**Commission to Study Residential Placement of Children**
{House Bill 2334}
{Sponsored by Speaker Kiss and Delegates: Michael, Perdue, Amores, Brown and Palumbo}
Wednesday, November 2, 2005 (1:00 p.m. – 2:30 p.m.)
Governor's Press Conference Room

# MINUTES

## Commission Members Present:

Martha Yeager Walker, Chair, Department of Health and Human Resources (DHHR)
Margaret Waybright, Bureau for Children and Families, DHHR
Andrea Darr, WV Prosecuting Attorneys Institute
Philip W. Morrison II, WV Prosecuting Attorneys Institute
Mike Lacy, WV Supreme Court of Appeals
O.C. Spaulding, Circuit Court Judge, Putnam County
John E. Bianconi, Acting Commissioner, BHHF, DHHR
Lynn Boyer, Department of Education
Frank D. Andrews, Department of Education
Nancy Atkins, Commissioner, Bureau for Medical Services, DHHR
Jack Alsop, Circuit Court Judge, 14th Circuit
Gary Johnson, Circuit Court Judge, 28th Circuit (Nicholas County)

## Staff and Guests Present:

Jerry Roueche, Secretary's Office, DHHR
Jason Najmulski, Bureau for Children and Families, DHHR
Rocco Fucillo, General Counsel, DHHR
Jeanette Rowsey, Mountain State Family Alliance
Caroline Duckworth, APS Healthcare, Inc.
Teri Toothman, MSPCAN
David Majic, Bureau for Behavioral Health & Health Facilities, DHHR
Linda Watts, Mountain State Family Alliance
Susan Sobkoviak, WV National Association of Social Workers
Scott Boileau, Alliance for Children
Sue Hage, Bureau for Children and Families, DHHR
Jane McCallister, Bureau for Children and Families, DHHR
Kathie King, Bureau for Children and Families, DHHR

**I. Call to Order – Secretary Martha Yeager Walker**

**II. Welcome/Introductions**

**III. Minutes** for the September 28, 2005 meeting were approved and adopted without changes.

**IV. Study Area 3 - Cooperation/Barriers**
Jane McCallister, Director, Children & Adult Services, BCF
Chariperson for Study Area 3

**Handout was provided – "Study Area 3, Cooperation/Barriers (7 & 10)"**

The group had a total of two meetings. Group included: Jane McCallister, Chair, BCF/OCFP/CAS; Jean Sheppard, BCF/Office of Finance & Grants; Wil Jones, BCF, Assistant Attorney General, Rocco Fucillo, DHHR General Counsel; Danny Woolcock, Richard Brennan, DHHR Finance; Pat Winston, Cindy Bureau for Medical Services, Pat Kelley, Becky Wolfe, Kristi Pritt, David Majic, and John Bianconi, OBHS; Joe Panetta, Frank Andrews, DOE; Bruce Blackhurst, DJS, Steve Fairley, Kim Ferrell, WV Child Care Association.

Task: Develop strategies and methods to promote and sustain cooperation and collaboration between the courts, state and local agencies, families and service providers, including the use of interagency memoranda of understanding, pooled funding arrangements and sharing of information and staff resources.

Jane explained that it was difficult to start the group, because it was hard to talk about finance or funding streams when the group was not sure exactly what service needs were needed out in the community in regards to services needed. Because funding steams are different in setting up residential facilities than looking at low end services, it was difficult to start. Recommendations of the group are based on the premise that the other work groups would be identifying the needs and would be comparing these to what we currently have in-state, and then determining what needs to be developed within our state.

Basically, there is no work group that would actually determine what the needs are currently of the children who are out of state or what our needs are in the state, and compare them to what we have available and develop a plan for those children. Recommendations are more of a broad and systematic approach than is more specific to those needs.

The first thing the group talked about were barriers to providing services:

- Building Facilities – no funds for start up costs, capital improvements;
- Education – no funds to expand existing in-state facilities with on-ground schools;

- Service/placement decisions and funding – lack of appropriate and available services across the state; due to inconsistencies, sometimes MDTs are not available what is available or where services are available.
- Regulations – Chapter 49 of WV State Code does not allow children between the ages of 18 and 21 to be housed in in-state facilities; the Bureau has proposed legislation to increase services to age 21.
- Fragmentation of Services – existing services are not provided full funding through Federal grants, require a state match, therefore there are limited financial resources. Generally, every agency is using all their funding to provide those services they are mandated to provide.
- Time Frames – short term funding may be a problem, Federal funding runs on Federal fiscal year 10/1 – 9/30, state fiscal year is 7/1 – 6/30.
- Cost Reporting – in-state facility rates are based on cost reporting.
- Contract monitoring – funding limits do not allow full discretion on services provided, fully monitoring contracts would require additional staff.
- Under utilization of existing in state facilities – in-state facilities are not at capacity because they have a unique specialization in programming, which does not always meet the needs of the children.
- Community resistance to facilities – public resistance to the population of children being brought into their community.
- Lack of flexibility for in-state providers – currently, facilities in-state are level specific, makes it hard to transition children to lower levels of care.

**Short Term Recommendations**

Recommendations made basically as an overall structure, as opposed to need-specific.

- Funding should be established by the Legislature based on The Commissions Implementation Plan. Two areas that would need specific line item budget appropriations: the educational piece, and the facility building piece, if it is determined to be the need.
- There needs to be continued work on strengthening the MDT process and ensuring that the MDT process is adhered to.
- Legislation has been developed, will be proposed in 2006 legislative session, to increase age of children allowed to be placed in in-state facilities, to age 21.
- In-state rate setting methodology is currently being reviewed by the Public Consulting Group.
- Funding for services is scarce; need to expand contract monitoring, additional staff would be required.
- The Certificate of Need process should be changed to an RFI process based on The Commissions Implementation Plan.

MYW: Question about the Certificate of Need process under short term, you talked about RFI process, that would be based on the type of treatment you needed and where it would be needed.

Jane said we would specifically request what we need to have, as opposed to right now, the process is, people can submit for the services they want to provide and how they want to provide them. The process would change to be a process of once the need is determined, then we would request that service in that area.

MYW: If you need treatment for certain types of kids, and it seems there aren't many services available in that area, then we would issue an RFI for certain types of individuals in that specific location, and then the need for those services. Who is going to determine the need?

Sue Hage: When Susan Fry presented on one of the groups for the Strategic Plan, the Strategic Plan work group has looked at the kids that have been out of state and continue to be so, and we are developing a very comprehensive process to view that again for all kids at the point of time in each region, to see if there is consistency in who is doing the reviews, so we can make sure can look at the treatment needs in the same manner, no matter who the child is, education issues, things of that sort. As we finish each region, we will be able to say, well, in this region, and Linda Watts alluded to this in her presentation, that in Region II, they're seeing this type of view, that are currently out of state, being the challenge, and the resources lacking. As we do that, once we finish all four regions, we will have a pretty good picture of what the needs are, and can start that process as soon as we want to, about RFIs, that hopefully the goal will be that we will institutionalize that review process, and put it in place at certain junctures for kids that are placed out of region, out of state, and eventually get it to where they are doing for kids that are placed out-of home. That would be a long-term way of using the instruments and tools in the process for development.

MYW: Who has input in this, do we have probation officers, courts, we identify something, but maybe the judges think we don't need this type of treatment?

Sue: We plan to, for those that are out of state that have probation involved, ask them (the court) to participate in the review process, and confirm with the court and build that in, and say that based on our review, if this Commission is still meeting, we can say what we see as the need, if we are going in the right direction, a number of ways we can participation, involvement of the court.

Gary Johnson: . . .every morning we checked . . . every bed available . . .
*Note to Sue – this was not clear on the tape – fill in, delete?*

Sue: we don't know that . . .the network . . . .do you know, Margaret, if Michael has that set up . . .

MW: We haven't done that . . . the way the system is set up . . . levels 1, 2, and 3 . . . it doesn't specify, for example, what really is needed . . . for sexual offender . . .

Sue: . . . and we also hope to be able to capture some of the challenges the families are facing, because I think that, although some of the youth out-of-state may have their own challenges, part of the reason they weren't able to stay at home is that their families were also facing some challenges that we have got to start dealing with, or we never will be able to reunite them.

Cindy Largent-Hill: If the RFI originated out of the department, as we determine the need . . .If I was a provider and had the opportunity to alter or add beds, how would I go through that process?

Sue: It's a request for information, where you state that, here are what we have identified as the need, here are the program expectations, here are the staffing expectations, here are all the various requirements, here's what we expect from you as a provider, here is what you can expect from us, and then to get some assurances that you are fiscally sound, you have capitol to operate. You can word it in such a way that existing providers have the opportunity, or can even have extra bonus points if they are willing to restructure their program, or are interested in adding a unit, or willing to change their staffing and programming. You could have it stated in such a way to give preference to an existing provider, over someone brand new, if they are willing to make those necessary changes.

Question: so we would request information on this area . . . ?

Sue: Yes, anyone interested and feel they meet the requirements, then we have a review team, and structured evaluation process, go through review, costs would be separate that our administration deals with.

Sue: You have costs, they have to give you budgets, what they anticipate their costs will be, you can even put limits in there, depending on what you are asking for, you can even say "proposal can not exceed more that X amount of money." They have to include a budget of what they expect all their costs to be.

Question: What is the meaning of the language about the "MDT being adhered to?"

Jane: Making sure all the children have an MDT, and that parties we need at the table are at the table, and they are familiar and aware of the services are available in the community, and what is available to (that) child.

Question: Are providers not following the MDT process?

Jane: Sometimes we're not as well informed as we need to be about the services available, when we go to court to make the recommendations.

Response (Spaulding): As far as the process, DHHR go, I have no complaint – two areas where people don't participate (with MDTs) is the office of the prosecutors, and the defense lawyers.

Spaulding: Regarding the third recommendation, increase the age of children allowed to be placed in-state, you know you are going to propose that legislation, what is it going to cost?

MW: This is kids who are already out of state, but cannot be brought back in state because of age.

Spaulding: Would it not also be about kids that are in state, now age 18, we would stop providing services, don't treat them because they are adult. If we treat them to age 21, it's a lot more than those that are out of state, we'll now be able to keep them, will have an explosion . . . all facilities, all children (to age 21)?

What kinds of kids do we have out there? Discussion, what kids are we talking about, what kind of treatment facilities

MW: Some of them are in custody, to age 18, have to be in an education program . . most of the kids are in the juvenile court system, in residential treatment program . . .

Sue: Keep in mind, the license of the facility to complete treatment and the programming is not that long, averaging 6 – 9 months, 9 – 12 months.

Sue: Also have to be concerned about existing programs, and their size, as it relates to being able to getting Medicaid funding and IV-E reimbursement, that all pieces have to be put together when getting reimbursement of care.

Jane: . . . And it all has to be based on need . .

**Long Term Recommendations**

We keep revisiting this issue, we have recommendations which go to a whole systematic change in developing low-end community services that prevent placement, if possible, in developing an array of services.

- Conduct a study of existing funding streams within DHHR and all child serving agencies, DOE, DJS, etc., to see what services are available, what services are needed to create an array of services within the state.
- Determine how state funds can be used to expand the Federal participation on grants that are not capped.
- A review of cost reporting needs to be conducted to see if we are maximizing our dollars while getting the services that we need.

- The next step would be to develop an incremental plan for service development. By October 1, 2006, Federal plan changes can be made to be consistent with The Commissions Implementation Plan.
- The Commissions Implementation Plan will lead to contracts and the Memorandums of Understanding. Basic language in the MOU's needs to be standardized. Language in contracts also should be standardized, and resources allocated in order to monitor their compliance.
- Once achieved, this plan would result in services being available to children in their homes, or closer to their homes if placements are needed. This will eliminate the need for most of the out of state placements in the future.

The plan of provision of services in the local community may not always result in the goal of prevention of out of state placement in all cases, but it may help in many cases.

Expectation would also be to provide education settings for this population, how this would be paid for has not been determined.

Comment here about study, Marshall University – comment not clear?

Sue: That is available, what it doesn't do, it doesn't talk about mixing & matching funds, some of the federal mandates are very narrow, funds that come through DHHR, DHS, DOE, the funding source will tell what they are to be used for. The finance people have all this information readily available, where you get into the challenges is how to mesh the monies together, using it to meet all the low-income regs, that is one of the challenges that has always been there in the past.

You have to be careful that you are not using federal dollars to match other federal dollars.

MYW: The next meeting is at the end of the month, we are hoping we have a list of the recommendations made so far. One of the things I was hoping we would talk about is what we are going to do with the out of state providers, particularly in the areas on the borders, panhandle areas. Question about the areas in those border regions that can still be considered "in-state," – just across the border. Need to agree to consider the areas around the county that, mileage wise, may still be considered a local or "in-state" placement, convenient for placements close to the home.

Discussion also as to if the facility the child is placed at, maybe 25 miles from the child's home, is really working with the family to get the child back home, if interaction is taking place.

Pointed out that the desire is for all facilities, whether in close proximity or not, to be communicating/working with the child's family.

Goal will be to get all of these items in agreement, either at the end of this month, or in the next month.

Sue: The strategic plan workgroup has dealt with this issue, and has come up with definition that did deal with the closest proximity to the child's home, that could meet their specific treatment needs. We'll bring copies of that, (it is in your notebooks) to the next meeting. Also have a meeting scheduled of all the presenters that have made presentations, around the 16th of November, we are going to look at the recommendations they have given to the group, and see if they can be put in some kind of sequential order, or if there is some overlapping, combine them, we will have that ready for you to discuss recommendations.

Group also agreed we need to have a longer meeting in December, perhaps 10 – 3, to wrap up the recommendations.

MYW: Our time is up, we are supposed to have everything finished by end of December. I don't think, personally, we can have everything ready by the end of December, but I do think we can have a general outline of the things we have looked at, and the things we think we need to discuss more. What we need to do, if we have a living document, we can meet in January, and then meet periodically, to make sure we are in agreement, if you have any issues, or if the judiciary has issues.

## V. Study Area 4 – Certification of Out-of-State Providers

Kathie King, Program Manager, Licensing/IIU
Division of Children and Adult Services

**Handout was provided – "Study Area 4, Certification of Out-of-State Providers (12)**

The assignment of Study Area 4 was to look at ways to certify out-of-state providers so that we could ensure that children who are place out-of-state will receive services that are consistent with the standards of operation in West Virginia.

One of the things we did was to gather information, and identify what exactly the standards and rules of operation are for our providers, and to assure those rules and standards for out-of-state providers as well.

There are different ways to administer regulations, with different methods to do that. We looked at all the ways we are doing that in West Virginia now, and find out what the purpose of those (regulations) are, and how that plays out here in West Virginia. Some of the ways to ensure standards and rules of operation, one of the ways is through accreditation. Those people are familiar with the joint commission that regulates cost rules. There also was a council for accreditation, those are the two we see mostly in West Virginia.

Sometimes those are voluntary, an agency wants to keep accreditation, so they apply to the accrediting organization and have to meet certain standards to get approval from that organization. With PRTF, because they are considered hospital-level, PRTFs are required to have joint commission approval. That's one of the ways that regulates PRFT for children in the state and through the joint commission for child care organizations accreditation.

Another way that we set rules of operation are building, health and fire approval. Depending on where you are located, it's going to be different, because many of those are at the local level, there are planning and zoning codes within the county, within the city, there are building codes that have to be met, depending on where they are located. There is also the health department, and there are statewide health rules, but those are enforced at the local level, so the local health departments are involved in sanitation approval, which is environmental health, and then they are also involved with the kitchen, and infections in the kitchen, and safety. There is also the state fire marshal, and state fire laws.

We also have contract regulations, and the purpose of contracts is for one agency, in our case a government agency, says, "I want to purchase these services from you," and if I were to tell you these services, then this is what I want you to do in order for me to pay you. You can set standards also within the contract, and usually those standards are above and beyond actually what a license would require.

Another way is also credentialing, that is when an agency or individual meets certain educational requirements or program requirements, and then they get an approval or credential from another organization saying you meet the standards that we expect to serve our clients.

We also have fiscal rate setting, within our state that's handled not just within the Bureau for Children and Families, or within the Bureau for Medical Services, but that's also handled at the higher level in DHHR Administration and Finance, where if we're going to purchase a service from you, a formula is developed to determine the rate that we will pay you.

Last but not least is child care licensing, so when you say _____that is what people are thinking of, the license that you either have to get from my Bureau, or Bureau for Children and Families, called a residential child care license, or there's also a behavioral health license administered through the Bureau for Public Health. Another way to get approved or licensed is in the correctional facilities operated by DJS, corrections has their own process, I'm not sure they call it licensing, but approval of certain standards that they set at the correctional facilities.

Usually we consider the license as the gauge for the minimal standards that someone has to be in order to get in-state. Above and beyond that, you've got physical incentives, contracts, credentialing, accreditation, so that you can

require to contract things that are higher and above and beyond the basic license.

Something that a lot of people may not realize, we have had some organizations to do one license to operate a residential child care business in this state, and they meet all the standards, and they do get a license, but they don't want to take government money, or they don't really want to work with - _____, they're taking private pay clients, or are affiliated with the church, or the church supplies all their _____ ,but you can have a license, and be regulated in this state, and still do basic building, house & carpet, etc., but you have to go through DHHR for anything else, unless you want money.

In order to get payment, the facility has to send in an application and an agency self-assessment. In your hand out you have a copy of the agency self-assessment for APS Healthcare, the facility has to send that into APS, they have to meet a certain standard, and then they have to be approved by APS Healthcare to have residential foster care children before we will pay for them. Also, certain types of characteristics have to go into APS Healthcare on the child, on the individual child, and that's where the matching takes place, because then the child, according to the child's needs and characteristics, APS Healthcare then says "this child is a good match for what this facility is credentialed or able to provide." APS Healthcare does that for emergency shelter care, levels I, II and III.

On the other side, when you're starting to talk about hospital-level care, which is usually paid all out of Medicaid, the Bureau for Medical Services has WVMI, which is West Virginia Medical Institute. The process is very similar to APS Healthcare, but it's for hospital-related care, there is information that has to come in on the child, to WVMI, and then each facility also has to prove and show enrollment with Medicaid or Bureau for Medical Services, to show that they meet the standards set by Medicaid. Rate setting is done by DHHR, licensing there are three entities involved in this state, which grant licenses, either the Bureau for Children and Families, OHFLAC, and Department of Corrections. Other kinds of regulatory methods that we have under "Other" – Medicaid review, Medicaid starts to pay a bill, for a child's services, at some point the staff do come back around, and audit and monitor the providers as to what services they provided, and determine whether or not the child is being well cared for. APS Healthcare does retrospective reviews also, once something is paid for, at either shelter care or levels I, II, and III, they also have reviewers that go out and review the facilities to determine whether or not what was paid for was what was needed, if the child needed the services, or what the facility said they were going to do. With WVMI, they the same thing with the hospital level of care.

We also know that part of the educational issue, some of the children could go out of state, receive their education, funded with special education funds from West Virginia, and they have at least a person or group of people who

go to the out-of-state facilities to do a review to be sure the child receives the special education according to their IEP, and what was paid for.

Question: What happens with other children, that are not receiving special education?

Kathie: There is no educational review specific to education.

Sue: It would have to occur through the foster care review, or our staff, doing their quarterly reviews, meeting with the MDTs, reporting that to the court, hopefully one of the items they are reporting on is the success or challenges that youth is having in education. That's why it's so important to have education involved in the MDT process, to make sure we are looking at the total programming and treatment for the kids.

Question: Is there some credential review, with respect to the out-of-state facility, to make sure they have an education program that is approved by that state, or by some agency?

Sue: No

Question: That's a serious issue, I think children can be really caught up in the system, back to West Virginia, for example, nobody recognizes that the education system was not seen, that can be very devastating, for a child.

We don't actually see those kids, they never touch our system, but they come back to the county school district, they're at the mercy of the county school district as to whether they'll accept that program. Don't the judges look at that (education) when they place a child out of state?

Response: They make sure they are accredited, local people make sure of that.

Kathie: Running out of time, we have lots to talk about at the next meeting, one thing is the interstate compact placement on children, which regulates out-of-state placement for children, will talk about that a little more in detail. Foster care review, MDT, judges, to look at what the child's needs are, and whether they are being met, whether the case plan is being carried out, so there is some oversight there on an individual basis for each child in foster care.

Next will look at what applies to in-state providers, out of state providers, many apply to both, some of them don't, the accreditation, the PRFT, that applies to all of the states, so PRTF here in West Virginia has to meet the state standards that PRTF in Oklahoma or California, those are federally regulated.

Building, health and fire – we have all those rules on the books in West Virginia, the fire marshal from WV doesn't go over to Pennsylvania and inspect a facility over there, but what we do to say is that every state has some kind of comparable fire marshal and regulations in their own state.

Contracts – BCF contracts with both in-state and out-of-state providers, material handed out in previous meetings, the new contract which recently went into effect.

APS Healthcare, WVMI, Bureau for Medical Services enrollment, those are the same in the state of West Virginia.

Rate setting happens at DHHR for both in-state and out-of-state, however, the process is a little bit different for the in-state and out-of-state.

Licensing in this state, in-state, DHHR, BCF, and OHFLAC, do licensing on our own facilities, we do not go into other states and issue licenses, however, those other states have comparable licensing units within their states.

Retrospective Medicaid review, WVMI review, those are the same in-state and out-of-state.

Special ed review, they go out of state.

Foster care review for the child, that's across the board, for in-state or out-of-state placement.

The interstate compact for children, that applies only to our state. Next page, more information on interstate compact, which I heard yesterday may be one of the most misunderstood portions of Chapter 49. It is enacted by law in Chapter 49, it was specifically set up on a federal basis for states to cooperate during interstate placement. The sending state, we must first provide notice to the other state, and then that state has to determine whether it is in the best interest of the child. It's up to the receiving state to give an approval for that placement.

Under interstate compact, for institutional care for delinquent children, this has the responsibility for the judges, it says the judges must make two findings before an interstate compact placement for an adjudicated youth to be approved: 1) they have to make a finding that the equivalent facilities for the child are not available in the sending agency's jurisdiction, and 2) the institutional care in the other jurisdiction is in the best interest of the child, and will not produce undue hardship. The judges have a part here in regulating the interstate compact.

Last, our recommendations, lot of things going on out there looking at these replacements:

- Conduct initial desk evaluation of all out-of-state providers: type of license, status of license, out-of-state licensing regulations, child abuse and neglect laws.

- Determine whether regulations for out-of-state providers are the same and/or comparable to WV

- Determine which out-of-state providers are operating within regulations and rules of operation comparable to WV and designate those providers as approved for utilization.

- Limit out-of-state placements to those residential facilities which have been prior approved.

- New out-of-state providers would be required to submit an application for an initial desk evaluation and approval to be utilized.

- Establish methods of communication and Memorandums of Understanding with Regulatory agencies in other states.

- Evaluate out-of-state provider contracts to identify inconsistencies with in-state provider contracts and reconcile when possible.

- Establish a process for periodic on-site review of out-of-state providers by the comparable West Virginia regulatory agency.

- Require out-of-state providers to obtain a license from a comparable West Virginia regulatory agency and be subject to periodic reviews and renewals.

MYW: The next meeting of the Commission will be November 29, advise everyone to bring questions, issues raised today such as education in out-of-state facilities, to next meeting.