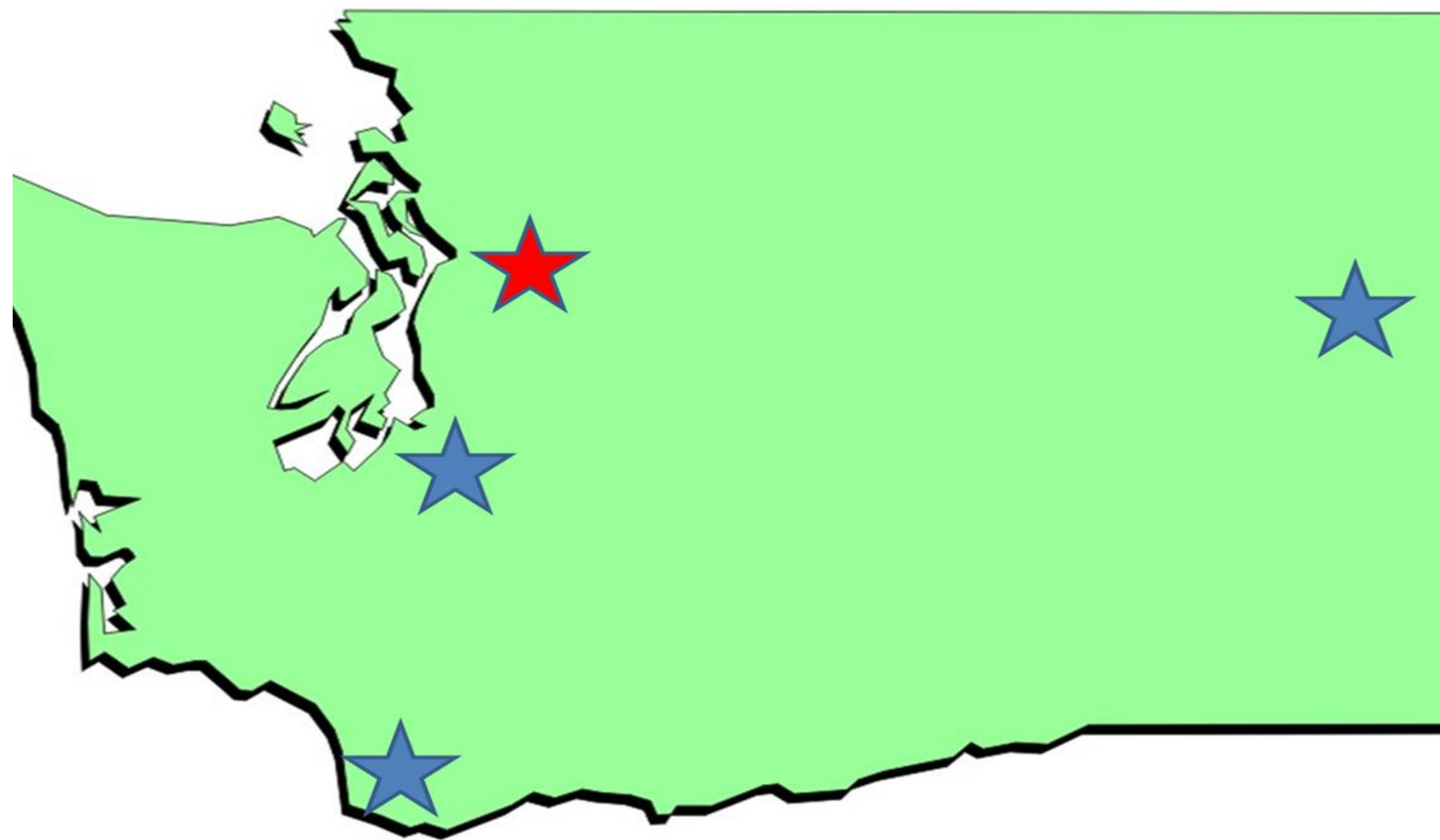
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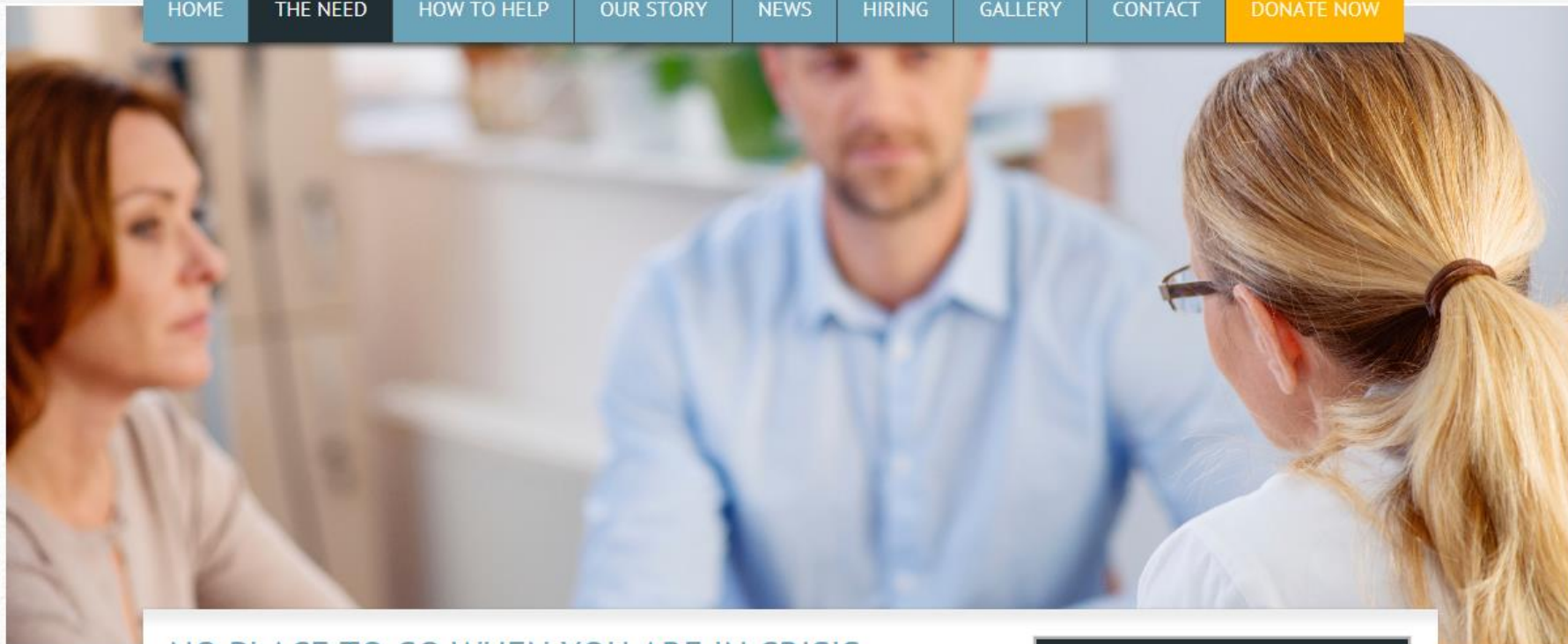
Nearly three months after the launch of new rules banning the warehousing of mentally ill patients in Washington state and after millions in new spending to boost care, experts in psychiatric evaluation and those on the front lines say the revamped system is off to an uncertain start.

The state Supreme Court [ruled last August](#) that it is unconstitutional to detain and hold psychiatric patients in settings such as emergency rooms without providing appropriate treatment. In the wake of that decision, critics charge that some detained patients are receiving only “Band-Aid” mental-health care — while others who should be held are being turned away, even when they might pose



Changes in Oregon

- Unity Center for Behavioral Health
 - Alameda Model
- Providence Willamette Falls Child Adolescent Psychiatric Unit
- Providence Milwaukie Geropsych Unit
- Increase in beds at Oregon State Hospital



NO PLACE TO GO WHEN YOU ARE IN CRISIS

Our mental health system is broken. This has been documented in numerous studies by experts serving individuals and families affected by mental health issues.

We see it every day in Emergency Departments across the region – behavioral health patients stuck in an Emergency Department exam room waiting hours or days for a more appropriate care setting.

Our physicians and social workers are frustrated in trying to find services for patients who need immediate psychiatric care or are trying to transition back to their home or community.

We need to do better.

UNITY UPDATES

June 13, 2016

Golfers are invited to join the Unity Center Benefit Golf Tournament.

[Take a swing.](#)

May 2016

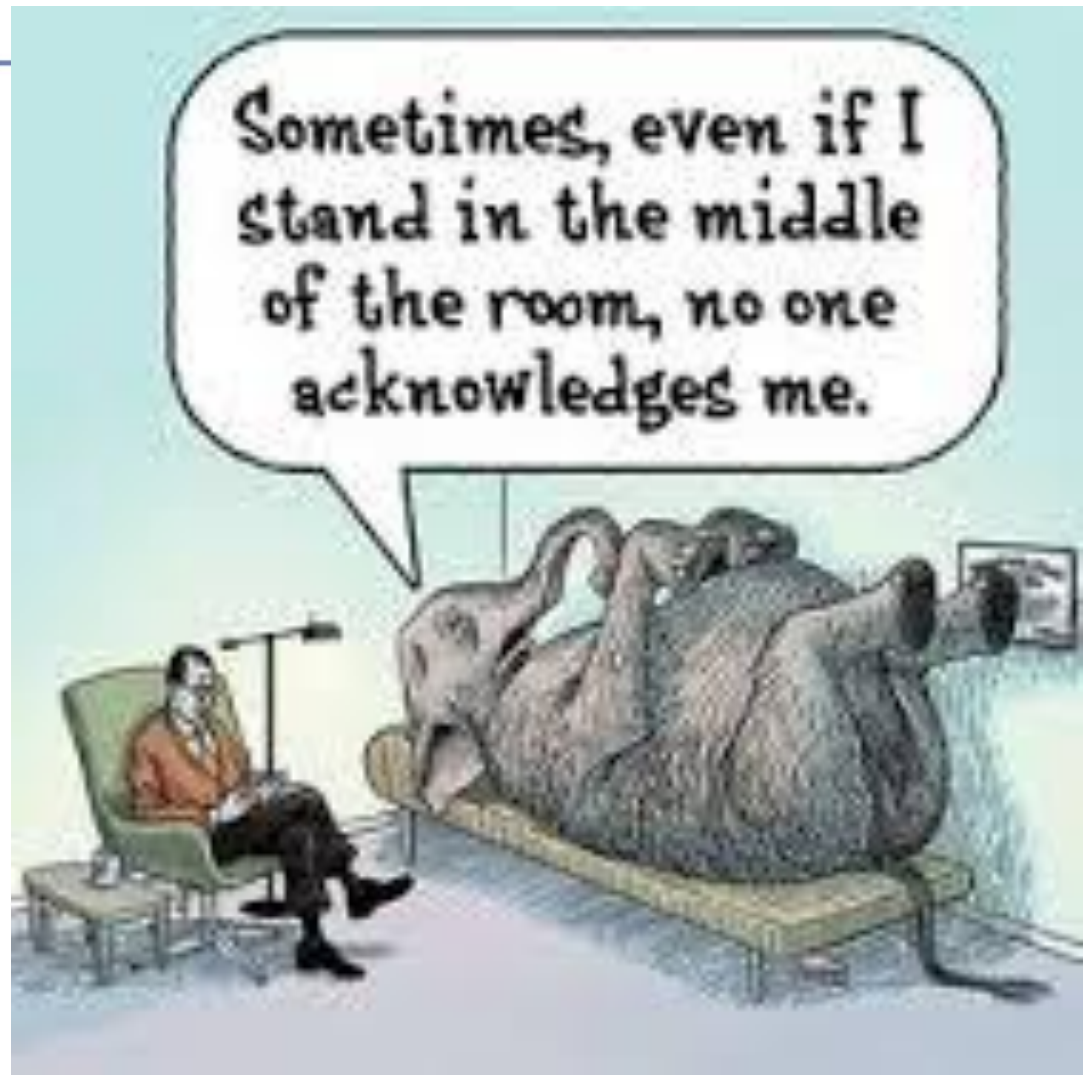
We thank the Oregon Community Foundation for supporting the Unity Center. Learn more: [OCF Annual Report.](#)

“A New Day” in Oregon

- January 2014 Medicaid expansion
- Number of adults receiving treatment for mental illness increased 60%

The Atlanta Journal-Constitution, 9/2015

Is it
enough?



Planning & Action: Approaches

- Early detection
- Internal teams
- External networks and relationships
- Bed registry



Planning & Action: Toolkit

- Internal behavioral health team
- Key contacts
- Current list of treatment beds
- Model for crisis triage of BH patient
- Forums

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASSIE CORDELL TRUEBLOOD, et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES, et
al.,

JUDGMENT IN A CIVIL CASE

CASE NUMBER: C14-1178 MJP

THE COURT HAS ORDERED THAT

Defendants are ordered to cease violating the constitutional rights of Plaintiffs and class members by providing timely competency evaluation and restoration services, and a permanent injunction is entered by the Court.

injunction is entered by the Court.

Dated April 2, 2015.

William M. McCool
Clerk of Court

s/Mary Duett
Deputy Clerk

In the Matter of the Detention of DW

“We affirm the trial judge’s ruling that the ITA does not authorize psychiatric boarding as a method to avoid overcrowding certified evaluation and treatment facilities.”

“Patients may not be warehoused without treatment because of lack of funds.”

Det. of D.W. v. Dep't of Soc. & Health Servs.,
181 Wash. 2d 201, 332 P.3d 423 (2014)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN

IT IS FURTHER ORDERED that the following additional relief is imposed against
DSHS and the State of Washington:

1. DSHS must explain to the court by sworn declaration why it disregarded this court's orders and denied respondent her Involuntary Treatment Act (ITA) and constitutional rights for two weeks.
2. DSHS must notify the secretary of DSHS, Kevin Quigley, and the assistant secretary for the Behavioral Health Administration, Carla Reyes, about this case. *+provide confirmation that notice was provided,*
3. DSHS must pay [REDACTED] the reasonable expenses, *based on affidavit* including attorney fees and costs, that it incurred in intervening in this matter to protect respondent's rights and oppose DSHS' frivolous defense, in an amount to be determined pursuant to ~~CR 54(d)~~ *+provide* CR 54(d).

DONE IN OPEN COURT this 10th March ~~February~~, 2016.

PRESENTED BY:

Jacqueline I Stam
JUDGE/COURT COMMISSIONER
JACQUELINE I STAM

In re the Detention of:

NO. 14-6-00174-6

ORDER GRANTING FRANCISCAN
HEALTH SYSTEM d/b/a ST. JOSEPH
MEDICAL CENTER'S MOTION FOR

Respondent.

The court has also heard the oral arguments of counsel. The court now makes the following findings:

1. DSHS and WSH failed to show ^{reasonable} cause why [REDACTED] should not be admitted to WSH;
2. ^{WSH Failed to do due diligence in assessing} There was no significant change in [REDACTED] medical condition from the ^{whether it was appropriate for [REDACTED] to b} time of WSH's initial refusal to admit her on May 7, throughout the remainder ^{admitted to WSH, and failed to conduct a} of her admission at St. Joseph Medical Center, up to and including WSH's ^{complete assessment of her;} determination on or about August 11 that she was medically acceptable for ^{determination on or about August 11 that she was medically acceptable for} admission and her admission to WSH on August 13;
3. DSHS's and WSH's refusal to admit [REDACTED] and their defense of this action was unsupported by law or fact;
4. DSHS's and WSH's defense of this action was frivolous and advanced without reasonable cause;
5. St. Joseph Medical Center submitted an itemization of the attorney fees and costs, and the attorney fees and costs it incurred are reasonable.

By _____

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

IN RE DETENTION OF G [REDACTED]

Cause No: [REDACTED]

ORDER ON CONTEMPT

(OR)

This matter having come before the Court upon the petitioner's motion and the Court having heard the argument of the parties and having considered the records and filed herein, now finds the State of Washington is in contempt of Court. ~~For~~ for failing to admit Mr. G [REDACTED] to WSH pursuant to the valid December 23, 2015 court order. The contempt can be purged by admitting Mr. G [REDACTED] to WSH by Monday April 11, 2016 by 4:30 p.m.


DATED this 8th day of April, 2016.
CRAIG ADAMS
COURT COMMISSIONER


Thereafter the State is ordered to pay sanctions at the rate of \$1500.00 per day until Mr. G. is admitted to WSH.


The Court reserves on the issues of ~~the~~ an award of fees or costs as well as where the sanctions should be paid.

The failure to admit Mr. G. to WSH was intentional. Petitioner/~~an~~ Intervener voluntarily withdrew the motion for Contempt or Sanctions against Telecare.

DATED this 8th day of April, 2016.


CRAIG ADAMS
COMMISSIONER COURT COMMISSIONER


Attorney for Plaintiff/Petitioner
WSBA# 26219


Attorney for Defendant/Respondent
WSBA# 26219
IN VOLUNTARY COMMITMENT
COURT 1
IN OPEN COURT

“We have replaced the hospital bed with the jail cell, the homeless shelter and the coffin.

How is that compassionate?”

Tim Murphy-R- PA

Questions?

- Eric Neiman

Eric.Neiman@lewisbrisbois.com

971-712-2802

- Sharon Peters

Sharon.Peters@lewisbrisbois.com

971-712-2807

