
AGENCY RESPONSE

Court-Ordered Placements at Residential Treatment Centers

Note: The attachments referenced in the Agency Response are on file with the Legislative Service Office.

STATE OF WYOMING
DEPARTMENT OF FAMILY SERVICES

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Senator April Brimmer Kunz, Chair
Management Audit Committee

Dear Senator Kunz and Committee,

First, I'd like to thank the committee for focusing much needed attention on Wyoming's children being served in residential treatment centers (RTCs) through court ordered placements (COPs). These children deserve appropriate and effective treatment. Residential treatment is a critical part of a comprehensive array of services DFS must manage wisely. The management must be responsive to research-based innovations as well as limitations on resources. The Department would also extend gratitude to the LSO staff who participated in this endeavor. They were professional and took the time necessary to develop the expertise to write a helpful report that will improve our work for children.

While it is clear the Department of Family Services has critical responsibilities for children and families who come into the juvenile justice system, DFS is but one of many players in the process. Indeed, juvenile justice is a process relying on having people with the right expertise at the right place in that system, able to use their expertise. The legal process should provide the tools necessary for good management, yet Wyoming's juvenile laws continue to fail us in this area. The most serious problem described in this report is far beyond the power of our agency to correct. It is a well established fact Wyoming does not have a fair or uniform juvenile justice system. Over the years, numerous studies and reports have concluded the system is broken in key respects.¹ This brokenness seriously undermines the state's investment in family success by providing counterproductive and conflicting authority and resources to various levels and branches of government.

While preparing this response, a case characteristic of the problem crossed my desk. The first time this child came to the attention of DFS was when the Department received a court order. That order adjudicated the youngster delinquent and ordered him placed at Normative Services, Inc. with neither notice to DFS nor any other DFS involvement or recommendation. The Department was made aware of this placement nearly three weeks later when it received a copy of the order. The statutory requirement for a predisposition report and an MDT were waived. An assistant district attorney, the child's GAL and parents appeared before the court and the child was placed in one of the most expensive RTC's in the state with no assessment, MDT or predisposition report.

This case mirrors many others where the view of some courts seem to be that DFS and the state of Wyoming have little role other than to write very large checks to providers. There is no doubt our current juvenile justice process can cause or exacerbate the problems a youth will ultimately bring to our

¹ The most recent critique of the juvenile court system was written by a University of Wyoming Law School Professor. See "Juvenile Justice in Wyoming" written by John M Burman, *Wyoming Law Review*, Volume 4, Number 2 (2004) at page 669.

juvenile court. The Department accepts the criticism that we can and should do a better job within our authority but urges a broader review of the juvenile system so systemic flaws can be addressed and true accountability and improvement may be realized.

This response is organized by report chapters and summarizes major actions DFS has initiated or hopes to initiate to address the problems identified in the report. The response also includes DFS agreement with all of the recommendations of the audit. Today the Department of Family Services commits to you we can and will do a better job of managing and treating these children. It has been my approach to redirect resources and take other actions to limit additional budget requests. The 2004 biennial budget for this Department represented only a 1.5% increase over the prior biennium though it included 20 new social workers. However, the LSO report recognized the Department may need to seek additional resources to carry out the recommendations and that cannot be avoided. Some of these critical actions will require additional resources and/or statutory changes to provide further clarity or authority. I invite you to partner with us in this opportunity.

Chapter 1: Background

This chapter concludes with the statement "The recommendations are based on the premise that even if the Legislature does not choose to change the workings of a complex, uneven juvenile justice and placement system, DFS needs to make improvements within its scope of authority." I began my tenure as Director of the Department of Family Services in March of 2003. The case file review and much of the data analyzed in this section reflect conditions at the start of my administration. The agency has since initiated numerous changes and projects, many targeting problems that directly impact the conclusions reached in this report.

Our first major effort was writing a Program Improvement Plan (PIP) in response to the federal Children and Families Service Review (CFSR). As a requirement of the Adoption and Safe Families Act, the U.S Department of Health and Human Services conducted a review of the child welfare system in every state. No state was deemed to have successfully passed the review. Under federal law, each state was then required to submit a Program Improvement Plan. The states have two years within which to implement the plan after which another review will be conducted. Failure then will result in the imposition of significant monetary penalties.²

The plan was submitted to the Federal Government in the summer of 2003 and approved for implementation beginning January of 2004. All of the processes and plans are intended to energize and empower our staff. Many of the efforts will improve outcomes for the children in Residential Treatment Facilities.

Some of the major efforts include:

Family Partnership Teams - a training process and social work practice model designed for families in crisis to increase the involvement of extended family and natural community supports. The model empowers families to take responsibility and control of the problems and identify a supportive network of family friends and professionals to help them. Family Partnership Teams also recognize many of the families are receiving services from multiple state and local agencies. The process attempts to coordinate those services under the umbrella of a single treatment/service plan with the involvement of other community providers. This represents a fundamental shift in case management practice, giving workers practical knowledge and skills enabling them to coordinate and mobilize the family to take ownership of and effectively address the needs of children and other family members. This practice model will be especially beneficial to youth in, or at risk of being placed in, a residential treatment facility.

Juvenile Court Enhancement Initiative (JCEI) - a collaborative effort designed to compliment the Supreme Court's Court Improvement Project (CIP) in the area of CHINS and Delinquency actions (Under federal funding restraints, the CIP must limit its work to neglect/abuse cases). The JCEI has launched an innovative Family Court pilot in one county; supported Family Treatment Court training and development within three (3) other juvenile courts. This DFS initiative has worked to bring more uniformity and

² It is worth noting that the federal review did not focus solely on the Department of Family Services. It reviewed the entire child welfare system to include the role of the courts, GAL's, county attorneys, providers and other stakeholders. Though the entire system is under review, the monetary penalties for failure fall only on the Department of Family Services.

collaboration to court processes – hosting a statewide Juvenile Justice Conference in June of 2004, developing recommended MDT standards (to be complete in December of 2004) and Court Process Standards (projected to be complete in Spring of 2005).

Training Academy – The Department has significantly improved its training program over the last year. By creating a Training Academy, we have developed focused training so workers are receiving timely and relevant training on an ongoing basis. We have implemented a nationally recognized curriculum for core training of child protection and probation workers. Under the auspices of the Training Academy, DFS is developing specially trained resource persons in every district to disseminate key information on best practices in the areas of substance abuse, domestic violence, special education, mental health and adult protection.

Recruitment Partnership – Together with the University of Wyoming, DFS is establishing a program to help educate, train and recruit qualified UW graduates. In this manner, we expect the quality of new workers to be stronger, recruitment facilitated and give us some hope of reducing turnover.

Management by Data – Through the development of a “Dashboard” instrument, we now have monthly statistical reports designed to help managers focus on the critical indicators measured under the Adoption and Safe Families Act (ASFA). Each month, managers can look at data to determine trends and to help them manage. For example, before the “Dashboard” only about 55 per cent face of kids in placement received a face to face visit with their worker. By using these monthly reports, that number has increased steadily and now exceeds 80 per cent.

Children & Families Initiative – This initiative was authorized by the Legislature in 2004. The Children and Families Initiative is a legislatively authorized process to develop a comprehensive plan for children and families based on the grass-roots input received from families and communities as well as other studies and the participation of a broad base of collaborators who represent a variety of interests related to the well being of children and families. It is a comprehensive process to identify barriers impeding the success of Wyoming families and develop a process for meeting key goals identified by citizens of the State. The expectation is the process will help expand the array of services giving more attention to prevention.

The final sentence of the second paragraph of page 3 reads: “Thus, with DFS data, it is not possible to determine with certainty either the numbers of children or costs of services by statutory category.” We understand the pending sunset of the Children In Need of Supervision (CHINS) statutes has generated questions and concern to legislators, related to cost and purpose of the statute. In an effort to fully inform legislators, DFS further analyzed the data for the FY '03 – '04 biennium and estimated that the portion of Court Ordered Placement costs expended for CHINS placements is approximately \$5.9 million or 26% of the DFS placement costs for that time period.

A heading on page 7 reads: “The Effect of increased Medicaid funding on DFS expenditures remains unclear.” The Department of Health has always set rates and paid for residential treatment involving psychiatric care for most out-of-state providers and one in-state provider, i.e. Wyoming Behavioral Institute. In 2002 this service was expanded in Wyoming to existing residential treatment centers who met Medicaid standards through a Memorandum of Agreement between the Department of Family Services and the Mental Health Division of the Department of Health. There was a provision in the agreement stating DFS would pay the state match for this expanded Medicaid service.

In December of 2002, St. Joseph's Children's Home in Torrington became the first existing DFS RTC provider to become Medicaid certified for which DFS pays the state match. Attention Homes of Cheyenne and Cathedral Home in Laramie became certified in 2004. Medicaid certification requires staffing and procedures additional to those required of non-Medicaid certified residential treatment. Therefore, the rate Medicaid will pay is significantly higher than the rate DFS pays to non-Medicaid providers. The impact of Medicaid funding and the resulting state share of expenditures is still unclear at DFS. More time is needed to analyze whether the state share of a higher Medicaid rate costs more or less than the state share of a non-Medicaid rate using various federal funding streams.

Chapter 2: Juvenile Justice System and Court-Ordered Placements

The final pages of this chapter provide some guidance to the legislature (page 17, final sentence of the third paragraph). "Most of the reports [issued since 1979] have at least one recommendation directed at correcting this lack of uniformity, such as designating a county gatekeeper, mandating consistent assessment procedures, establishing a family court, or requiring more central coordination."

Ongoing efforts to bring clarity to this problem have begun to coalesce around a few promising possibilities the legislature should act upon. Recognizing the critical and pivotal role played by the court, these include formally establishing 4-5 "family court" pilot projects designed to allow counties or districts of varying sizes to experiment with redistributing jurisdictional authority between the courts to meet fundamental requirements, within parameters established by the legislature. This would help the state develop a better juvenile justice process assuring fairness and uniformity. Other states have been very successful in addressing court reforms in this way and there are indications that some jurisdictions are ready for (asking for) this type of opportunity.

A second recommendation is the Legislature eliminate the CHINS sunset but amend the statutes to better define and address the population of youth that should be served by this type of intervention. CHINS serves a vital population of uninsured or underinsured children with serious mental health conditions. Past efforts have recommended a number of ways this could be accomplished.

Third, improving Guardians ad litem (GAL) representation by providing state funding to assist counties and ensure uniformity in standards and training and fair pay for this work is a vital reform. Fundamental to achieving appropriate placements is having child advocates who are well trained, who do not have burdensome caseloads and are paid fairly for this important service.

Fourth DFS suggests the Legislature consider amending the status offense definition to bring Wyoming into compliance with the Juvenile Justice and Delinquency Prevention Act. Wyoming now has the dubious distinction of being the only state yet to come into full compliance with the Juvenile Justice and Delinquency Prevention Act. With the persistent efforts of the Wyoming County Commissioner Association and the State Advisory Council on Juvenile Justice, most counties have already done the hard work necessary to comply. The critical final step can be taken by our legislature this year.

Chapter 3: DFS Has Not Justified Its Rates for Residential Treatment

RECOMMENDATION:

DFS should develop a cost-based rate methodology in collaboration with the other agencies funding COPs, and develop a contracting process that facilitates the monitoring of services contracts.

AGENCY RESPONSE:

Agree

COMMENTARY:

DFS will begin to implement the recommendation immediately, contracting with experts to advise the agency on 1) the establishment of a clearly defined service array for all out-of-home care services (excluding DFS family foster homes), 2) program/service monitoring, outcome measurements and quality assurance processes including results-based contracts, 3) a process for establishing cost-based rates for service array, and 4) writing a clear and effective Requests For Proposal (RFPs) for the services.

A recently released report titled "Helping Wyoming Become One of the First States to Pass their CFSR," written for the Wyoming Youth Services Association (WYSA) by the Child Welfare League of America, provides supplemental information that will be utilized to further refine this process. Once the recommendations are received, the agency will implement them as described below, provided sufficient resources are available. A budget exception request will be developed for July of 2006, once the costs can be more accurately estimated.

The rate establishment process will be collaborative, involving service providers as well as Department of Health and Department of Education and other stakeholders. Public input will also be solicited. The cost-based rate establishment for residential treatment facilities approved to provide Medicaid services will continue to be used for facilities seeking to provide Medicaid eligible RTC services.

DFS was involved in the Medicaid and Department of Education rate setting process and this information will be considered in our process.

DFS will identify the service array within residential treatment establishing "levels of care" and "intensity of interventions" concepts within the cost structure. These will be aligned with plans for improving the use of clinical assessments (discussed further in Chapter 4) to obtain a good profile of the child compared to services available in each facility in order to ensure a good match. Once the service array and contracting process is established, there will be a separate contract for treatment case management, contract and utilization review monitoring to assure best practices are being used and that client outcomes are being achieved with lengths of stay that are related to client need and outcomes. This RFP process will also include the participation and recommendations of reviewers from the partner agencies of Medicaid in the Department of Health and the Department of Education.

The agency will face one barrier that cannot be overcome without legislative action. Ultimate authority for the placement and treatment of children currently resides with the Juvenile Court. The statutes contain very minimal guidance to courts on the process that should be involved in this decision and there are no requirements for obtaining or using clinical assessments to assist in placement decisions, which are essentially therapeutic as opposed to legal in nature.

The report identified one of the problems in the current system: "We found that many youth, particularly CHINS and delinquents, are rushed through Wyoming's legal system too quickly to allow for assessments." Report at page 39.

A second systemic problem is the fact some judges actually make the placement decision including naming specific providers in their orders. This is problematic for a couple of significant reasons. One, it promotes an entrepreneurial approach of providers. Frequently providers market their services to courts, county attorneys and others. DFS believes this promotes an overstatement of the actual services and results in inappropriate placements. As I prepare this response, I have two examples on my desk.

In one order (Attachment A), the court names specific providers, at least one of which provides services duplicative of those already paid for by taxpayers who fund the DF probation system. When the judge names the provider and specifies the services, there is little DFS can do to contain costs and in this case, a child, who was ordered into a specific day treatment program will receive costly services exceeding the cost of residential treatment.

The second example (Attachment B) is an invitation to the "grand opening" of a new RTC in Cheyenne. This is a "for profit" facility. Even though it has neither submitted an application for DFS certification nor negotiated a daily rate, it is marketing itself to the court, GAL and district attorney's office. We have been told an order was signed (Attachment C) placing this 18 year-old adult in that facility at DFS expense as soon as it opens for business. It is evident to those who would make money off of the current system that it is "provider driven" and that DFS is little more than the checkbook. Under current law and court practices, you can be assured that "if you build it, they will come." The 24 beds in this facility will soon be filled and DFS costs will increase.

The second problem is that so long as judges make placement decisions, the state will be ineligible for significant federal funding for placement costs. Under Title IV-E of the Social Security Act, the federal government pays about 50% of the costs of non-detention placements for low income families if certain federal statutory conditions are met. One of those requirements is that the state child welfare agency and not the court make the placement decision. 42 USC Section 672.³ The statute expressly gives the authority for placement and care of these children to the state agency and not the court.

DFS recommends the statutes be amended to clearly place the child in the custody of the Department so that DFS can be held accountable for the placement decision, permitted to monitor the treatment plan and allowed to hold providers accountable whenever the MDT recommendations, supported by valid clinical assessments, indicates the child should receive services at the level of a residential treatment facility. Not only is this a prerequisite under federal law to receiving federal financial contributions, it is also a best practice that will help assure appropriate placements and cost management.

The statutes currently provide courts with an appropriate level of oversight to ensure the agency and MDT members are adhering to the statutes and properly fulfilling their obligations. The statute

³ Federal Register, Vol. 65, No. 16, January 25, 2000 at page 4058: "[W]e are clarifying in the regulation...that it is not permissible for courts to extend their responsibilities to include ordering a child's placement and care with a specific foster care provider." The federal statute defines "foster care provider" to include a child care institution such as Wyoming's RTC's.

should expressly preclude the court from placing or committing youth to specific treatment facilities. This will protect children from inappropriate treatment placements while also ensuring better fiscal accountability. (See Attachment A – Court order that has completely excluded agency participation, except to pay for a placement)

We have a saying in the Department, “aces in their places.” It means in every system, the best decisions are made when you have the best people exercising the proper role within their education, training and expertise. In the juvenile court system, judges should assure the integrity of the legal and court processes, GAL’s should advocate and social science experts should be allowed to do what they are specially trained for. We seek not only the authority to make those decisions but a process that makes certain we are fully accountable for the consequences.

Once the processes described above have been defined, DFS will provide extensive training to ensure workers understand both the clinical issues as well as the court process. In addition, other participants will need to be provided training to maintain or rebuild collaborative processes.

Chapter 4: Many Court-Ordered Youth Need, But Do Not Get, Clinical Assessments

RECOMMENDATION:

DFS should develop rules and procedures to ensure that children receive uniform, independent clinical assessments prior to being placed in RTCs.

AGENCY RESPONSE:

Agree

COMMENTARY:

DFS will issue a training letter by December 31, 2004, to clearly instruct workers on the circumstances and process for obtaining and documenting timely clinical assessments for children in state care, especially those currently placed or having a potential for placement in a residential treatment facility. Other actions are already in various stages of completion.

The Juvenile Services Division is in the process of changing its screening tool from the Youth and Family Screening instrument which screened for both risk factors and treatment to separate more tailored instruments to improve screening. For client treatment and service needs, a scientifically validated assessment tool known as the Quick-GAIN will be used to better align our process with the Substance Abuse Division. The new tool will do a better job of alerting workers to potential substance abuse or mental health problems warranting further assessment. The agency has tentatively selected the LSI-R (Levels of Supervision Index – R) for assessing safety and supervision needs for juveniles. The screening tool can be utilized for probation services and in institutional settings. DFS staff will be trained on the new instruments beginning in January, 2005.

The agency is issuing a new “family assessment” policy for the Juvenile Services and Child Protection divisions. This assessment is also designed to alert workers to indicators requiring further investigation or clinical assessments. More importantly the tool will help workers identify key strengths of the child and family that can be used to circumvent more intrusive and restrictive interventions, such as residential treatment.

The Department is also working closely with the Substance Abuse Division of the Department of Health on implementation of the Access to Recovery grant which will be piloted soon in Natrona County. The grant will improve addiction recovery supportive services and establish protocols for clinical assessments and other screening measures to improve our ability to match the child’s needs to appropriate levels of treatment services. The decision to apply for the Access to Recovery Grant was made jointly by the Governor’s Office, DFS and the Department of Health. The hope was these funds would be used to fill a big pot hole in Wyoming’s service system, i.e. the lack of substance abuse treatment capacity for juveniles. Assessments are important but equally important is being able to provide the treatment indicated by the assessment. That requires a capacity expansion.

While Wyoming’s application scored highest among all applicants and the grant was awarded, federal officials reduced the grant amount. If this hole in the service delivery system is to be filled, legislators will have to do so with other funds. We would encourage you to consider additional funds from the tobacco settlement which are available and proper for this important purpose.

In conjunction with the Access to Recovery project, the department will use the RFP process for monitoring and measuring outcomes (discussed in Chapter three) to develop more efficient and effective ways of obtaining clinical assessments. An assessment process will be developed, using independent professionals to determine the treatment needs of children. The focus will be to require separate assessments of the youth's treatment and supervision needs. The recommendations will be required to identify a level of care need rather than a specific placement recommendation. Other professional staff, outside the regional clinical assessment contractor, will then match the level of treatment and supervision needed by the youth to the best available service to meet the identified need. Policy will also address the timeliness of assessment, especially in rural areas, a front end process that will identify and address acute care needs, and will establish a process for interim care during the assessment process if safety is a concern or if the youth is homeless.

Levels of care will be established and length of stay will correlate with individualized treatment goals and needs. A utilization review process similar to the process required by Medicaid will be incorporated to ensure periodic reassessments that use peer reviews. Efforts to improve the legal processes associated with court-ordered-placements in residential treatment facilities will continue. The MDT Guidelines and Court Process Guidelines will emphasize the need for appropriate clinical assessments prior to making recommendations to the court.

Finally, treatment decisions must be made by qualified professionals, rather than an arbitrary legal process. The current system does not make a distinction between legal decisions and therapeutic decisions. To effectively incorporate clinical assessments into the residential treatment arena the law must remove ambiguity in this area of responsibility. This could be accomplished by requiring DFS to establish assessment requirements prior to placement decisions and providing agency rulemaking authority to accomplish this. The Department cannot be expected to simply "choose" an assessment tool. This decision is highly charged with professionals debating long and hard the merits of potential assessment tools. Providers have already voiced opposition to the DFS position, affirmed by this report, that assessments should be made independent of those providing the treatment services.

Accordingly, DFS should be given rule making authority to make that decision. The rule making process assures public and provider voices will be heard. It also assures a final decision can be made. A budget exception request will be developed for July of 2006 biennium in order to fully implement the plans outlined in this report, as they will require resources above and beyond the agency's current budget. Adequate resources and training will be the key to success.

Chapter 5: DFS Case Management and Oversight Do Not Ensure Effective Treatment

RECOMMENDATION:

DFS should more actively manage COPs cases and should develop measures of treatment effectiveness.

AGENCY RESPONSE:

Agree

COMMENTARY:

The agency does not have sufficient resources to recruit, train and retain staff adequately. When I assumed leadership of DFS I noted many of the problems contained in the report. Our staff struggles daily to stay on top of wave after wave of new challenges, including high caseloads, high turnover, rising social problems like methamphetamine addiction and economic boom and bust cycles in some communities as well as a myriad of federal requirements, audits and reviews. Non-competitive pay, crushing work loads, the sheer difficulty of the work combined with vague and conflicting authority have all contributed to this environment.

However, I want to assure you we will meet the challenges put forth in this report. There is an underlying core of bedrock at the heart of this agency. It is based on the fundamental belief that we do make a difference in the lives of the children and families we touch. We have, over the last 18 months, charted a new course and we are moving toward healthier youth and families using the tools at hand to the best of our combined abilities. The agency is implementing a quality assurance process as part of the Program Improvement Plan. It will address many of the case management concerns raised in this report.

However we do not have the resources or staffing capacity, especially in the state office, to provide adequate oversight. Some offices are stretched far too thin by a variety of circumstances and they operate in a near constant state of crisis. Adequate case management of residential treatment placements often falls off the radar in that work environment. The report indicates we may require Juvenile Services to reduce its caseload standards to 17-18 open cases per worker, the level recently established for child our child protection division in order to ensure time for adequate management of residential treatment placements, which are predominately managed by juvenile services. I also believe the additional workers authorized in the 2004 session will greatly help bring the agency closer to meeting our current caseload goals. None of us should overlook the reality of the current energy boom in many parts of the state. When couple with the meth crisis, it means that although you gave us 19 new social workers, the culture gave us hundreds of new children and families with whom to work.

The other key component of the recommendation in this chapter has to do with monitoring treatment effectiveness. The RFP for contract monitoring/utilization review/outcomes on placements (discussed in chapter three) – is critical to addressing this problem but it can not be implemented without new resources. This will require clinical case management, which is beyond the basic responsibilities or training of our field office caseworkers.

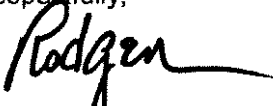
Chapter 6: Conclusions

In conclusion, the Department of Family Services agrees with each of the three recommendations contained in your report and we have set a course to implement them. We have also offered our recommendations for reforms that will make a difference. Most are not new. Indeed, most are reiterations of those contained in numerous studies over many years, e.g. piloting family courts, improving child representation, expanding the capacity of community-based prevention and treatment among others.

While those changes are vital and we encourage you to give them attention, there are three improvements immediately responsive to the recommendations your staff have made. The first we can do under current law, though additional financial resources may be required. It is the development of a system for monitoring contracts and outcomes, justifying rates as well as treatment. The second and third require legislative action. They are (1) provide DFS with authority to begin a rule making process aimed at identifying and using a common assessment tool to aid in placement and demonstrate effectiveness of treatment; the process should result in independent, timely, accessible, uniform and cost effective assessments; and (2) amend the statutes to provide DFS has the authority and accountability for making placement decisions.

I couldn't be more proud of the hard work and dedication of the entire staff at the Department of Family Services, but more importantly, I believe the staff are proud of their accomplishments and I have and will continue to fully support them in their efforts to assume leadership and improve the Department's services to all children and families. Nor could I be more respectful of our responsibilities to you and your constituents. We share the goals and offer to partner with you in meeting them.

Respectfully,



Rodger McDaniel
Director