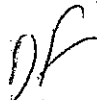


**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF GENERAL COUNSEL**

DATE: March 24, 2009

RE: Authority of OCYF to Limit Reimbursement to Counties for
their Purchase of Services from Private Providers via a Bulletin

TO: Richard J. Gold, Deputy Secretary
Office of Children, Youth and Families

FROM: Dan Fellin 
Senior Counsel

I. Issue

Does OCYF have the authority to issue a bulletin that (a) caps administrative costs at 15% of a provider's total expenditures for the purpose of determining a maximum reimbursement allowance and (b) uses 85% as the minimum occupancy rate to determine maximum per diem reimbursement allowances at residential facilities?

II. Short Answer.

Yes. There is both statutory and regulatory authority for OCYF to limit administrative costs and assume a minimum occupancy rate in calculating maximum per diem reimbursement rates. The Public Welfare Code and regulations require state reimbursement for "reasonable" costs, including costs of purchased services. These costs must be reasonable in comparison to past trends and also to the costs of comparable county children and youth agencies. Regulations also grant OCYF the authority to specify the information that counties must provide in their needs-based budget requests and to publish a regulation, directive, or memorandum to set the maximum level of state reimbursement for purchased services.

III. Discussion.

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. See, e.g., 62 P.S. §§ 704.1(a)(2),(3),(5), (7), (8), 709.2(b). 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 is a reasonable cost. Pennsylvania Human Relations Comm'n v. Norristown Area Sch. Dist., 473 Pa. 334, 374 A.2d 671 (1977). By limiting the reimbursement for administrative and per diem costs to reasonable levels, OCYF can allocate resources to direct state funds toward the actual provision of services to children in placement. Providers and county children and youth agencies are best served by having advance notice of the reasonable level for which state reimbursement will be available as they negotiate contracts for purchased services.

Regulations applicable to the budget and reimbursement process for county children and youth agencies carry through on the fundamental principle that costs must be reasonable. 55 Pa. Code § 3140.17(c) sets forth the criteria on which OCYF will determine whether a county’s needs-based budget plan is reasonable. In particular, OCYF must consider whether service levels and services costs for purchased services are reasonable compared with current and prior year trends and with other comparable counties. See 55 Pa. Code § 3140.17(c)(6). OCYF may determine that some expenditures are unreasonable and therefore not reimbursable with state funds. See 55 Pa. Code § 3140.17(d).

Regulations also give OCYF the authority to obtain information necessary for the development of needs-based budget allocations. 55 Pa. Code § 3140.16(a) requires that county children and youth agencies' needs-based budget plans and estimates “contain the forms and information specified in the forms and instructions bulletin published annually by the Department.” OCYF therefore can instruct county agencies to identify administrative costs for purchased services and to calculate private residential providers' expenses based on a minimum 85% occupancy rate.

Other regulations relating to allowable costs also give OCYF authority to limit state participation in costs of purchased services. The maximum level of state participation “shall be the lesser of:

- (1) That established by regulation, directive, or memorandum published by the Department.
- (2) That charged another government agency which purchases the same service from the provider agency.
- (3) That charged the general public as evidenced by a schedule of charges officially adopted by the provider.”

55 Pa. Code § 3170.84(a)(1)-(3). OCYF can, therefore, publish a directive specifying the maximum level of state participation in administrative costs for purchased services and a minimum occupancy rate in calculating the maximum per diem reimbursement. In that way, OCYF can ensure that the state reimbursement is the same for all county children and youth agencies who purchase those services. Publication of a bulletin limiting administrative and per diem costs will also help county children and youth agencies comply with their regulatory responsibility “for obtaining the best possible rate for purchase of services.” See 55 Pa. Code § 3170.85.

Courts have held that the Department's interpretation of the Public Welfare Code is entitled to great deference as long as that interpretation is not “clearly erroneous.” St. Elizabeth's Child Care Center v. Dep't of Public Welfare, No. 23 MAP 2007, _ Pa. __, A.2d __, 2009 Pa. LEXIS 256 (Feb. 19, 2009). The Department’s interpretation of its powers, as set forth in its regulations, is not clearly erroneous and, therefore, entitled to “great” deference.

If you would like to discuss this matter further, please feel free contact Dan Fellin at 717 705-0614.

c: Allen Warshaw