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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 RALPH COLEMAN, et al.,
12 Plaintiffs,
13 v.
14 EDMUND G. BROWN, JR., et al.,
15 Defendants.

No. 2:90-cv-0520 KJM DB P

ORDER

18 In an order filed April 19, 2017, this court directed the Special Master to “convene
19 a workgroup to focus on outstanding issues related to compliance” with the Program Guide
20 twenty-four hour timeline for transfer to a mental health crisis bed (MHCB). ECF No. 5610 at
21 14. In the same order, the court ordered the parties to file a joint report containing “(1) a
22 description of issues, if any, resolved by the workgroup and the substance of agreements reached;
23 (2) a focused and comprehensive list of issues that remain for resolution by the court; and (3) a
24 list of witnesses and other evidence the parties propose to offer at the evidentiary hearing” set in
25 the order. *Id.* at 15. The court advised the parties that it would “review the submission . . . and . . .
26 advise the parties if it is modifying the scope of any evidentiary hearing.” *Id.* The purpose of
27 the evidentiary hearing is “to address achievement of full compliance with the twenty-four hour
28 Program Guide transfer timeline to mental health crisis beds.” *Id.* at 14. Originally set for

1 August 29, 2017, *id.*, the evidentiary is now set for September 28, 2017 at 10:00 a.m. ECF No.
2 5670.

3 In their joint report, ECF No. 5669, the parties present three issues to the court for
4 resolution. First, defendants propose that the twenty-four hour timeline for transfer to an MHCB
5 should not commence until a clinician has completed an in-person assessment of a patient
6 identified by staff as needing MHCB placement, and that for any request “made during after-
7 hours when the institution does not have a clinician on site to conduct an in-person evaluation, the
8 patient will be placed in Alternative Housing on one-on-one observation if necessary for patient
9 safety.” ECF No. 5669 at 8. Defendants contend a high number of rescissions of MHCB
10 referrals present an obstacle to compliance with the twenty-four hour timeline, and they contend
11 requiring an in-person clinical assessment will reduce this high rescission rate. *Id.* at 7. Plaintiffs
12 oppose the request, contending it “is not responsive to the Order and is instead an unwarranted
13 attempt to modify previously negotiated and resolved policies governing the use of alternative
14 housing before referral to a crisis bed,” that it would “inappropriately” revise and lengthen the
15 twenty-four hour timeline, and that there are better ways to address the allegedly high rescission
16 rates. *Id.* at 8.

17 The second issue tendered by the parties is when the twenty-four hour timeline
18 should start to run for patients who must be transferred to another institution in order to be placed
19 in a crisis bed. Defendants contend the timeline should run from the time of referral until the
20 patient is placed in a transport vehicle. *Id.* at 8-9. Plaintiffs oppose the request, contending that
21 the Program Guide requires timeliness to be measured from the time of referral to the time of
22 placement in a crisis bed and that delays caused by unforeseen transportation obstacles can be
23 addressed as exceptions to the twenty-four hour requirement. *Id.* at 9.

24 Finally, plaintiffs request additional relief from the court related to defendants’
25 tracking and reporting of MHCB referrals as an aid to ensuring compliance. *Id.* at 9-10.
26 Defendants contend their tracking system is adequate but have agreed to review their reporting
27 systems. *Id.* at 10.

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1 The parties have now filed opening briefs accompanied by evidence, and
2 responsive briefs. ECF Nos. 5677, 5678, 5679, 5680, 5686 and 5688. Plaintiffs also have filed
3 evidentiary objections to evidence filed by defendants. ECF No. 5687. The parties' submissions
4 raise a core issue that requires additional focused discussion, specifically, the effect of
5 defendants' current and ongoing shortfall in the number of both MHCBS and Acute Psychiatric
6 Program (APP) hospital beds on defendants' ability to comply with the twenty-four hour Program
7 Guide timeline for transfer to MHCBS. By this order, defendants will be directed to bring to the
8 evidentiary hearing a person or persons who can address this issue and who can, as appropriate,
9 discuss whether and how defendants can accelerate their planned development of additional
10 MHCBS.

11 Defendants currently have 427 MHCBS for male inmates and 22 MHCBS for
12 female inmates. ECF No. 5684 at 12. As of August 28, 2017, fourteen of the male MHCBS were
13 "redlined" and therefore unavailable, leaving 413 MHCBS available. *Id.* at 10 n.2, 12. The
14 Spring 2016 Mental Health Bed Need Study projected defendants would need 490 MHCBS for
15 male inmates in 2017 and 493 MHCBS for male inmates in 2018. *See* ECF No. 5542-1 at 116.
16 For female inmates, the projected need was 30 MHCBS by 2017 and 35 by 2018. *Id.* at 122.
17 The Spring 2017 Mental Health Bed Need Study projects an even higher need: 500 MHCBS for
18 male inmates in 2017 and 495 in 2018, and 34 MHCBS for female inmates in 2017 and 41 in
19 2018. Mental Health Bed Need Study Based on Spring 2017 Population Projections (2017 Bed
20 Need Study) at 14, 20.¹

21 The Bed Need Study projects two separate numbers for male MHCBS, one of
22 which is referred to as a "trued" bed need. *Id.* at 14. The "trued" number is lower than the
23 projected need based on 90 percent occupancy, and in the 2017 Bed Need Study is 470 for 2017
24 and 480 for 2018. This so-called "enhancement" has been used since the Fall 2011 Bed Need
25 Study, and is explained as follows:

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27 ¹ At the court's request, the Special Master has provided the most current bed need study.
28 The court will direct that it be filed concurrently with this order.

1 1. For the Male MHCB, EOP-GP, and EOP-ASU programs and the
2 Female EOP-ASU program, provided a “trued” bed need reporting.
3 This is an adjustment to the official forecasted bed need that
4 eliminates “double-counting.”

5 HCPOP conducts an analysis of pending lists in order to determine
6 current housing/level of care of those on the pending lists so that
7 adjustments could be shown to eliminate “double-counting.” For
8 example, an analysis of the APP pending list revealed that a
9 substantial percentage of the inmate-patients were residing in a
10 MHCB. A separate reporting of the “trued” bed need is shown in
11 the MHCB forecast with the observation that the beds used by those
12 inmate-patients on the pending list could be freed-up once adequate
13 APP capacities become available in the future.

14 2017 Bed Need Study at 5. For some time, defendants’ monthly status reports on waitlists for
15 access to inpatient care have suggested a need for additional male APP hospital beds, first with
16 increases in the size of wait lists for transfer to male APP beds and, more recently, a significant
17 number of patients waiting past Program Guide timelines for transfer to those beds. Until August
18 2017, defendants had approximately the number of male APP beds projected by the Spring 2016
19 Bed Need Study. The 2017 Bed Need Study projected a substantial increase in the need for these
20 beds, and in August 2017, defendants increased the number of male acute care beds from 360 to
21 402, see ECF No. 5684, which is close to but still below the forecasted need of 419 APP beds for
22 male inmates for this year. 2017 Bed Need Study at 10.

23 The foregoing suggests to the court there is a strong correlation between delays in
24 transfer to MHCBs and the number of available beds both for acute inpatient care and mental
25 health crisis bed care. Defendants acknowledge as much. *See, e.g.*, ECF No. 5680-10, Tebrock
26 Decl. ¶ 33. The court requires defendants to explain why they have not activated the number of
27 mental health crisis beds and acute inpatient care beds projected by their Bed Need Studies.
28 Defendants also present evidence that they have “acquired approval to build 100 new crisis beds
in Southern California within the next four years.” *Id.* ¶ 7. The court also requires defendants to
explain whether they can accelerate the building of some or all of these crisis beds.

29 IT IS SO ORDERED.

30 DATED: September 22, 2017.

