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Questions for DPW Budget Hearings

General Purchased Services Funding Concerns

County Children and Youth and Juvenile Probation offices are not required to purchase services from private providers. However, the majority (75-80%) of direct services - foster care, group home care, residential, as well as an array of therapeutic, support and in-home services, are purchased by counties from private agencies across the Commonwealth. These purchased services are paid for with a combination of federal, state and county dollars.

Questions

- In the Commonwealth Budget for 2008-2009, there was a 1 % COLA included for services purchased by counties. The legislative intent of this COLA was not met as providers report that only two counties increased some rates to include this COLA. What direction did OCYF offer to counties regarding increasing rates, use of state dollars and the COLA?
 - ✓ The Department of Public Welfare informed the counties of the legislative intent to provide a 1% COLA to providers; however with the absence of language mandating that the COLA go towards providers, DPW could not mandate the counties to pass the COLA to providers.
- More costs are being shifted to the county and, in turn, counties are looking to Private Providers to raise dollars to subsidize the increasing funding shortfalls for mandated services. How does DPW plan to address connecting adequate funding for mandated services to the direct service provider delivery level?
 - ✓ During the needs based budgeting process, DPW determines the need for counties to provide services to the children and youth in their care, including the provision of services through private providers. The counties in turn enter into negotiations and determine the provision of contract agreements with the providers, including the per diem rates. DPW does not set the individual contract rates.
- Actual costs incurred by private agencies are not being addressed, creating greater challenges to Private Providers' ability to continue service delivery. What is DPW doing to address the need for equity and adequacy of funds for purchased services? How is DPW directing counties in this regard - to meet legislative intent and to address the actual increased costs of private agencies?
 - ✓ The contracting process that DPW established in July 2008 and is improving for the fiscal year beginning July 2009, strives to address the inequity of reimbursement among the counties for services supplied by the same provider. Moreover under Pennsylvania law, the Department is charged with the responsibility that state reimbursement is the same for all county and children youth agencies who purchase the same service. The contracting review process allows DPW to fulfill this obligation.
- In the 2009-2010 budget proposal, OCYF indicated that \$11 million dollars has been restored from cuts to the OCYF 2008-2009 budget. An additional \$9 million dollars is being requested. Of this total, how much will be used to support addressing the actual increased costs of purchased mandated services?

- ✓ DPW does not have the authority to set the contract rates between providers and private agencies; absent a legislative directive to provide a COLA to providers, DPW cannot mandate that a county increase a provider's per diem rate.
- DPW regulations do not factor services delivered by private providers into caseload size standards of county children and youth agencies. This creates duplication of effort and forces the counties to incur unnecessary labor costs, directing disproportionate dollars away from direct service needs. What is DPW doing to review and clarify the respective roles and functions of the private and public sectors to recognize the duplication and move toward a more cost effective, efficient system that would direct more dollars to the service needs of children, youth and families?
 - ✓ DPW has begun to collect data to analyze this problem. DPW requested from all counties a one-day time study list of all of the personal who carry case loads and also the caseloads managed by their private providers. DPW will also ask for this information in the counties' submission of their needs based proposal for FY 10-11 due in August 2009. The Department hopes that this comparison will help provide a clearer picture of duplicative functions in the child welfare system and will lead to the discussions on how to implement a more efficient and effective system.

Contracting Practices for Child Welfare and Juvenile Justice Services OCYF Bulletin 3170-09-01 Residential Services Contract Documentation

Contracts governing the purchase of services are required by existing county fiscal regulations (Chapter 31 70), applicable federal rules and local county government requirements. 55 PA Code § 31 70.83 states that counties establish rates and negotiate costs with providers, and that counties conduct the process with providers in an open and reasonable manner. These contracts define the working relationship and payment process between private providers and the individual counties purchasing services. The Department of Public Welfare (DPW), Office of Children, Youth and Families (OCYF) is attempting to create fiscal and contracting requirements and impose them upon private agencies through a Bulletin process mandating changes in county contract language. Bulletins do have a legitimate role in offering clarification or interpretation of existing policy addressed in laws and regulations; however, the proposed OCYF Bulletin 31 70-09-01 Residential Services Contract Documentation - clearly exceeds this purpose. The Bulletin defines caps on administrative overhead, retained revues and occupancy levels that are not referenced in any applicable law or regulation. OCYF is also promoting a county review team process that supports collusionary efforts to set rates.

Questions

- Bulletins are to be used to clarify or offer interpretation of existing regulations and laws. The Residential Services Contracting Bulletin proposed by the Office of Children, Youth and Families (OCYF) clearly exceeds current regulations and law. Why is DPW Office OCYF using a Bulletin to try to "mandate" substantial changes in contracting practices? Why do you believe OCYF has the authority to require significant changes to the system, such as with Bulletin 3170-09-XX, without going through a regulatory change process?
 - ✓ Please see attached legal memorandum.
- Who was involved in the development of this Bulletin? How can the Department justify mandating these contract requirements that directly infringe upon the independent business operation of private providers?
 - ✓ The 09-09 Bulletin was developed by DPW and the US Department of Human Services, Administration for Children and Families (ACF). The 09-10 Bulletin was developed by a

workgroup consisting of DPW and county staff.

- Counties and OCYF staff have had months to offer input into this process yet providers, who are most directly affected, originally, only had three days to comment. This was extended from 2/23 to 3/12 after legislative intervention. The initial presentation was that many significant points were non-negotiable, although now OCYF is presenting that comments are welcome on all points.
 - ✓ When presented for comment, the Bulletin was in draft form and all comments were welcome. OCYF held six regional forums across the Commonwealth to afford anyone an opportunity to provide comments or ask questions. The comment period was extended to after the final regional forum.

- Why weren't the providers included from the beginning? How will the Department verify consideration of comments/input? Will the Department provide a clear and clean comparison of the draft bulletin, comments received and changes made, as is the usual practice with comments on regulatory requirements? Why not use the established and more transparent processes of proposing regulatory changes or amending current statute?
 - ✓ The parties responsible for payment were the original parties in the bulletin design team. After the bulletin was in draft form, it was released for comment. DPW plans to publish the comments received as well as those made at the forums. The Department will also provide a comparison of the draft and final bulletin for review. The regulatory process was not originally pursued because we wanted to implement the changes and believe that we have the authority to utilize the Bulletin process for these changes. However, as it is already the end of March, there may not be ample time for providers to make the necessary changes for the new fiscal year. As a result, we will delete the sections on retained earnings, administrative costs and occupancy rates in the final bulletin. We still believe we need to manage administrative dollars more tightly. However, we will make these changes through legislation with a proposed effective date of July 1, 2010 to ensure adequate time for a smooth transition.

- Does the state intend to set rates for services purchased by counties from private agencies? If so, doesn't this impinge upon county contracting responsibility and authority defined in regulation? The rates for any purchased service must be reviewed in the context of what is being purchased, specific county expectations and the outcomes delivered. How can OCYF support "setting rates" when there are such variables?
 - ✓ DPW is not setting Title IV-E or Act 148 rates; rather DPW is fulfilling its duty under the Public Welfare Code and Title IV-E to determine the allowable maximum reimbursement to counties for services the counties procure from private providers. Article VII of the Public Welfare Code, which governs funding of county children and youth agencies, requires state participation only in the "reasonable" costs of child welfare services. Indeed, the needs-based budgeting process is premised on reimbursement for reasonable expenditures. Thus, under the Public Welfare Code, OCYF has the authority and the responsibility to determine what a reasonable cost is and limit its reimbursement payments to that amount.

Use of Federal Dollars

DPW OCYF advocated for increased federal billing for services "maximizing the federal draw down" and now a number of federal audits are pending. Very little has been circulated by OCYF in writing regarding the 'settlement' with or 'requirements' being imposed by the Administration of Children and Families (ACF) on Pennsylvania. Yet, the fiscal and operations impacts of these decisions upon private agencies are considerable.

Significant changes related to fiscal reporting and budget details are being prescribed by OCYF as requirements for private agencies without benefit of written verification from ACF or OCYF that these changes are "required or if they meet with ACF approval.

- Without written documentation and a clear plan to support implementation, there is no accountability. Without written verification, Private Providers run the risk of incurring costs unnecessarily in complying with directives which may not be necessary or appropriate corrective actions. Where is the written documentation of terms between ACF and DPW?
 - ✓ DPW is still in negotiation with ACF; at this time we do not have any final written terms. The changes we made in July 2008 was our effort to demonstrate to ACF that we are moving in the direction they want, to assist our negotiations with them.
- Where is DPW's written work plan to guide Counties and Providers through continued efforts to maximize federal dollars? Since several DPW initiatives have fallen short of expectations, consuming significant time and energy at the county and Provider level, what supports confidence in the success of additional planned efforts to secure additional federal dollars?
 - ✓ There seems to be some confusion concerning the Department's intent of revenue maximization. The Department is not looking at maximizing federal dollars; rather we are looking to right sizing our federal revenue. The Standard Documentation Bulletin (3170) enables the Department to ensure that only Title IV-E costs are billed and a new Title IV-E invoicing system ensure that only eligible children services are billed to Title IV-E. These items have been implemented to ensure that the Department is only billing for children and costs that are eligible and ensure that the Department is able to retain this funding when an audit of Title IV-E funding is conducted.
- Non-profit agency fiscal information is already made available in audits and IRS 990 reports. For-profits agencies also provide program audits as part of the purchase of service contracting process. Why isn't this information sufficient as a foundation for addressing eligible costs for federal funding?
 - ✓ DPW agrees that these audits are informative however they do not provide the sufficient detail that is necessary to satisfy ACF because they do not have the level of detail that demonstrates compliance with the regulatory provisions in Title IV-E.
- Private Providers were challenged by the absence of clear guidance and direction from OCYF concerning changes to comply with ACF requirements prior to and during the current fiscal year. This has resulted in significant delays in finalization of contracts with counties as well as payments being made for purchased services. Services to children and youth have continued without disruption largely due to private agency borrowing and use of private funds. Many contracts are not signed and payments are now 3, 4 and even 5-6 months behind. What is OCYF doing to make sure that counties are paying the providers who have continued to deliver services without disruption?
 - ✓ This year was our first year implementing the changes to the contracting process for children and youth. We have all learned many lessons from this first year and DPW believes that the process proposed in the draft Bulletin and the bi-level training offered to

the providers and counties will greatly improve the process this year. The bi-level training is training for providers on how to complete the review forms with counties invited to participate and then a subsequent training for counties on how to review the provider material with an invitation to the providers to attend.

- Why is finalization of the fiscal forms and access to training once again running up against the OCYF defined deadlines for submission of this detailed, complicated information required from private providers?
 - ✓ The time frame was designed to help ensure that the counties have an opportunity to review the forms and every county has an opportunity to negotiate a contracted rate with their providers before June 30. The Department listened to concerns from providers about the first year's implementation and the delays in their payments.

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