

Testimony Presented
to
Interbranch Commission on Juvenile Justice
Pennsylvania Judicial Center
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Presented by
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Good Afternoon. I am pleased to offer testimony to this Commission today as the Executive Director of the Pennsylvania Council of Children, Youth and Families Services (PCCYFS), a statewide membership association of private providers. We appreciate the opportunity to offer input for consideration by this Commission and value the recognition of the private provider community as a key stakeholder in Pennsylvania's children, youth and family serving systems.

PCCYFS represents more than 140 private providers of child welfare and juvenile justice services who are part of our statewide network. Our members offer a wide variety of services including prevention, in-home, foster care, residential, behavioral health and drug and alcohol programs. Many of our member agencies also offer educational programming and other family and community based services. The majority of these programs and services are funded through contracts with counties using a complex combination of local, state, federal and often private dollars. Many of these services and supports are mandated through statute or regulation. And all focus on the desired outcomes of keeping children safe, supporting permanency, competency development and accountability and ensuring community safety.

Membership in PCCYFS is voluntary. Dues are assessed based on agency operating expenses to support membership services. Our scope of services and supports is defined by our strategic plan and our goals focus on efforts to:

- Influence Public Policy
- Increase Public Awareness of Issues
- Create Opportunities For Professional Development
- Ensure the Fiscal Stability of PCCYFS
- Support Membership Services/Membership Expansion

PCCYFS asks that members adhere to our Code of Ethics (attached). Our governing Board of Directors does not take action to exclude private agencies from membership but rather operates on the premise that inclusion best supports improved practice through exposure to professional development opportunities, access to information regarding priorities and initiatives, and exposure to our informal peer mentoring network. As a voluntary membership organization, PCCYFS does not have authority to require compliance on any level or to sanction private providers who fail to comply with best practice.

Pennsylvania's child welfare and juvenile justice delivery system is state supervised and county administered. This structural relationship is established in law. Each Pennsylvania county must "provide or arrange for the provision of" a specified set of social services for dependent and delinquent children and youth, which are further defined in law and regulation. To meet these legal mandates, all counties, to some extent, rely on private providers to deliver direct social services.

The history of child protection and juvenile justice in Pennsylvania reflects a deep commitment of private agencies and institutions dating back to the mid-1800's. As Jim Anderson, Juvenile Court Judges Commission, shared with you several weeks ago, the private sector is a fundamental part our current system. While the focus of the Commission's attention is on breakdowns in the juvenile justice system in one county, the interconnected realities of all human service systems in all 67 counties must be recognized and considered in the Commission's recommendations for change.

Relationship Driven vs. Outcomes Driven Practices

Background

As previously noted, many private agencies pre-date county programs addressing community needs including interventions with juvenile offenders. This extensive private provider community has strong community identities and long-standing relationships with their local donor base. Our heritage is rich, although we have welcomed new and evolving providers, both for- and not-for profits.

Providers have been encouraged by the public sector to move from an altruistic, grass roots and family or faith based operating platform to one of a "business model". Doing so has resulted in many providers adopting marketing practices and developing public relations

campaigns that rival other service and product areas. Business plans, cost benefit and market analyses and retained revenues and investments are now part of our vocabulary.

Only ten years ago, providers' needs to understand funding streams or engage in professional presentations of program effectiveness were discounted as unnecessary. Today, the need to understand how the complex formulas of funding dollars come together as well as a focus to remain cutting edge and competitive are the rules rather than the exceptions.

Despite this evolving business mentality, our human services system remains relationship based and driven by shared concerns of professionals from both the private and public sectors. It is natural to gravitate toward others sharing a common value base and experience on professional and personal relationship levels. The appearance of potential conflict arises when these lines become blurred. While an "everyone pays for their own meals, lodging, drinks policy" can be committed to writing, it is easily forgotten in social settings where time is focused on enjoying camaraderie and not enhancing potential business opportunities.

Invitations to a private provider's open house, new program presentation or annual business meeting, mirror the purposes of county invitations to planning hearings, needs based budget presentations and anniversary celebrations – to share information, celebrate successes and generate input. Providing coffee and snacks during a meeting is accepted as a simple social courtesy. However, a catered dinner and open bar at a reception could be construed as an attempt to influence referrals. Where should the line be drawn of acceptable social courtesies and business practices and those which present an appearance of conflict or clear attempt to influence business practices? And even if this line is clearly drawn, who is responsible for monitoring and enforcing acceptable practice? These questions have been debated by providers for years.

Recommendations

- It is impossible and impractical to assign a monetary value of acceptable marketing and promotional items since even a token pen could be construed as a connection to an agency when noticed by a parent in a juvenile probation office. Adherence to a consistent code of

ethical practices should be presented as a clear expectation of employment or professional relationships inclusive of state, county and private provider staff.

- Consumable item guidelines are challenging to define as this quickly becomes a debate over doughnuts and coffee being acceptable while alcohol and filets are not. Private agencies could be required to develop standards of practice for all meetings hosted as part of all purchase of service agreements. In the absence of this expectation, and while there is hesitance to support a zero tolerance policy related to practices referenced above, there appear to be few alternatives that offer assurance that the line between acceptable courtesies and attempts to influence is not crossed.
- The value of services delivered by private providers should be evaluated and purchased based on achievement of mutually defined and desired outcomes. These agreed upon outcomes should be data driven and documented. While the influence of long standing relationships, professional confidence and mutual respect will remain factors in any working relationship, transparency, consistency and accountability in practice is better supported by decisions made on merit and performance.

Accountability

Background

While there were egregious violations of ethical practice and inappropriate uses of public money in Luzerne County, the overwhelming majority of county juvenile probation office staff, members of the judiciary and private agencies follow acceptable professional practices. As a rule, this adherence to ethical and accountable expectations upholds public trust without attention or media coverage. It is unfortunate that the actions of a few have violated public trust and had unforgivable impacts on the lives of so many youth and their families.

Recommendations

- Certainly, outliers must be held accountable and sanctioned for their actions. However, successes achieved, supports offered and public and private resources dedicated to positive interventions with youth involved in the juvenile justice system must be publically presented with equal vigor.

- Coordinated educational sessions for community stakeholders and public hearings on performance and allocation of resources should be made readily available to the public and media. Demonstration of the working partnership of the courts, county probation offices, and private providers can make inroads in correcting public misperceptions and instilling community confidence in the juvenile justice system.
- Juvenile court proceedings should be open unless such an open venue is deemed to not be in the best interest of the youth by the court.

Contract Language

Background

County Children and Youth and Juvenile Probation Offices are not required to purchase services from private providers. However, the majority (75-85%) 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. In many cases, contracted rates do not cover actual costs of mandated services, which must be increasingly subsidized by private dollars raised by providers. The level of competition for referrals to support continued viability of agency programs, especially in the current environment where referrals for almost all levels of service are decreasing, is a very real part of our service delivery system.

Contracts governing the purchase of services are required by existing fiscal regulations (Chapter 3170), applicable federal rules and local county government requirements. These contracts define the working relationship and payment process between private providers and the individual counties purchasing services. By regulation, counties must negotiate and establish rates with providers. In practice, there is little true negotiation. Even with state reviewed and confirmed maximum allowable costs, contract rates fall short and are not adjusted regularly to reflect increased costs and elevated requirements. Unfunded mandates are the norm and there is little, if any, recognition of performance in the process of selection of services purchased.

While readily able to identify the strengths of our county administered purchase of service system, sixty-seven variations of contract provisions present challenges related to consistency, transparency and monitoring. These variations are also cause for inefficiencies

in current practice. Counties and providers invested in the development of a uniform contract template some years ago resulting in use by approximately one third of the counties. Current contract language, however, reflects significant variations in service deliverables, documentation requirements, payment/invoicing protocols and other obligations of both parties entering into the agreement.

Recommendations

- Regulations governing county fiscal requirements including purchase of service agreements with private providers became effective on January 1, 1978. Clearly, best practice thirty years ago is not necessarily the most appropriate foundation for business practices today. It is time to re-visit and revise these governing regulations.
- Updated conflict of interest policies, including prohibitions from offering or receiving gifts, payments, tokens or other gratuities, should be defined and required by regulation for inclusion in contracts executed for purchased services. This would support a consistent foundation for enforcing ethical practices.
- While there is much attention focused on outcomes, there is little consistency in how these desired outcomes are defined, tracked or incorporated into referral or service delivery practices. Private service providers, county juvenile probation departments, and the overall juvenile justice system would benefit from the implementation of a standardized outcomes reporting mechanism or access to outcomes reporting software that would serve to eliminate many of the individual county variations currently experienced by providers.

Currently, quality and high performing service providers are not recognized through increased referrals or adjusted rates while consequences for poorer performing colleagues are not defined or enforced. A purchase of service process focusing on state/county and provider jointly defined outcomes, which include a validated assessment factoring in the needs of referred youth, is needed.

- The majority of purchase of services contracts are renewed on an annual basis without in-depth review or consideration of alternatives. This process has benefit in that it supports continuity for youth currently receiving services. However, it also perpetuates a referral

network based on history rather than documented effectiveness or ability to respond to projected need. Many counties sole source contracts or enter into closed discussions with a “preferred” provider to respond to new initiatives. An open and competitive request for proposals/bid process would increase transparency, ensure that all interested providers have opportunity to respond and support appropriate and balanced competition.

Funding

Background

These are the two primary statutory references for funding for both child welfare and juvenile justice services including purchased services. Act 30 of 1991, which amended Act 148 of 1976, does not include requirements for payments of actual costs of mandated purchased services. There is significant disparity between actual costs and rates paid for purchased services. Cost of Living Adjustments (COLA) in the state budget and flexibility in county determinations of services purchased have historically served to support individual county determinations of rate increases. Few providers have been able to access any increase in recent years, however.

Clearly, the Commonwealth and counties are not prepared to take full responsibility for the array of mandated services currently delivered by private agencies. Yet, the private provider community is being strained beyond tolerable tension. A defined mechanism to ensure that adequate and appropriate funding reaches the direct service level is needed. There are cost savings available within the system if duplication of effort, clearly defined roles and responsibilities and cross systems communication are aggressively addressed.

State scrutiny has served to complicate and delay the county/private provider contracting process. As of today, at the beginning of the eighth month of this fiscal year, there are private service providers delivering services in good faith without signed purchase-of-service contracts or payments since July 1, 2009. Efforts to expedite this review process and ensure accountability of all involved entities must be an enforced expectation.

Recommendations

- Act 30 of 1991 should be amended to require that contracted rates cover the costs of mandated services, and that sufficient funds be appropriated to ensure payments for those services.
- Act 30 of 1991 should be amended to require all purchase-of-service contracts to include a “timely payment” clause which would require payment for services to private service providers within 75 days.
- Act 30 of 1991 should be amended to require all purchase-of-service contracts to include contract extension language which would provide for continuing services and payment at the last contracted rate until a new contract agreement is signed.
- Starting in FY 2010-11, the Commonwealth should establish a protocol that would provide for review of rates for all private service providers on a two or three year rotating basis, with provisions for annual cost-of-living adjustments of rates tied to the Consumer Price Index during non-reviewed years.
- Purchase-of-service contracts between counties and private service providers should be for the same two or three year duration, thereby changing the current system focus away from “process” issues, and facilitating a return to a focus on quality of care issues.

Thank you for this opportunity to share our recommendations and concerns.

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CHAPTER 3170. ALLOWABLE COSTS AND PROCEDURES FOR COUNTY CHILDREN AND YOUTH SOCIAL SERVICE PROGRAMS

UNIT OF SERVICE FUNDING

§ 3170.81. Generally.

The Department will participate in the cost of purchasing services on a fee per unit of service basis.

§ 3170.82. Guidelines governing purchase of service.

Residential services may be purchased or paid for only for those children whose custody is vested with the county agency, or who are receiving shelter care or juvenile detention services or who have been committed by the court to a facility for delinquents. Nonresidential services shall be purchased for children for whom the public agency has accepted responsibility, for children referred by the court under informal adjustment, and for children being diverted from the system by agencies exclusively operated for this purpose. The Department will reimburse the county for the cost of purchasing generic children and youth social services to a child regardless of income, including dependent, delinquent, mentally and physically disabled children, and drug and alcohol abusers.

§ 3170.83. Establishing rates.

(a) When the county obtains social services for children under a purchase of service agreement, one of the following methods shall be used to establish the rate of payment and select the provider:

(1) The county may request bid proposals in writing. When using this method the county shall follow its practices established under the appropriate county code sections applicable to bidding and procurement of goods and services. Contracts need not be awarded solely on the basis of the lowest bid received; however, county officials shall exercise prudent judgment in their selection of a provider. Therefore, the method and criteria used in evaluating all bid proposals received shall be documented and kept on file in the county. Maximum levels of Departmental reimbursement for unit of service funding are outlined in § 3170.84 (relating to maximum levels of reimbursement) and shall be considered by the county in developing its methodologies for evaluating bid proposals.

(2) The county may establish a maximum rate or range of rates for the service to be purchased. Rates shall be developed:

- (i) Considering the reasonableness of cost for the service.
- (ii) In an open and public manner.
- (iii) On an annual basis with necessary revision and update.

(b) Based on the rates, the appropriate county authorities shall negotiate agreements with providers of service. The policies as applicable in §§ 3170.41—3170.49 (relating to personnel expenses), 3170.51—3170.61 (relating to operating expenses), and 3170.71—3170.77 (relating to fixed assets) may be used as guidelines in developing the rate for the services. In addition the maximums outlined in § 3170.84 (relating to maximum levels of reimbursement) shall remain binding on the counties regarding the amount of costs in which the Department will participate.

§ 3170.84. Maximum levels of reimbursement.

(a) The maximum level of reimbursement in which the Department will participate when services are provided on a unit of service basis 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.

(b) The county agency, the juvenile probation office, or the juvenile court shall determine the kind of service needed and together with the provider agency or facility determine the conditions under which the service shall be provided, except in the case where the child is diverted from final entry into the children and youth program. However, Departmental reimbursement will not be made for the specialized services to treat mental disabilities. Juvenile probation or other Commonwealth or Department sponsored programs shall not be allowed, nor costs of providing services which are the responsibility of a school district under the Right to Education consent agreement between the Department and the Department of Education.

(c) At least quarterly, the children and youth social service program shall require an invoice from the vendor agency or facility for delinquents to which children have been committed by the court, respective to the name—or type—of service provided, units of service provided, the rate per unit of service, and the total amount charged—that is, the rate times number of units provided.

(d) Unless specified in the agreement, the cost of client services shall not include costs for research, or other activities not essential to the provision of service to the client.

(e) The cost of services provided by vendor may include training for persons involved in the direct provision of the service being purchased.

§ 3170.85. Responsibility of the county.

The appropriate county authorities are responsible for obtaining the best possible rate for purchase of services by the county children and youth agency. In addition, the appropriate county executive officers shall be responsible for the effective execution of each purchase of service agreement. The policies as applicable in § § 3170.41—3170.49 (relating to personnel expenses), 3170.51—3170.61 (relating to operating expenses), and 3170.71—3170.77 (relating to fixed assets) may be used as guidelines for obtaining or establishing rates.

§ 3170.93. Contracts

(a) *Contracts between Department and counties.* The Department may enter into a purchase of service agreement annually with counties who wish to provide social services under Title XX and the comprehensive annual services program plan.

(b) *Purchase of service requirements.* The county shall maintain a written contract or purchase of service agreement with providers to which clients are regularly referred, or with which the county agency, the juvenile probation office, and the court have a continuing relationship. This includes program-funded facilities. The contract shall represent a legally binding agreement between the county and the provider, and shall be renewed annually.

Service contracts or agreements.

(1) Services purchased by contract or agreement shall bear the signature of the chairperson of the county commissioners, or a duly authorized representative, and the director or administrator of the service provider. Purchased service contracts or agreements shall also include the following:

- (i) Contracting parties and addresses.
- (ii) Effective date and term of the contract.
- (iii) Contracted amount or unit price and payment schedule.
- (iv) Provisions for contract modification, amendments, or termination.
- (v) Prohibition against reassignment of the contract without permission of the county.
- (vi) Work statement, including the service provider's location and hours of operation.
- (vii) Required reports for the county and the Department.
- (viii) Maintenance and retention of required reports, documents, and accounting books.

(ix) Audit rights on the records in subparagraph (viii) and inspection rights of performance by the county and the Department.

- (x) Procurement of liability insurance.
- (xi) Client confidentiality and right of privacy.
- (xii) Units of service to be provided and their definitions.

(xiii) A provision that the parties to the contract shall not discriminate against any employee, client, or other persons on account of race, color, sex, religious creed, national origin, age, or handicap.

(2) Contracts or agreements between the county and a program-funded provider shall contain the following additional components:

- (i) Provisions for budget modification or amendment.
- (ii) Property title rights for fixed assets purchased or materials, plans or procedures developed through the agreement.
- (iii) A budget and fiscal statement of how fees or costs were determined.
- (iv) Provision for the procurement of fixed assets.

(3) Agreements shall be reviewed by the county solicitor who may require additional components beyond the requirements outlined in paragraph (2).

(4) A narrative description of the services to be covered by the contract shall be included in the county's annual services plan. A signed contract becomes the authorization for the expenditure of funds for services identified by the agreement. Therefore, county agency funds cannot be expended for provider expenses until a contract is signed.

(f) *Contracts with providers outside of the county and the county children and youth agency.* A county or county children and youth agency may purchase services from a service provider within the jurisdiction of another county. The services shall be purchased via contract or written agreement with the provider. If the provider is a program-funded agency, the payments received for the services shall be reported as income and subtracted from the gross expenses billed to the county agency of which it is part.

(g) *Conflict of interest.* The appropriate county authority shall not make any contract or agreement with a person, company, or organization in which a member of the county children and youth staff has a financial interest; nor, shall the county authority contract with members in its own staff or their immediate families, except with the clear prior written approval of the regional office.

Attachment B

Funding Background and Complexities

In 1976, Act 148 established a formal process by which County Children and Youth (C&Y) agencies are financed through a combination of federal, state and county dollars. Act 148 included fiscal incentives for County C&Y agencies to use in-home and community based services over residential programs whenever appropriate. These financial incentives, reflected in reimbursement rates, served as the catalyst for unprecedented growth of community based and in-home services in Pennsylvania and the development of the infrastructure upon which our current continuum of quality services was built.

This Act was amended in 1991 by Act 30 which established the intent of the legislature to fund County C&Y agencies based upon financial need identified by individual counties and certified by DPW - the Needs-Based Plan and Budget process. Act 30 of 1991 created a process that was intended to provide adequate funding to meet the widely-differing needs of Pennsylvania's 67 County C&Y agencies in an equitable manner using consistent standards. Each County C&Y agency is annually required to submit a needs-based plan and budget to the DPW Office of Children, Youth and Families (OCYF). It was intended that this document accurately reflect the child welfare and juvenile justice needs of each county and be the product of collaborative county planning involving the C&Y agency, juvenile court and commissioners. The intent of Act 30 is that the total DPW-certified dollar amount for all 67 counties is the basis for the figures in the Budget presented by the Governor to the Legislature.

In the past several years, the funding environment has become more challenging, competitive and contentious. As dollars have become more restricted at the federal, state and local levels, there has been movement away from developing budget calculations based on projected need to one based on actual expenditures for the previous year. This shift has reduced creative planning to effectively respond to the changing needs of children, youth and families, minimized the inclusionary process of providers and community representatives in the planning process, restricted prevention services, and even caused an overly-conservative approach to accepting cases for service.

Attachment C

Pennsylvania Council of Children, Youth and Family Services

CODE OF ETHICS

Council membership commits to the highest standards of integrity and ethical principles in the delivery of best practice services to children, youth and families. This code of ethics sets standards of behavior to be adhered to in relationships between the member agency and its clients, colleagues, staff, foster parents, the child welfare field and society. This code is the ideal to which all members work to achieve and reinforces each member agency's accountability to society and to those individuals with whom they have professional relationships. The membership of the Pennsylvania Council of Children, Youth and Family Services affirm and agree to adhere to the following statement of ethics:

1. Member agencies will ensure each child's safety, permanence and well being within the guidelines of priorities and best practice established by the Commonwealth of Pennsylvania. Member agencies will also ensure adherence to the guidelines of Balanced and Restorative Justice (BARJ) principles for youth involved with the juvenile justice system and the Child and Adolescent Service System Program (CASSP).
2. Member agencies will protect children in their care from maltreatment and avoid harming those for whom they have professional responsibility.
3. Member agencies will establish and sustain services that are unbiased, competent, appropriate, and culturally competent.
4. Member agencies will respect and protect the confidentiality and rights of all clients served.
5. Member agencies will carry out their professional responsibilities with integrity, treating those with whom they share professional relationships in a respectful and honest manner.
6. Member agencies will employ the staff necessary to ensure that services are provided in a professionally competent manner.
7. Member agencies will nurture and model organizational operations that encourage accountability and reward ethical behavior.
8. Member agencies will ensure their private interests, whether personal or financial, will not conflict or appear to conflict with their professional responsibilities.
9. Member agencies will adhere to all laws and regulations relating to the conduct and operations of their agency and work to improve and change laws and policies that are unproductive or outdated.
10. Member agencies will respect the boundaries and policies established for use and dissemination of material, information and publications generated by PCCYFS as benefits of membership.

Adopted by the PCCYFS Board of Directors on 7/17/09