Commission to Study Residential Placement of Children
{House Bill 2334}
{Sponsored by Speaker Kiss and Delegates: Michael, Perdue, Amores, Brown and Palumbo}
Tuesday, November 29, 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
Cindy Largent-Hill, Division of Juvenile Services, MAPS
Nancy Atkins, Commissioner, Bureau for Medical Services, DHHR
Philip W. Morrison II, WV Prosecuting Attorneys Institute
Andrea Darr, WV Prosecuting Attorneys Institute
Jane Charnock Smallridge, Family Court Circuit, Kanawha County
Gary Johnson, Circuit Court Judge, 28th Circuit (Nicholas County)
Mike Lacy, WV Supreme Court of Appeals
John E. Bianconi, Acting Commissioner, BHHF, DHHR
Frances Clark, Department of Education (representing Lynn Boyer)
Frank D. Andrews, Department of Education

Staff and Guests Present:

Denny Dodson, Division of Juvenile Services, MAPS
Rocco Fucillo, General Counsel, DHHR
Jason Najmulski, Bureau for Children and Families, DHHR
David Majic, Bureau for Behavioral Health & Health Facilities, DHHR
Caroline Duckworth, APS Healthcare, Inc.
Pat Winston, DHHR/Bureau for Medical Services
Linda Watts, Mountain State Family Alliance
John Moses, Youth Services System
Laurel Haught, Region II, Family Network
Rhonda McCormick, Region II, Family Network
Jeanette Rowsey, Mountain State Family Alliance
Susan Sobkoviak, WV National Association of Social Workers
Nancy Tonkin, Alliance for Children
Sue Hage, Bureau for Children and Families, DHHR
Carl Hadsell, WVU Center for Entrepreneurial Studies and Development

I. Call to Order – Secretary Martha Yeager Walker

II. Welcome/Introductions

III. Minutes for the November 2, 2005, meeting were approved and adopted without changes.

IV. Recommendation/Action Phase Process

Secretary Walker began by indicating that she wants the group to review some issues that have been "left hanging", look at the MDT process, recommendation hasn't been made on that; talked earlier about 18 – 21 year olds, is legislation needed for that change; education requirements have been talked about before for out of state placement, should there be more requirements, should there be some certification of out of state placement. In addition, need to talk about some of the previously made recommendations by some of the CAS team. Secretary Walker has asked Carl Hadsell to help the group work through some of the recommendations to say yes to some, others might want to discuss, some may not want to discuss. At the end of today, Secretary would like to have some sort of feel for what the Commission wants to do so that she can present an executive summary of what has happened within the Commission, and what some of the recommendations might be to the Legislature. A final report is supposed to be completed and ready to present for the December interims. Secretary Walker has told them, informally, that in discussions she has indicated that the Commission should be continued for a period of time, to make sure all goals are achieved.

She would like to take Judge Johnson's recommendation that, in January, the group could have a much longer meeting to thoroughly discuss what to do and have a real definite action plan and time frame. She would like to start putting that together now, then have the long discussion in January.

If the Commission is agreeable with that time frame, the group may or may not have something in December, planning a longer meeting in January, with lunch, may be more suitable. The result of today's discussion will produce a preliminary report to present to the Legislature. The Commission was in agreement with this plan.

V. Key Discussion Points – Carl Hadsell

In your packet is a table, produced by the study groups; they met since the last Commission meeting and synthesized the recommendations from all of the study reports, so they are rooted in the material handed out. A frame work was put together to think of the recommendations. The framework indicates which study group the recommendation came from.

These are the recommendations, who might be responsible for implementing, whether or not there will be a cost to it, when it might happen, impact,

meaning, if the recommendation was put it, would it really impact the time frame the Commission is trying to change. What is the difficulty of having it happen, either cost-wise or hard to get people to implement.

What appeared to be important from looking through the minutes of all the meetings, was that there are some points that may need discussion before going to the recommendation stage. Depending on time today, he'd like the Commission to look at the first recommendations, also brainstorm with the group what additional recommendations they think will be important. Suggests an e-mail should also go out to those Commission members not present today, to get there input on final recommendations.

First, group should look at some of the discussion points, get a sense of the Commission of where everyone is on each one. Sue Hage will start the discussion on these.

❖ **Systems of Care**

There are two recommendations on the left, these were part of the recommendations made when Linda Watts and Laurel Haught presented in September. These are recommendations 9 and 10. The reason we want to spend a little time on these recommendations, is we probably need to be making steps towards implementing them prior to the report being released and finalized. There may be some fiscal implications determining what the recommendations are. We feel it is very important to get your input about whether those two recommendations are something the Commission feels could impact how we serve our children and families in West Virginia.

When Linda did her presentation the System of Care is a project that has been in place for 7 years, it is a concept of buying into certain principles and values, not a particular service, site, or person. It is the communities coming together and making sure that the families are involved in the decision making as it relates to their family and the children. The project we have been involved in has focused on the seriously emotionally disturbed youth. Linda and Laurel discussed the impact this has had in Region II. What we are recommending, both the Mountain State Family Alliance and Region II Transition Team, as well as another group, the System of Care Collaborative (all this information is in the September minutes and presentation). What we have continued to recommend is that we need to sustain what we are currently doing in Region II, we need to look at whether or not to expand the target population, do we need to focus on additional children and youth we may not have captured in that specific target population we had with the grant.

Also, how do we begin phasing this system of care throughout the state, how do we begin discussing the principles and values, how do we start getting buy-ins from communities, how do we insure that we have families involved. We are on our no-cost seventh year, we have enough money left over to

continue what we are doing now, through August, 2006. If we are going to sustain, and if we are interested in expanding, we need to focus on those points, and continue that discussion, as we look at the other recommendations of the Commission.

Question, where did they get the employees to work with this system of care?

Linda Watts – "nutshell" of staff at Mountain State Family Alliance, Clinical Resource Coordinator, Kids Care Coordinator, their role is to identify most "at risk" youth. Most of the services are contracted out, built into those contracts is the mechanism of deliverables on how the services have to be applied. It is strength, MDTs, family, are involved. She oversees the day to day operation to ensure that all of the (services) are done within the region, evaluation is on-going. Services like respite are contracted out. It was based upon a needs assessment of what the region needed at the time, and looked at needs of kids being seen at the time, those needs can change, over time.

The Alliance uses private practitioners, comprehensive mental health, psychologists, access whatever resources are in the community, and if they have to, travel to rural counties as well. They work with the families to get whoever is available to provide services.

Martha Walker – We must also be aware of the cost of implementing this, and where the money would come, should be phased in, do we know what the costs would be to implement this statewide, and is there a way to phase it in. Are there funds that we can identify that are currently being spent for other services that could partially be used for these services.

Sue Hage – The Transition Team is working on pulling together some of that information. Two other key facts to worry about, one of the key components, as we did grant announcements stating we needed these resources in the community, those who apply for those grants have to be willing to accept the principles and values, that means everybody working together, meeting the needs of the families and the children, where they are located.

Linda Watts – They travel, if we want them in rural counties, we have a therapist that travels to the two farthest rural counties that we have, and is there four days a week. We built that into the contract, that those families could get those services.

Sue Hage – The other key component is the family network. We have to make sure the family network works very closely with the family in helping them navigate through all the different systems in understanding what the individual education plan is.

The family network is about two years old now, has been part of the grant, but is separate from the family resource network, these are parents working with

parents. There are existing networks already in place, but we need to make sure we can sustain them.

Kids Care is a group of clinical individuals from provider agencies as well as DHHR staff, Kids Care does not replace the local MDT, but their job is to look and assess the clinical needs of the child, and make recommendations whether or not that child can be served within the region or within the state. The success of Kids Care is that basically, they have been able to prevent out of state placements by pulling their resources and looking at the child's needs. They meet every month, any DHHR provider can refer a child, even a family can refer a child, to Kids Care for a clinical assessment. Their role is to make recommendations for placement, or to make recommendations for children to return from out of state. They are community providers who have either accepted these kids, and we are working with them, through our project or just the resources within social services and the community to maintain their needs. It is on a volunteer basis, we do pay for one clinical, one kid's care coordinator can manage that.

Carl Hadsell – What would this Commission like to do, what is your recommendation?

Martha Walker – Whether we still have children out of state, or whether we develop in-state facilities, we need to have some system of care and either, to keep them from getting into the system, or when they are out of the system, can give them counseling and help families. I think we need some type of continuum of care.

Is there education money that currently is being used as part of the process, is it child specific, or is it general?

Frances Clark - There have been some child-specific dollars, historically, for those returning from out of state. I don't know whether that will continue or not, but it certainly is something we will address.

Martha Walker – Whatever we do, it won't be without some cost.

Frances Clark – These students, especially the ones with disabilities who are out of state. By bringing them back and providing additional support for re-integration, had a more positive outcome.

Question – Is there some kind of information about what a transition team is, why it is necessary.

Sue – There has always been an executive team, and a steering team, of Region II System of Care, group has gotten together, Bureau for Medical Services, Bureau for Children and Families, Bureau for Health and Health Facilities, looking at how to sustain the system of care, what would it take, and how would it look, actually try to figure out what the model would look

like, continuing to look at Region II also, to see how it would look in other regions, looking at phasing it in, community readiness, and then budget-preparedness, what it would cost to sustain as it is, start identifying how we're currently paying for some of the services, and some of the staffing, so that we can make recommendations to John Bianconi, Margaret Waybright, and Secretary Waybright.

Carl Hadsell – What would the Commission like to do on this?

❖ **Definition of "Out-of-State"**

Carl Hadsell – Next is matter of defining out-of-state, whether it really means physical borders, or location.

Sue – When the presenters from the different groups talked about defining "out-of'-state," some of the comments that have been made in the Commission meetings, they talked about going back to the strategic plan, it was very narrow. One of the presenters, Kathie King, reminded us that there is federal statute that talks about what is in the best interest of children, in view of those placed out of home. It gives us certain direction as to what we need to be focusing on. We have taken a little of the language out of the Social Security Act, and I thought I would share this, to see if this is what we are trying to say. We get hung up on "50 mile radius" and "in-state, out-of-state, in-region, out-of-region." We first need to start with what is in the best interest of our children, in order to do that, we need to meet their needs as close to their home community as we possibly can. If we have to place them either out-of-state or a long distance from their home, that's built into the case plan, into what is reported to the court, in the decision making process.

Hopefully, as we do the comprehensive review on the kids from each region currently out of state, we'll be looking at what the resources are we need to build in West Virginia, or expand, may be a matter of existing providers doing something differently, may mean additional beds. It may be there are certain youth for which it is more feasible to purchase those services as close to home as possible, but it may mean in Pennsylvania, Maryland, or Virginia.

Question – do you want to make a definitive statement of what is "out-of-state?"

Martha Walker – I personally think we should, because, close proximity to the parents' home in West Virginia sometimes is out-of-state, is in another state. If you are in Weirton, for instance, you are closer to a grocery store in Pennsylvania or Ohio than you are in West Virginia. All of that (area) is considered a neighborhood.

Morrison – Troublesome part is the word "feasible" – connotes the decision being made on a purely economic basis. Think the Commission needs to steer the Finance Committee away from the idea of a "boundary." We have

talked about this since day one, everyone may not get exactly what they are looking for from this Commission.

Secretary – We have been looking at this issue for a very long time, and we know what our charge is, but I also think that part of our charge is to do something that makes sense and that will work. We have been treading water for a very long time, and we issue reports that go nowhere. We are not moving forward. I would rather be responsible for giving them something we think will work, and not necessarily say that out-of-state means crossing from West Virginia to Pennsylvania, Ohio, or Virginia.

Sue – Ultimately, where we need to go is keeping children and families together, if at all possible, with the child in the community can be safe, and you can serve the youth in their home or in a relative's home, that should be our ultimate goal, we've been able to show that this can happen, as in Region II. It's not an easy solution, it's a complex process, but we can get this intrastructure built.

Nancy Tonkin – The Alliance has always stood on the position that they would like as many of these kids place in West Virginia as possible. We also recognize we have more providers in southern West Virginia, don't want to send them to Wheeling, which is a long way from home. At this point, we would not argue against this definition.

Question – There would not be opposition to a locality rule of some kind?

Nancy Tonkin – Correct, if you read the beginning of this, what we've always said, if you're really looking out for the best interest of the child and the most appropriate setting, we're there.

Question – Last year, it seemed your position was, in public meetings, that every child should come home, and there should be no children out of state.

Nancy Tonkin – No, our position last year, was to have no new out of state referrals after July 1, to keep them from going out from that point. The additional parts of our policy is to support, increase our capacity in state, get better communication, get the multidisciplinary teams moving and supported and organized, and that piece has been fixed. We appreciate all the work you have been doing on this. If this is the direction of the Commission, looking at the best interests and special needs of the child, and if that is across the border and that's where the provider is, then that's fine, as long as we are looking at the multidisciplinary process and the best interests of the children. We haven't talked about rate setting, but that's very important to members of the Alliance for Children, as well.

Question – To make clear, you don't oppose the locality rule?

Nancy Tonkin – If this is where you are, we support it.

Carl Hadsell – As I understand it correctly, there are federal guidelines, that DHHR sets the policy, writes the policy, so there are opportunities to change the policy, not the federal regulations.

How about some other Commission members on this topic? This is a very important topic, and one that you need to stand behind when the report comes out.

Frank Andrews – Reasonably, if you are near a border and want to use a facility there, you want to use the resources in close proximity, for several reasons. If, though, that facility, is exorbitant, with the costs, then you could make the case, but for the cost benefit with the ratios I've seen, using the out-of-state facilities within close proximity may be the best resource.

Other comments: There are some issues around more supervision, special education, specially designed instruction, which can only be provided by a local education agency or the state. But there are some implications for those students and the federal dollars spent, regardless of what state they are in.

By the same token, we don't place children out-of-state for educational reasons.

There need to be descriptors for the placement, perhaps the facility may be close, but not approved by the Department of Education. Facilities need to be approved, appropriate, and available. Need to look at the closest proximity, some kids are passing other facilities to go out of state. We need to say if it is approved, available, and appropriate, in <u>closest</u> proximity to the family, to be considered first.

There probably used to be a standard, if a juvenile delinquent is in the northern panhandle, but goes to Salem, and the judge wants to put this youth out of state, then the argument could be made that even though that's closer, we have a state facility that was constructed for WV residents. If there are special treatment issues, then that becomes a different story.

Does this particular definition govern the Medicaid portion of the Social Security act, or is it only applicable to another area? If that is true, is there a definition of the locality rule within that portion?

Sue – Medicaid on out of state facilities does not play a significant role. We have 70 to 80 youth that are in the PRTF level of care, the remaining youth are placed, and their costs fall under Title IV-B, part of the Social Security Act. There are lots of descriptors within that Act, relating to proximity to schools, to families, case plan, etc. WV develops state policy that reflects those guidelines, so we can ensure obtaining federal reimbursement.

Carl Hadesll – Any other questions? So the Commission agrees that the locality rule should come out of this recommendation.

❖ **Education Requirements in Out-of-State Placements**

At the last meeting, there were a number of points brought up about education that happens outside of the state, WV state special education, there are probably no standard requirements of that.

Frank Andrews – There were no provisions for students who were not special education, funded by DHHR, no provision to ensure they were receiving an appropriate education. Either by contract, where DHHR is willing to pay educational dollars for students, the contract should have supplemental provision, and/or, there needs to be some monitoring of programs out of state.

Sue – We have several obligations to monitor the provision of state to any child who qualifies for special education. Prior to providing the fiscal resources, the Office of Special Education monitors every facility that we have a contract with, that we then provide fiscal reimbursement for the provision of state. The federal government requires that we do that.

I want to talk about numbers 16 and 17 on the list, because the only entity that can determine a child's eligibility for special education is the local education agency. If a child is in an out-of-state placement, they cannot be deemed eligible for special education because they are not participating in a public education program. That's what "faith" is, a guarantee of a free and appropriate public education.

If a child is in parental custody, and the parent places the child in out-of-state placement, the federal law states very clearly that (education?) is the parent's responsibility. The only reason the Office of Special Education supports children who are in DHHR custody is because we have an agreement with DHHR, that the children who are identified as special education, require in-state that we will typically support those children, if they are in a placement that is appropriate and meets the requirement as stated.

How a child becomes eligible for special education is not just meeting eligibility requirements, the eligibility team determines the need for special education. It's not a labeling process, the child meets eligibility, but also has the need for special education.

Every child has to be looked at individually, which is why there is on average about 25% of the children in out-of-state placement annually requiring special education. Do I believe that there is more than that (requiring special education) – not a whole lot more, many are juvenile delinquents, or mentally ill, who may not require special education, they may meet the criteria, but don't need special instruction.

The child is made eligible by a local education agency as needing special education.

Secretary Walker – One thing that should be identified, with the appropriateness of out-of-state placements, is what West Virginia should expect in education – should we expect them to provide some type of education, whether or not it is special education, should there be some standards that these schools have met, so when these children come back (to WV), that we have some reasonable of expectation that they have been receiving a certain level of education.

Response – part of our recommendation will be to develop the standards for education.

Part of the requirements (to be licensed in every state) is the expectation of education. In their licensing from whatever state they are placed in will be a description of the expectation of education, and they are monitored by their state to see that they meet that standard. That is totally separate from special education. Every residential facility for children under the age of 18 has to have an expectation and realization of provision of education, because it is a requirement.

Sue – Question is, is anybody gathering that information now, to ensure that they do. We all feel pretty comfortable about it, but to actually say that these are the standards, are you (the facility) licensed to meet these standards, the agency should be able to provide this.

Carl Hadsell – what are the recommendations of the Commission?

Sue – (refers to 16) – once a child is out-of-state, the local education agency has no relationship with the child. If, for example, the child comes from Kanawha county, and goes to George Jr. Republic in Pennsylvania, it's not Kanawha county's responsibility to guarantee the provision of education for that child. It is the responsibility of the parent to guarantee the educational services for that child.

Other recommendation (number 17) – the other state has a standard of licensure certification, we are developing those standards.

❖ **MDT Process**

Carl Hadsell – what is the Commission's general sense of the MDTs and supporting it?

Secretary Walker – It seems someone was talking (at last meeting) about a county where the MDT process wasn't working, there is a long list of people who need to be involved in it. Can we involve a smaller number and still have an effective process in order to make sure these recommendations are made

in a timely manner, do we think it's necessary in all cases? How well does it work, is there a way to do it differently that would improve it?

Comment – This is something that needs to be reviewed, it is not the function of the defense lawyer to figure out treatment, or the prosecutor. These people are not trained in this area. It would helpful for the MDT personnel to let the judges know what their recommendations were.

Sue – We have to look at the fiscal impact (of adding more MDT coordinators), at any point in time we have 2,500 to 3,000 kids in custody, that is 4 MDTs per year per child, plus the other MDTs required in CPS where we may not have the youth in placement. There is a way to look at the complexity of cases, where workers are fresh out of college, unaware of what MDT is, putting them with experienced, tenured workers. There should be a way of better coordinating or facilitating, whether or not this would be possible for every MDT is probably not fiscally possible.

Question – How is this procedure done in Region II, is there anything done differently than in other regions?

Response – They do help with facilitation for very complex cases, there are two coordinators, one goes out if there is a youth at risk, and coordinates that MDT in the local DHHR office and facilitate that meeting. The other coordinator works with the kids at risk of out-of-home, or those that have been in and out of the hospital a lot, will also assist the worker, facilitate the MDT process. There is a very specific target population, they do not target each child. Their role is to teach the worker how to do it correctly, they don't go back later unless needed.

Carl Hadsell – The general sense of the Commission seems to be that the MDT model might be good to look at in terms of which ones are certified, which are not and why. We'll work on the recommendation here to bring back to the Commission.

Question – regarding MDT quarterly reviews of kids currently in care, how often does this happen, how much time does it take, is that something that needs to be looked at.

Sue – We try to tie the reviews in to when they are going to have their judicial review in court, and coordinate them accordingly.

❖ **Focus on 18-21 year olds**

Carl Hadsell – Is there any particular discussion point on this, or is the general consensus regarding this population?

Sue - We have had over the last several years seen an extended increase in the number of 17 to 18 and older kids being placed out-of-state, one way we

hope to address some of that is in suggesting statutory changes regarding licensing, so that if the youth is in a out-of-home program in-state, and approaching their 18th birthday, we could continue to license those facilities so that the youth can finish the program and their needs be met, and not cause a disruption in services. It also would allow those agencies to take youth they might have to deny, knowing the youth is approaching their 18th birthday, rather than disrupt their placement. We do grant waivers, but we try not to grant them for 6 or 9 months, as it relates to licensing. We wanted to make that legislative change, we don't know what kind of impact that would make, but the concern continues to be the kids being out of state through age 19 – 20, and still being served under the child welfare system, are we making an impact, is it really beneficial for them, is it the responsibility of child welfare to continue to do that.

Question – Policy used to be if the youth was still in school, they still remained in placement?

Sue – That is still in place, this applies more to foster care than to group residential, that's why we're making the statutory change. We do have in-state group residential providers, who will ask for age waivers if it is close to the end of the school year, and they will turn 18 in the spring.

In February, there were 57 age 18 and older, 18 were sexually-related behavior, 15 combat disorder, 11 conduct disorder, they were all out of state.

Carl Hadsell – What is the Commission's recommendation or wish here?

Comment – If we could look at a particular population of kids out of state, for example, those who have been out of state for awhile, and they need to transition back, don't want to interrupt a course of treatment, but if the older adolescent has been out of state 8 or 9 months, and they are ready to come back, why can't we bring them back?

Secretary Walker – How do we make those placements available, or beds available, to those children we may be bringing back from out of state.

Cindy Largent-Hill – We have two facilities we could put on the bed website, and we could also do it through the central office. Whatever would expedite the process, we can make that available.

. . .we have a building that is located on the industrial hall campus, that is separated from the new building, it is at Salem, but it is separate, we could do a lot of specific outdoor type programs, gardening, work skills, vocational peace, we're willing to basically move all the kids out of that building to another part of the campus, and make that be what is needed, particularly for the older kids.

Secretary Walker – Can we do this without legislation? Without licensing? Is this something that can be done immediately?

Sue – yes – can make sure this can be posted.

Cindy Largent-Hill - One of the things we talked about is our facility in Barboursville being dedicated to adjudicated delinquents, and could that facility be a conduit to what the most appropriate placement is; what I here in frustration is, there may be a provider in state who can do the service, but there is not bed availability. Could we use those 24 beds as a conduit for the MDT process, and then determine, is it a state home kid, is it a Davis kid, is it a level III provider kid, or maybe it really is an out-of-state kid. We could do that work in that facility, which then would be a mechanism to keep kids in state. All these decisions are usually made because of availability, is there a way we can use a facility for just those adjudicated delinquents, to determine what they need. Most of these kids that we see go out of state don't go through the diagnostic procedure, many of the kids that do are sent back home.

Carl Hadsell – What you (the Commission) wants to do is re-evaluate this procedure?

Mike Lacy with work with Cindy Largent-Hill to figure out how to do this (facility process).

Carl Hadsell – Last page of the packet, we put together the recommendations that came from the study group, we've had some adjustments in them. The next step is to look at the table, see if it makes sense, plus, get the Commission's recommendations on what has been heard here, get the recommendations into a document. Time not available now, but he can send a form out electronically to get everyone's recommendations that should be considered by the Commission. Get them back in the next couple of weeks. Should be able to compile by the middle of December, get ready for presentation in January.

Sue – At the next meeting, she will bring a list of the people who were suggested for the coordinating council, which at some point quit meeting. The Commission needs to make a determination to keep going, or a group has to oversee the plan developed here.

Secretary Walker – At one time, someone asked for a list of the out of state placements, and the amount of money we have spent for each out of state placement. We have a list of that, from July 1, 2004, to June 30, 2005.

Margaret – The original list had individuals from foster homes & adoptions, we took those off, only includes facilities, does not include Medicaid payments, key at the end of the list describes what the information is.

Next Commission meeting will be Wednesday, January 18, 2006, from 10:00 a.m. to 2:00 p.m., this will be a working lunch session.