

PCCYFS Response to DPW's proposed changes to the PA Welfare Code

On behalf of the private provider community, PCCYFS respectfully presents the following concerns, challenges and recommendations specific to the Department of Public Welfare's proposed changes to the PA Welfare Code. These include:

- A proposed cap of 3% of gross retained revenue or gross profit
 - A proposed cap on reimbursement to counties for indirect administrative expenses of 15% beginning 7/1/10, 14% beginning 7/1/11, and 13% beginning 7/1/12, and
 - A proposed minimum occupancy rate of 85% for each residential service facility as the basis of determining reasonable cost of services beginning 7/1/10.
 - DPW is also proposing that it be authorized to limit the reimbursement to counties for the compensation of private agency chief executive officers for combined cost of salaries and benefits.
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- A pre-determined and defined set of expectations, such as the proposed caps on administrative expenses and retained revenues, is not an acceptable starting point for an open discussion of changes needed to reach an as yet undefined or clearly articulated goal. The proposed changes affecting the business operations of private agencies are not supported by data or experience nor do they support increased quality, outcomes or service access. Private providers request a clear statement and identification of the problem to support constructive exploration of responsive and appropriate solutions.
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- Adequate time must be provided for open discussion to occur and stakeholder comments must be thoughtfully solicited and seriously considered as part of the developmental process related these significant proposed changes. Private providers submitted numerous comments and offered input at stakeholder meetings across the Commonwealth when these provisions were included in draft Bulletin. Assurances were offered by OCYF that all comments received, both verbally and in writing would be compiled and shared. To date, this has not occurred.
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- As stated in the House Appropriations Committee hearing on March 3, 2009, OCYF is pursuing this effort to set caps on indirect administrative expenses and retained revenues as a cost-containment step. Based on this presentation, the process must begin with documentation of actual costs incurred in providing mandated services to support projections of cost savings. While "cost containment" has been referenced as a consideration by DPW in advancing the proposed changes, there have been no cost savings projections or comparative data provided to validate this approach. Many private agencies are operating at significant losses, have extended lines of credit to remain operational and have not been able to negotiate any increases for rates of services despite escalating costs. This reality must be factored into discussions.

- Counties already freely exercise cost containment options – they can simply choose not to purchase a service or not use a particular provider. Counties have historically paid contracted rates that are lower than the actual costs of providing the services, which is another cost-containing mechanism used by counties.
- The proposed changes address provisions which will affect the contracting relationship that exists between providers and the counties choosing to purchase services. County contracts vary in the standards, defined deliverables and scope, given authority exercised by county solicitors, commissioners, C&Y administrators and Chief JPOs.
- While there is an established connection between counties and DPW as to the costs of purchased services in which they will participate, these provisions are addressed in regulations, Chapter 3140.21-.22 and Chapter 3170.84 (references the maximum level of reimbursement in which the Department will participate when services are provided on a unit of service basis). This presents the indirect connection between private providers and DPW.
- The current efforts to incorporate changes into statute are misdirected. If DPW believes that there is merit to these changes, they should be reflected as regulatory changes to the Chapters 3140 and Chapter 3170 and removed from the proposed legislation.
- The full cost of services purchased by counties has been consistently ignored in the fiscal reporting process in recent years, and remains ignored even as it has been redefined this Fiscal Year and as proposed for next Fiscal Year. Mandated services are not fully supported by public dollars, nor do the counties or state engage in assuming any of the risk involved in program operations of private providers.
- The public sector has become dependent upon the subsidy offered by private agencies for publicly mandated services without recognition of the value, extent or negative impacts that would quickly occur if such funds were not voluntarily contributed for these purposes. Private dollars, if available, are also often used to enhance program designs to support improved quality, voluntary accreditation, increased staffing ratios, facility renovations and other direct socialization, recreational health, treatment, and vocational/occupational experiences for children and youth served.
- Acceptable uses of retained earnings of non-profit agencies are addressed in federal IRS rule – they must be reinvested in the program operations. Ultimately, the reinvestment of retained revenues falls within the scope of authority of governing Boards of Directors. The authority and fiduciary responsibilities of Boards of directors as defined by the IRS cannot be negated by Bulletin, regulatory or conflicting statutory directives.

- Imposition of retained revenues limits in other service areas are based on program funding or payment of actual costs. If DPW/OCYF is committed to addressing the full costs of care and/or sharing the risks assumed by providers when revenues fall significantly short of operating costs, the discussions would be framed very differently. Since these conditions do not exist in child welfare/juvenile justice, private providers strongly oppose the proposed limits on retained revenues.
- Inclusion of reasonable indirect administrative costs in the calculated rate for purchased services is supported as a good business practice. However, development of definitions and determination of deemed “reasonableness” must be inclusive, based on Pennsylvania experiences and current mandates, and framed in consideration of the diversity of organizational structures in place. In the absence of an open and inclusionary process to define costs centers, gather historical data, review budget submissions and engage in focused debate, the establishment of a cap on indirect administrative costs is strongly opposed.
- The establishment of minimum occupancy percentages should be a small part of a much larger systemic discussion of need, utilization, access and development of transition and community based service options. While verbal assurances have been offered by OCYF that emergency/planned increases in adjusted occupancy levels is possible, clear written directives and assurances are needed as is a broader discussion of the service array, access and location distribution of services. Occupancy minimums should be established based on historical usage and current trend information and not based on a fixed percentage.
- CEOs and Executive Directors are contracted or hired “at will” employees based to the high level of skill and expertise they possess. With very few exceptions, they are not paid exorbitant salaries but are compensated based on competitive marketplace experiences. If they oversee systems, multiple entities or geographic locations, their compensation is adjusted to reflect this. They assume significant responsibility in the organization and visibility within the communities in which they work. They are fired for failure, and failure is often judged by the bottom line. They labor long hours and their professional success is directly linked to the level of success their organization achieves.

DPW is proposing caps on compensation in which they will participate, without open review of the data, without open discussion and premised on references to a few exceptions to the clear majority of situations. The language as presented in the proposed statutory amendments references standards in county MH/MR practice which may or may be relevant. Private providers strongly oppose efforts to apply standards developed for another categorical service without opportunity for open review of the data and open access to the MH/MR standards referenced.

- Providers request that OCYF disclose projections of cost-savings anticipated from imposition of a cap on indirect administrative expenses and retained revenues. These projections could then serve as a basis for discussions of actual costs incurred by providers, unfunded mandates imposed upon providers, individual program losses, wasted resources due to redundant and duplicative data and fiscal reporting requirements and the need to amend Acts 148/30 to ensure that funding as allocated by the legislature connects with the direct service level and private providers.

- Interest charges incurred by private providers as a result of using lines of credit to remain operational will never be recouped. Experiences with delayed payments and/or contracts add hard costs to agency operations. Although OCYF has issued directives to counties regarding contract terms and has clearly reinforced their responsibility to approve maximum allowable rates for state and federal participation, they have been noticeably silent in addressing timely payments by counties for purchased services. To the credit of the private provider community, services to vulnerable children, youth and their families have continued without disruption.

- FY 08-09 has been filled with challenges, confusion, inconsistencies in fiscal compilation and interpretation, and delays in contracts execution and payments.
- By OCYF acknowledgement during recent fiscal training sessions, data compiled on their restricted website is incomplete. At three quarters into FY 08-09, contracted rate information and supporting documentation are not completely posted. There are still many unresolved issues related to fiscal packets as submitted, inconsistencies in rate determinations and finalizations, and outstanding issues pending.
- Contacting requirements often change from year to year based on needs, priorities and guidelines generated by OCYF. Incorporating contacting requirements into legislation establishes rigid standards that cannot be modified easily to respond to economic considerations or evolving service delivery trends.
- Contracting requirements should not be framed on suppositions, incomplete data, dated requirements borrowed from other systems or unsupported fiscal projections or assumptions that are disconnected from practice and reality. The relationships established by contracts clearly rests between private provider and the counties choosing to purchase services.
- The data sheet provided at the initial meeting of the DPW workgroup raises numerous questions and concerns as it is not framed in the correct context nor is enough detail included to support confidence in using this as a frame of reference for discussions. Further discussion with OCYF confirmed that it presented 115 programs (not agencies) with rates in excess of \$200.00 as reviewed directly by OCYF.
- OCYF has presented that they are responsible for addressing reasonableness of expenditures -“A cost may be considered reasonable if the nature of the goods or services, and the price paid for the goods or services, reflects the action that a prudent person would have taken given the prevailing circumstances at the time the decision to incur the cost was made.” The data sheet circulated by OCYF includes a program reflecting 137% indirect administrative expenses. Approval of a program rate reflecting 137% indirect administrative expenses does not reflect reasonableness or prudent judgment. Further discussions with OCYF staff indicated that this service was program funded skewing the data even more.
- Discussions related to occupancy calculations and preparation of budgets are still unresolved. A number on a certificate of compliance may have little bearing with actual utilization and the basis for budgeting. OCYF has presented that budgets include unused beds however, it is impossible to make this determination from the data as presented.

- Given the inaccurate, incomplete and inconsistent data available only to OCYF and counties, providers are placed in an untenable position of refuting inappropriate interpretations of bad information without benefit of direct access to the supporting documentation.
- Recent fiscal trainings have supported changes in reporting practices by providers, as there is a clearer understanding of rationale, use, relationship, background and process. However, the data this year will still be flawed due to the limited timeframe for preparation of fiscal packets and continuation of a steep learning curve.
- It is strongly recommended that efforts to compile and analyze data continue through FY 2009-10 and 2010-11 to establish a valid foundation for any changes considered in state reimbursement practices and that such changes be addressed in proposed regulatory language based on open and inclusionary input.