



Pennsylvania Council of
Children,
Youth, and Family Services

Monday Morning Update

Special Edition

- Compromise Reached – Final Language Pending
- Needs Based Plan and Budget Bulletin Released
- Allegheny County Presentation of Rates and Contracting Addressed

Happy Memorial Day....

Appreciating that the focus of recent attention has been on out-of-home placement services, the reality that changes in one part of the child serving systems have direct impact on every other service cannot be minimized. Read on for a recap of the events of.....

THE WEEK THAT WAS –

Definition of Compromise – Agreement - a settlement of a dispute in which two or more sides agree to accept less than they originally wanted; Do a deal – bargain – negotiate – meet have way – find the middle ground.

Definition of Negotiate – Discuss terms of agreement - to attempt to come to an agreement on something through discussion and compromise; navigate something successfully - to manage to get past or deal with something that constitutes a hazard or obstacle

This past week has been an immersion into negotiations in an effort to frame safeguards for private providers and ensure continued access to a full array of services by children, youth and their families. Following direction from PCCYFS members framed during a conference call on May 15, 2009, a position paper was distributed to the members of the workgroup convened by DPW to address the provisions of HB 1351. This bill contained provisions that were strongly objected to by affected providers including:

- The use of 85% occupancy as the basis for determining per diem rates
- A proposed cap of 15% on indirect administrative costs,
- A proposed cap of 3% on retained earnings or profits, and
- A proposed cap on reimbursement for compensation for the executive directors of private provider agencies, with DPW authorized to determine the maximum total salary and benefit compensation for which it would participate in reimbursement.

During the challenging discussions within the DPW workgroup, it became clear that a maximum for indirect administrative costs was a priority along with the occupancy calculations. The continuing provider position that these requirements were misplaced in the House Bill and should be totally removed was again reinforced. It was not viewed as a counter offer or compromise as it clearly presented the position of objecting to all proposed provisions without alternatives other than to remove the language from the bill. DPW was equally adamant that provisions would remain in the proposed legislation in an effort to demonstrate accountability and proper stewardship of public funds.

The arguments against including this language in statute were not heard nor was the argument that this presented governmental intrusion into private agency operations. The reality that providers already comply with numerous levels of "government intrusion" was hard to refute given licensing, county contracting provisions, federal fiscal reporting, experiences with other service systems etc. For the first time, DPW identified potential savings of \$11 million in this effort. There was no detail offered as to how this was calculated.

Efforts were made on behalf of providers to remove the inclusion of a "licensed number" of beds from the occupancy calculation without success. There was willingness to alter the utilization number used, guarantee in legislative language the provider's ability to adjust the licensed numbers to reflect reality, and offer exemptions for shelter/detention programs, and discuss special considerations for smaller programs.

An alternative to the indirect administrative percentage was offered at 25%, which was not well received. The reaction was that it was impossible for state or county leadership to support funding for any program in which \$0.25 of each dollar was being diverted away from direct services for children and being used for overhead/operations. This led to a "compromise" of 20% as a starting point for more serious negotiations. While the decreasing amounts originally proposed by DPW in the legislation (15-14-13%) were not supported by the workgroup either, the long-term goal of reaching a 15% level of indirect administrative costs clearly was deemed reasonable by the workgroup except for provider representatives.

At the conclusion of the meeting, it was clear that DPW intended to proceed with including some version of these provisions in their proposed legislation. Even with the outstanding advocacy efforts exerted by PCCYFS members and the attention growing in the legislature, valid concerns were still present as to how legislative voting might fall during the final hours of anticipated contentious deliberations of the budget bill which will run concurrently with HB 1351. Representatives and Senators are looking for every dollar that can be saved and every corner that can be cut. It will be all too easy for last minute deals to be cut, party lines to hold, favors to be called and the objectionable language to remain in the bill, intentionally or by oversight, in the final hours of budget deliberations. The legislature has apparently asked DPW to wrap up their proposed amendments to HB 1351 by Memorial Day so timeframes tightened.

Given the absence of support from others at the DPW workgroup table for the positions presented on behalf of providers, and at the expressed request of DPW to have PCCYFS once again explore options and try to gain support from private providers on a compromise position, the focus turned quickly to intense communication with the PCCYFS Board and member agencies. During an emergency PCCYFS Board of Directors conference call held on Wednesday morning, the Board determined that it would be in the best interest of Council membership to modify its prior position of insisting that the child welfare provisions contained in HB 1351 that would adversely impact private agencies' operating and fiscal policies be withdrawn. The position shift was made due to the lack of support for PCCYFS' position from any other Workgroup members, especially in light of the current economic and political environment.

Along with child welfare provisions that have had focused attention from the DPW Workgroup, HB 1351 also contains language regarding new taxation of Managed Care Organizations and provisions for a Pharmacy Carve-out, which are touted by the Governor's administration as being capable of annually generating \$800 million in new tax revenue for the Commonwealth. In an environment when the Commonwealth is facing an estimated \$3 billion revenue shortfall this fiscal year, HB 1351 is very attractive to legislators as a partial solution to some very challenging budgetary problems. Faced with the very real possibility that HB 1351 could become law in spite of intensified lobbying efforts by PCCYFS member agencies, the Board determined that a compromise resolution would be preferable

to the threatening outcome if HB 1351 passed in its original form. Consequently, the Board informally endorsed a wide ranging set of compromise recommendations that proposed withdrawing some of the HB 1351 provisions and modifying others to make them more acceptable to provider agencies.

The general membership of PCCYFS held an emergency conference call on May 20 in order to receive updates on developments involving the Workgroup convened by Secretary of Welfare Estelle Richman to discuss the proposed changes to the Public Welfare Code in HB 1351. During the conference call, members clarified background positions and discussions of the Workgroup that led to the Board's current position. Many questions posed explored predictions of potential outcomes if Council members continued their legislative advocacy against HB 1351. There was general consensus that such a strategy would be very risky, and that managing the potential fiscal impact on membership was critical.

Discussion ensued regarding whether OMB Circular A-87 or A-122 was more appropriate for providers to define indirect costs. While DPW believes A-87 would be less restrictive and more open to interpretation for providers, many non-profit providers already need to comply with provisions as defined by A-122 due to their status as sub-recipients of federal funds.

As the conference call progressed, many agency representatives voiced their general agreement with the revised Board position on HB 1351 and conceded that they could probably adjust operational and fiscal practices given sufficient time and training. Possible modifications and concessions to the Boards' 13 points were discussed, and absolute "must" conditions were identified. Concern was voiced that even if agreement is reached with DPW on revised language for HB 1351, PCCYFS has absolutely no control over last minute legislative amendments which may occur.

The details on the negotiations are referenced below by chronological and topic area in an effort to fully disclose the offers/counter offers and final agreed-to provisions as they evolved over a forty-eight hour period. The PCCYFS Board strongly supported a risk-controlled approach to reaching compromise and the final negotiated terms are viewed as including appropriate safeguards for the interests of the diverse population of PCCYFS members affected – large, small, single service, multi-dimensional, single county or statewide contracting history. If reliving history is not of interest, skip to the end for a summary of the changes that will be made to HB 1351.

The initial compromise offered by PCCYFS on May 20 included the following points:

1. DPW agrees to provide the details of how the costs savings projections of \$11 million were calculated - the formula and figures used.
2. DPW agrees to using a portion of this "savings" to fund training and technical assistance for private providers over the next two years to support to elevated business and fiscal practices and assist providers in defining and allocating direct and indirect expenses. This training/TA would be provided by an agreed upon CPA/Specialist, not DPW.
3. Indirect expenses would be capped at not more than 20% for FY 2010-2011, 18% for FY 2011-2012 and remain steady at 15% from 2012-2013 on.
4. Occupancy calculations would be based on 85% the most recent year of actual (audited year) utilization data as reported on the IV-E fiscal forms divided by the denominator of licensed number of beds times 365 days.
 - a. Providers will determine the licensed number of beds based on their calculations of utilization, staffing ratios etc.
 - b. Providers will be offered guarantee of DPW approval of requests to increase licensed numbers in statutory language - 24 hours for emergency requests and 5 business days for planned increases. If the request for an adjustment is made, it would be processed without discretion exercised by DPW as long as physical space and staffing was in place.
 - c. Shelter and detention facilities are exempt from these occupancy requirements

d. Short programs (diagnostic etc.) of less than 45 planned days are excluded from these occupancy requirements

e. Small facilities of less than 15 residents would be excluded from these occupancy requirements

f. A special circumstances exception language/process will be included

5. All language regarding any restrictions/caps on retained revenues or gross profits is stricken and will not be reintroduced/revisited in any form during the remainder of this administration.

6. All language regarding limits on executive compensation is stricken and will not be reintroduced/revisited in any form during the remainder of this administration.

7. Language addressing safeguards for providers from any retaliatory act or retribution by DPW through imposition of additional mandates (on counties or providers) relating to purchased services imposed through Bulletin or other vehicle or through new interpretation/application of regulations during licensing reviews will be included.

8. DPW will approve access for PCCYFS to the data base containing the rate information and will provide electronic copies of county needs based plans and budgets as they are approved submitted to support transparency.

9. DPW will agree to support amendments to Act 30 of 1991 as proposed by PCCYFS as part of this counteroffer. Anticipated cost savings for counties realized from transitioning away from the use of placement services to other in-home or community-based services, have supported discussion as to "reinvestment" language and the ability of counties to keep these dollars. This provides a pool of funds that could be used in part to support a planned transition to reduce the differential between rates paid and the costs incurred. Counties could be purchasing less service but paying a more realistic rate for the services they do purchase.

10. Timeliness of payments by counties to providers for purchased services must be part of the legislation. language allowing providers to recoup the full costs of interest charges incurred as a direct result of late payments (in excess of 90 days) from counties. Providers would need to clearly document submission of timely and accurate invoices.

11. OMB Circular A-122 and its correlating circular addressing for-profits will be used as the definitional base for indirect costs.

12. DPW, and any or all agents acting on their behalf, will agree to immediately stop negatively referencing out-of-home care as bad, harmful to children/youth or not showing positive outcomes.

13. DPW/OCYF will immediately stop the coercive use of licensing compliance reviews and/or child abuse investigations.

The DPW counter offer and follow-up responses from PCCYFS exchanged with DPW between the evening of May 20 and the afternoon of May 21 are included the following points: (DPW responses/proposals in black type/PCCYFS counter responses in blue

DPW response and PCCYFS counter offer

Changes to be Reflected in the Legislation

1. Indirect expenses would be capped at not more than 15% beginning in FY 2010-2011.

There will continue to be strong opposition to using the requirement of 15% for the initial year of implementation. This has been one of the major issues of contention and there needs to be a phase in process to reach the 15 % cap by 2012-2013. While we believe that many agencies are already operating at this level, allowing for a transition period for those providers that need to make adjustments is reasonable. As discussed earlier today, the alternative of "Indirect expenses would be capped at not more than 17% for FY 2010-2011, 16% for FY 2011- 2012 and remain steady at 15% from FY 2012-2013, is offered as the final option that private providers can accept. It meets the goal of accountability in a reasonable manner.

2. **Effective 7/1/10**, occupancy calculations would be based on the most recent year of actual (audited year) utilization data as reported on the IV-E fiscal forms divided by the denominator of licensed number of beds times 365 days for a minimum of 85%.
 - a. Providers will determine the licensed number of beds based on their calculations of utilization, staffing ratios etc. Providers agree to reduce licensed capacity to meet occupancy rate requirements and calculations will be based on the adjusted capacity.
 - b. Providers will be offered guarantee of DPW approval of requests to increase licensed numbers in statutory language - 24 hours for emergency requests and 5 business days for planned increases. If the request for an adjustment is made, it would be processed within existing licensing rules and regulations exercised by DPW as long as physical space and staffing was in place.
 - c. Shelter and detention facilities are exempt from these occupancy requirements
 - d. Small facilities of less than 10 residents would be excluded from these occupancy requirements. **We cannot agree to less than 12 residents based on common 1:6 staffing configurations and calculations. Operating at 2 fewer children than maximum capacity at 12 calculates at less than an 85% occupancy.**
 - e. **Short programs (diagnostic etc.) of less than 45 planned days need the protection of exclusion from these occupancy requirements due to cyclical variations in utilization.**
 - f. **A special circumstances exception language/process will be included allowing DPW to grant exceptions where appropriate.**

Changes in licensed capacity, although to be completed within 1 or 5 days, would still have to go through normal licensing procedures. This has historically meant new applications, inspections, etc. before the increase can occur and we believe this to be reinforced by your language above – “would be processed within existing licensing rules and regulations exercised by DPW”. The timelines reported by providers in the past have been considerable – up to 2 months for a relatively simple change. These experiences support valid concerns voiced by providers even within the new timeframes that will be included in the legislation

As verified with an OCYF Regional Office the process involves two pieces of paper:

1. A new application, and
2. An explanatory letter

Dependent upon the nature of the application, but especially for increased licensed capacity requests, regional DPW staff now must make a site visit to insure that adequate square footage in living and sleeping quarters is available to accommodate the added clients and still meet regulatory guidelines. For requests to reduce licensed capacity, site visits are seldom necessary.

Either way, once regional staff has made a recommendation to approve a re-licensed capacity request, the recommended action must be signed by the Deputy Secretary in hard copy and a new certificate of compliance form reflecting the new capacity number is issued. Currently, the process involves regional staff mailing the forms to DPW in Harrisburg.

In summary, the regional staff person agreed that a modified new process would have to be put in place in order for DPW to meet the 5-day response timeline for planned increased capacity. The regional staff person had no idea how the 24-hour emergency authorization could be achieved within existing protocols.

While we support the process and appreciate the inclusion of language in the statute as a guarantee, protocols will need to be clearly defined and implemented. We would be happy to work collaboratively on this.

3. All language regarding any restrictions/caps on retained revenues or gross profits is stricken
4. OMB Circular A-122 and its correlating circular addressing for-profits will be used as the definitional base for indirect costs.

Note: There has been some discussion as to needed clarity around separation of indirect administrative costs and facility costs and even within the A-122 Circular. We are working to frame this clarification.

5. Language referencing limits on executive compensation must be stricken from the legislation. Providers strongly believe that this issue will be resolved within the context of limits set on indirect administrative costs. Because no detail has been provided by DPW as to the parameters envisioned, there is significant concern based on the current proposed language attempting to compare public sector MH/MR with private sector executives. DPW does not need legislative approval to address these issues in regulation. It clouds the tone and spirit of agreement reached on the other contentious points.
6. While we believe timeliness of payments by counties to providers must be addressed, we acknowledge that this statutory proposal is not the most appropriate place to do so. With the cap imposed on indirect admin expenses and flat lined rates, it is a clear loss operation for providers that borrow money to ensure that mandated services continue without disruption. Since mandated services are a public responsibility, there does need to be some mechanism to ensure that these losses, directly related to delays in county payments, are recovered. We are open to suggestions and alternative language but this is an increasing burden on an already over burdened private system.

Other Items for Agreement

1. DPW agrees to provide the details of how the costs savings projections of \$11 million were calculated - the formula and figures used.
2. DPW agrees to fund training and technical assistance for private providers over the next two years to support to elevated business and fiscal practices and assist providers in defining and allocating direct and indirect expenses. This training/TA would be provided by an agreed upon CPA/Specialist and not DPW. *Is there a projected figure in mind from DPW? We need assurances that funding will be sufficient to support quality and access.*
3. Although DPW's goal is to safely reduce out of home placements, DPW acknowledges that out-of home placements are a necessary part of the system and that, *for some youth* [in some cases], their use is appropriate.
4. DPW will support focused efforts to address concurrent planning and support training for private providers to address permanency options and flexibility in program designs and service delivery for older youth in care.

Providers need assurances that DPW will not simply frame items removed from the proposed legislation and format them into Bulletin or other mandates. Understanding that DPW needs to be able to conduct normal business, providers also need safeguards. PCCYFS is prepared to assist in crafting language but providers have made it clear that some protections are a necessary part of this process given our starting point and history.

Items that DPW needs more information before it can make a determination

1. DPW will approve access for PCCYFS to the data base containing the rate information and will provide electronic copies of county needs based plans and budgets as they are approved to support transparency [DPW needs to determine what information is available subject to privacy laws].
2. DPW will agree to support amendments to Act 30 of 1991 as proposed by PCCYFS as part of this counteroffer. Anticipated cost savings for counties realized from transitioning away from the use of placement services to other in-home or community-based services, have supported discussion of "reinvestment" language and the ability of counties to keep these dollars. This provides a pool of funds that could be used in part to support a planned transition to reduce the differential between rates paid and the costs incurred. Counties could be purchasing less service but paying a more realistic rate for the services they do purchase. [DPW can't comment on this until we see the language]

Note: While DPW was clear that they have no intention to violate the agreement reached, DPW indicated that they could not agree in writing to the PCCYFS proposed point of "no additional bulletins/mandates imposing the deleted provisions" as it would restrict the general ability of DPW to conduct business. The concerns of providers relating to anticipated or actual experiences of punitive licensing reviews, interpretation/application of child abuse laws and intensity of investigations, and anticipation of other forms of mandates imposed as directives to counties were directly voiced to Ted Dallas, Executive Deputy Secretary, who has been leading the negotiations on behalf of DPW. These concerns will be the substance of a letter to be sent to Secretary Richman and signed by PCCYFS provider members to clearly be on record and establish a foundation if such experiences are encountered by providers. This item becomes a matter of "trust" between private provider and DPW and will need to be carefully monitored through ongoing communication between PCCYFS and member agencies.

DPW also noted that they could not address the PCCYFS proposal of language regarding timeliness of payments by counties. PCCYFS will craft language that providers may opt to include as part of their response to county contracts.

Summary of points

As circulated in a summary generated by DPW to the entire workgroup, final negotiations of provisions in the proposed legislation included agreement on:

1. Indirect expenses would be capped at not more than 17% for FY 2010-2011, 16% for FY 2011- 2012 and remain steady at 15% from FY 2012-2013.
2. OMB Circular A-122 and its correlating circular addressing for-profits will be used as the definitional base for indirect costs.
3. Effective 7/1/10, occupancy calculations would be based on the most recent year of actual (audited year) utilization data as reported on the IV-E fiscal forms divided by the denominator of licensed number of beds times 365 days for a minimum of 85%.
 - a. Providers will determine the licensed number of beds based on their calculations of utilization, staffing ratios etc. Providers agree to reduce licensed capacity to meet occupancy rate requirements and calculations will be based on the adjusted capacity.
 - b. Providers will be offered guarantee of DPW approval of requests to increase licensed numbers in statutory language - 24 hours for emergency requests and 5 business days for planned increases. If the request for an adjustment is made, it would be processed within existing licensing rules and regulations exercised by DPW as long as physical space and staffing was in place.

- c. Shelter and detention facilities are exempt from these occupancy requirements
 - d. Small facilities of less than 12 residents are excluded from these occupancy requirements
 - e. A special circumstances exception language/process will be included allowing DPW to grant exceptions where appropriate. Occupancy rates for short programs (diagnostic etc.) of less than 45 planned days will be handled through this clause.
4. All language regarding any restrictions/caps on retained revenues or gross profits is stricken
 5. Language referencing limits on executive compensation is stricken from the legislation. Since executive compensation is part of indirect administration, the change agreed to in Item 1 indirectly accomplishes the same goal.

Other points of agreements outside the provisions of the proposed amendments to the Pennsylvania Welfare Code will remain as referenced in the above paragraphs Other Items for Agreement.

Moving Forward – Lessons Learned

1. Legislative advocacy does work – without the great groundswell of advocacy efforts supported by PCCYFS and exercised by private providers during the past five months, the provisions framed by DPW, first within the contracting for out-of-home placement services bulletin, and then in the HB 1351 language to amend the PA Welfare Code, would have moved through the process without resistance, challenge or question.

Clearly, there were challenges raised, providers' concerns were heard by elected officials, who exerted pressure on DPW to reach compromise. The end result is a much more balanced and reasonable process to address public accountability. Considering how skewed the power base was at the onset, the balance achieved through these advocacy efforts is an awesome experience. This achievement should be celebrated by every Board member who made a call, every agency director who made a visit and every staff person who wrote a letter. Together, these efforts made a significant difference.

2. Having support from an experienced and energetic government relations consultant, Alex Rahn, Wanner Associates, is a critically important resource in negotiating unfamiliar legislative territory. Effective use of dues revenues to fund access to this support has been evident in this process and this resource is a true benefit of membership.

3. The governing PCCYFS Board of Directors demonstrated leadership in true textbook fashion. Removing individual agency hats, each Board member engaging in discussions during this intense process clearly viewed the protection and greater good of the broader private provider community, especially PCCYFS members, over benefit or positioning of their own agency. This is what makes any organization strong and enduring. This is what makes being part of PCCYFS such a value.

4. That it takes individual agencies to run the risk of exposure and identification to achieve positive outcomes. Whether through offering passionate testimony at legislative hearings, presenting agency specific impact statements in communications with legislators, speaking out at legislative breakfast events or taking time to attend weekly DPW workgroup meetings and fending off pointed statements aimed at the private provider system, it requires that individual providers take on additional risks. Dan Styborski, Laurel Youth Services, and Chair of the PCCYFS Public Policy Committee, can speak first hand about risks and reactions as he cleared his schedule to attend these weekly meetings.

5. Compromise in this situation means not getting everything providers wanted. However, having opportunity to directly and significantly direct the final outcome with greater assurances than by taking

chances on decisions being made under pressure and with less concentrated attention by a removed third party (the legislature) has great value.

6. The bottom line benefit and concrete outcome is assurance that providers will have training and technical assistance to support first rate accounting practices and distribution of direct and indirect costs that will not be easily challenged by fiscal techs in the counties. Providers will be better able to defend legitimate costs, and hopefully, be able to redirect energy back to practice.

7. The private provider community and PCCYFS will be stronger because of this experience. The private provider community has found its "united voice" on behalf of their own agencies and more importantly on behalf of the children, youth and families that the agencies support with critically needed services. We will no longer be satisfied to be quiet or remain on the sidelines when misdirected or harmful policy changes are being driven from other vantage points.

Next Steps

DPW is working to incorporate language reflecting the agreed upon changes so that amendments can be introduced to HB 1351. This draft is to be reviewed by the DPW workgroup on Tuesday, May 26. PCCYFS will be supporting communication with legislators to advise them of the resolution and to thank them for their attention and intervention. Providers will once again have opportunity to exercise advocacy in follow-up. A letter will be drafted to Secretary Richman outlining points of understanding and stressing concerns voiced by providers throughout this process to have a firm foundation in place in the event of any action by OCYF giving appearance of retaliation.

There are many other changes that the workgroup agreed to including changes in the percentages that the state will reimburse counties for services. Many of these changes are connected to the purchase of congregate care creating disincentives for counties to utilize this level of service. The new language will be circulated as soon as it becomes available for general release and review.

Yes, it was an intense week....

NEEDS BASED PLAN AND BUDGET BULLETIN RELEASED – The Department of Public Welfare released both the Needs Based Plan and Budget Bulletin (NBP&B) under the signature of OCYF Deputy Secretary Richard Gold and the Integrated Children's Services Plan (ICSP) Bulletin under direct signature of DPW Secretary Estelle Richman. Both documents will be posted to the PCCYFS website this week.

Several points are of particular interest to providers in the **Fiscal Year 2010-11 Children, Youth and Families Needs-Based Plan and Fiscal Year 2009-10 Implementation Plan Instructions**. They include the following sections:

Pages 1&2 **PURPOSE:**

The purpose of this bulletin is to transmit instructions for the preparation and submission of the Fiscal Year (FY) 2010-11 Needs-Based Plan and Budget (NBP&B) and the FY 2009-10 Needs-Based Implementation Plan which must be submitted by August 24, 2009.

BACKGROUND:

The following statutes and regulations are the basis for planning and budgeting requirements and processes.

Article VII of the Public Welfare Code, 62 P.S. §§ 701 et. seq., makes child welfare services the joint responsibility of the Department and county government. The Department regulates the services and

supervises the county children and youth agencies' administration of the service delivery to families and children either directly or by purchased service contracts.

Act 30 of 1991, which is part of Article VII, mandates an annual NBPB process.

62 P.S. §709.2 (b) (relating to Review of County Submissions), requires the Department to consider whether the county's plan and budget is reasonable in relation to past costs, projected cost increases, number of children in the county, number of children served, service level trends, and estimates of other sources of revenues.

55 Pa. Code Chapter 3130, "Administration of County Children and Youth Social Service Programs", relates to the responsibilities for children and youth services. The goal of children and youth social services is to ensure for each child a permanent, legally assured family which protects the child from abuse and neglect (§3130.11).

55 Pa. Code Chapter 3140, "Planning and Financial Reimbursement Requirements for County Children and Youth Social Service Programs" relates to the development and submission of the NBPB, and it sets forth the mechanism by which the Department reimburses counties for eligible expenditures incurred by the county for children and youth social services and substitute care.

.....New initiatives and services must be reasonable, and the county must identify cost savings or reduced rates of increase within its major service category or another major service category. The county must identify that the service is less expensive or more effective than the current service available. The cost of the new service or initiative is limited to six (6) months funding during the first year or up to ten (10) months funding based on adequate justification, and the county must show that the cost savings will equal at least the amount of the additional funds requested beyond the six (6) months.

55 Pa. Code §3140.21(c) identifies costs that will not be considered reimbursable through the "Needs Based Budget" process. These expenditures include mental health and mental retardation treatment services, basic education programs, and related cost of the probation office, juvenile court, or county social service (other than the child welfare agency) staff.

55 Pa. Code Chapter 3170, "Allowable Costs and Procedures for County Children and Youth Social Service Programs," defines allowable costs that are reimbursable by the Department. §3170.11(b) states that the Department will participate financially in the payment of expenditures which are necessary and justifiable for program operation and that expenditures made must be reasonable to the extent that they are of the same nature as expenditures which would be made by a prudent buyer in the market place. Expenses which are not included in Chapter 3170 are not eligible for Departmental financial participation.

Page 10 - The State has established four broad, statewide goals for Children, Youth, and Family agencies to focus on for the 2010-2011 budget year:

1. Increase children's safety and safety of the community
2. Safely reduce out-of-home placements
3. Improve permanency
4. Reduce re-entries to out-of-home placement

Page 11 – Determining Need - 2-2a. Collaboration

Collaboration between all parties within the county is essential to developing the service needs of children and families. In developing the budget, the county should have a distinct process for all critical parties to work together actively in determining how best to provide services that meet the identified need(s) for children and families in the county.

Describe how the county actively engages with the following entities to identify needs and services:

- County Children and Youth Agency Staff
- Juvenile Probation Staff
- Juvenile Court and Family Court Judges and Legal Counsel for Parties
- Family Members and Youth, especially those who are or who have received services
- Child, Parent, and Family Advocates
- Mental Health and Mental Retardation service system
- Drug and Alcohol Service System
- Early Intervention System
- Local Education System
- Community Organizations which provide support and services to children and families
- **Current Service Providers**

This planning process and the integrated children's planning process are functionally related and should be concurrent. In addition, counties must use the Integrated Children Service Planning as the mechanism to accomplish the goals and objectives established in the Joint Position on Mental Health/Juvenile Justice.

Page 13 - 2-3d. Fostering Connections to Success and Increasing Adoptions Act of 2008

This piece of federal legislation was signed by the President on October 7, 2008. It provides significant opportunities for states and creates important mandates that will require changes in state law and practice. Among other things, the Act:

- Provides states the option to extend Title IV-E Foster care, Adoption and Guardianship up to age 21;
- Provides states the option to provide kinship guardianship assistance payments to certain children and related provisions;
- Provides eligibility of IL services, Education and Training Grant (ETG), and Medical Assistance (MA) for youth who enter kinship guardianship arrangements or adoption at age 16 or older;
- Requires that a plan for educational stability is made for the child, which may include coordination so that the youth can remain in the school attended by the youth upon placement, or immediate enrollment and record transfer in the local school;
- Requires that a transition plan be created with the youth and presented to the court at least 90 days before the youth is discharged from the child welfare system; and
- Increases incentives to \$8,000 for older youth adoptions.

On February 24, 2009 OCYF issued a Special Transmittal entitled Fostering Connections to Success and Increasing Adoptions Act of 2008. This special transmittal addresses the enactment of new federal legislation and provides guidance and direction on the immediate impact of portions of this Act on agency operations. Please contact your appropriate OCYF Regional Office with any questions.

Page 26 - Program Oversight - 6-2a. Document Maintenance for Residential Providers

The county must ensure that its contracts with Residential Providers include the following provisions:

- Residential Providers must maintain centrally located documentation on each referral that the provider receives from a county agency (CYS or JPO). The provider may maintain the documentation however it chooses, as long as it is centrally located. Information the provider must maintain includes:
 - the date of receipt of referral;
 - the requesting county and agency (CYS or JPO);
 - the name, age, and race of the child;

- presenting primary problem;
 - whether the child was accepted or rejected for admission to the program; and
 - the reason the child was accepted or rejected.
- Residential Providers, with the exception of emergency shelters and detention centers, must maintain centrally located documentation for each child that is discharged from their residential programs. The provider may maintain the documentation however it chooses, as long as it is centrally located. Information the provider must maintain includes:
- the date of the discharge from the residential program;
 - the county and agency (CYS or JPO) that placed the child at the program;
 - the name, age, and race of the child; and
 - the reason that the child was discharged from the residential program (including the successful progress of original presenting problem, AWOL, negative discharge, etc.)
- Residential Providers must maintain centrally located documentation for all arrests by law enforcement regarding children and youth being served by the provider. The provider may maintain the documentation however it chooses, as long as it is centrally located. Information the provider must maintain includes:
- the date of the arrest;
 - the county and agency (CYS or JPO) that placed the child at the program;
 - the name, age, and race of the child; and
 - reason for arrest by the law enforcement agency.
- Residential Providers must maintain centrally located documentation for all restraints of children/youth served. The provider may maintain the documentation however it chooses, as long as it is centrally located. Information the provider must maintain includes:
- the date and time of the restraint;
 - the county and agency (CYS or JPO) that placed the child at the program;
 - the name, age, and race of the child;
 - reason for restraint;
 - intervention attempted by staff prior to restraint;
 - type of restraint used;
 - name of employee(s) who performed the restraint;
 - duration of restraint;
 - name of employee(s) who observed the child; and
 - the result of restraint (i.e. injuries incurred by, hospitalization, etc...).

Residential Providers must maintain centrally located documentation for the period that the youth was placed out-of-home with the same provider as to whether the youth been truant (3 unexcused absences within the school year);

- Residential Providers, with the exception of emergency shelters and detention centers, must maintain centrally located documentation as to whether the youth is attending school and/or is employed full-time (37.5 hours per week) within 6 and 12 months after discharge from placement; and
- Residential Providers must maintain centrally located documentation as to whether every youth has received a full EPSDT screening within 60 days of entering placement, unless the child has had a screening and the results of the screening are available, and whether the subsequent treatment indicated has been initiated/scheduled within 90 days upon entering placement. Youth transferring from one foster care agency to another and youth transferring from a facility licensed

under Chapter 3800 to a foster care agency may be exceptions. Please see Policy Clarification 3700-07-03, dated May 25, 2007.

Pages 27-28 – Grant Funded and Special Programs 6-3a. Evidence Based Programs

All Evidence Based programs and/or practices are now managed as a separate grant. Evidence Based practices and/or programs include **only**:

1. Multi-Systemic Therapy (MST)
2. Functional Family Therapy (FFT)
3. Multidimensional Treatment Foster Care (MTFC)
4. Family Group Decision Making (FGDM)
5. Family Development Credentialing (FDC)
6. Family Finding (FF)

Describe these practices and/or programs for FYs 2008-09 and 2009-10, the outcomes of these services (via use of available data), and the county’s plans for expansion of these practices and/or programs during FY 2010-11. The county must discuss how many children are expected to be served, and the expected reduction in placements.

Program/ Practice (Chart from page 77)	State	Local
EBP: (MST, FFT, MTFC, FGDM, Family Development Credentialing, Family Finding)	95%	5%
PaPP:	90%	10%
Housing:	80%	20%
State Reintegration:	80%	20%

6-3b. Pennsylvania Promising Practices

The county may identify one outcome-based dependency program and one outcome-based delinquency program, for a total of two, for special funding consideration. The State encourages outcomes-based (i.e. non-Evidence Based) services, and the county must report on each program’s services and outcomes. The information the county submits regarding dependency and delinquency outcome-based programs must include a discussion of how many children are expected to be served, and the expected reduction in placements.

If the county identified one outcome-based dependency program and one outcome-based delinquency program in the NBB 09/10 and those programs were approved, the county may continue to request funding for those programs from the State. If the county is participating in two promising practices programs, requests for additional programs will not be considered. If the county has not requested or been granted two Promising Practices, it may request special funding consideration for a maximum of two programs in NBB 10/11.

SOMETIMES YOU NEED TO READ THE ORIGINAL COMMUNICATIONS TO APPRECIATE THE FRUSTRATION - A number of PCCYFS providers shared correspondence received from Allegheny County Department of Human Services related to contracting and rates. Given the presentation of “mandated statewide per diem rates for Children Youth and Families Placement Services”, providers were understandably concerned. This promoted communication between PCCYFS and Marc Cherna, Allegheny Count DHS as follows.

-----Original Message-----

From: Bernadette Bianchi <bernadetteb@pccyfs.org>
To: Cherna, Marc
Sent: Mon May 11 09:31:26 2009
Subject: Questions regarding contracts and rates

Good Morning Marc –

The contracting letter received by providers from Allegheny County dated April 28, 2009 and signed by you, indicates on page 2 that:

“The Pennsylvania Department of Public Welfare has mandated the establishment of statewide per diem rates for Children Youth and Families Placement Services. DHS has issued your contract renewal with the Fiscal Year 2008-2009 rates in order to assure timely cash flow and uninterrupted services to our consumers during the rate-setting period. However, once the statewide rate is established, DHS will modify our agreement to retroactively incorporate the statewide rate. If the established rate is higher than our contracted rate, we will reimburse the difference. If the established rate is lower, we will recover any over-payment buy (sic) deducting the difference from future payments.”

Your presentation appears to be contrary to presentations made by the state as OCYF has repeatedly indicated that they were setting the maximum allowable rates for federal IV-E and state Act 148 participation but that they were not establishing rates. I understood this as a very fine nuance in presentation but nonetheless it was consistent. Your direction to providers is concerning as it clearly reflects a state effort/directive to set rates. Rather than executing a contract extension, it appears as though Allegheny County intends to execute full contracts for FY 2009-2010. Can you clarify the county's plan and position? Do you have access to additional information that has not been shared with providers as the basis for your presentation?

Providers maintain that it is critical that the basis for rate discussions remain directly connected to the county-provider negotiation process and not planted in a “DPW mandated statewide per diem rates for Children Youth and Families Placement Services” framework. The retroactive application of increases to reflect the “DPW mandated statewide per diem rates for Children Youth and Families Placement Services” appears to be in conflict with Chapter 3170.93 “(c) Conformity. The contract shall provide for conformity with the regulations or procedures promulgated by the Department. The contract shall specify the types of services provided by the contracting agency for the county. In the case of unit of service agencies, the rate of reimbursement for a service shall be cited. In no case shall a provider agency be retroactively awarded an increased rate of reimbursement.” Will Allegheny County be waving this regulatory requirement with approval from OCYF? Will you be including language to that effect in the contract itself?

Bernadette M. Bianchi

From: Cherna, Marc [<mailto:Marc.Cherna@AlleghenyCounty.US>]
Sent: Monday, May 11, 2009 5:00 PM
To: hbgoffice@pccyfs.org
Subject: Fw: Questions regarding contracts and rates

Bernadette, here's Randy's response.

-----Original Message-----

From: Brockington, Randolph W.
To: Cherna, Marc
CC: Deland, Richard; Evancho, Dan; Schepis, Peter D

Sent: Mon May 11 16:37:02 2009
Subject: RE: Questions regarding contracts and rates

Bernadette is stretching what we've written and said in our provider meetings (which she attended). We do not mean and we did explain that the state is not setting rates. Regional county teams are reviewing provider budgets with providers to assess IV-E allowable and unallowable costs. We are writing new contracts and not extending existing contracts because it is the best action in Allegheny County without interrupting cash flow to the service provider. We are saying if provider rates exceed the IVE and 148 reimbursement, the county will recover over payments. We are not planning to submit any regulatory waiver requests to the state.

Randolph W. Brockington, Deputy Director
Allegheny County Department of Human Services
Office of Administration - Suite 500
1 Smithfield Street, Pittsburgh, PA 15222
412.350.5203 Fax: 412.350.6390
randolph.brockington@alleghenycounty.us

From: Bernadette Bianchi <bernadetteb@pccyfs.org>
To: Cherna, Marc
CC: Brockington, Randolph W.
Sent: Tue May 12 08:17:09 2009
Subject: Questions regarding contracts and rates

Do not think I was stretching at all, simply reading what was written. Providers are reading what was written and it differs from what was heard. I too was concerned with what I read as what I heard from DPW/OCYF differs from language in the letter. Sensitivity is heightened and with good reason.

Bernadette M. Bianchi

-----Original Message-----

From: Cherna, Marc
Sent: Monday, May 11, 2009 9:54 AM
To: Brockington, Randolph W.
Subject: Fw: Questions regarding contracts and rates

I think I've always been straight with providers and they know they can always talk to me if they have concerns.

Marc.Cherna@AlleghenyCounty.US

So...there you have it!