CHAPTER 3

DFS Has Not Justified Its Rates for Residential Treatment

Chapter Summary

DFS does not specify what services providers should deliver for its rates.

DFS pays RTC providers individually-negotiated rates but it does not have a methodology justifying the price differentials. DFS also does not have contracts with RTC providers specifying the services to be delivered to children in placement. By not specifying what costs the rates should cover and what services providers should deliver, DFS lacks assurances as to the quality and quantity of services for which it is paying. Without leadership on rate-setting from DFS, providers, both individually and in groups, are developing cost-based methodologies and attempting to set the terms for future rate increases.

The three state agencies funding RTC services for COPs are independently determining their methodologies for rates. Acting separately, the three cannot determine whether they have the same allowable costs, may be making duplicate payments for the same services, or may be inadvertently encouraging providers to act in ways that undermine the other agencies' objectives. Rate-setting for RTCs, especially now that Medicaid has become a major funding source, needs to be done in a collaborative manner.

Providers Seek Increases in Six-Year Old DFS Rates to Reflect Their Actual Costs

DFS has negotiated rates individually with each provider.

The current DFS daily rates for providers (see Figure 3.1), which cover room, board, and treatment, for the most part date from the 1999-2000 biennium when the Legislature last appropriated additional funds for an adjustment. DFS has negotiated rates individually with the mix of private provider organizations that serve COPs: associated non-profits, independent non-profits, for-profit providers, and Boards of Cooperative Educational Services (BOCES). Some of these facilities are eligible to receive reimbursement from Medicaid for residential treatment services, while others are not.

DFS and providers have had an understanding that the agency will adjust rates only after the Legislature authorizes additional funding for this purpose. Although DFS did not ask for rate increases in its FY '05 – '06 budget request, some providers have since sought an increase in rates from existing DFS funding for grants and aid payments, or 600 series. DFS has resisted requests for increases, other than for slightly adjusting the rates of a few providers, and officials say they are not planning to request supplemental funds in the 2005 General Session for this purpose.

To this point, DFS has mostly resisted provider requests for higher rates.

Recently, a group of associated non-profit providers brought forward a proposal for cost-based rates. At roughly the same time, for-profit providers also said they must receive higher rates from DFS, with one indicating it will simply raise its rates, which courts could require DFS to pay. On the other hand, there are providers who believe their DFS rates are adequate.

Providers receive daily tuition payments from WDE only for days in which children are schooled.

Figure 3.1

Daily Reimbursement Rates for RTC and Education Services by State Agency, FY '04

Residential Treatment Centers	DFS	WDE	Total Daily Rate
Attention Homes, Inc.	$100	$75	$175
Cathedral Home for Children	$115	$75	$190
Frontier Correctional Systems, Inc. (Jeffrey C. Wardle Academy)	$130	$75	$205
Normative Services, Inc.	$105	$75	$180
Red Top Meadows Treatment Center, Inc.	$105	$74	$179
St. Joseph's Children's Home	$117	$98	$215
Newell Children's Center	$220	-----	$220
Wyoming Behavioral Institute	$220	$73	$293
Youth Emergency Services	$95	$70	$165
BOCES			
Northeast Wyoming BOCES	$124	$140	$264
Northwest Wyoming BOCES	$125	$140	$265
Region V BOCES/(C-V Ranch)	$125	$140	$265

Source: LSO analysis of COPs data.

Providers receive higher rates from Medicaid

But not all providers qualify for Medicaid reimbursement.

Apart from DFS action, payments for residential treatment have increased for some providers in the state. All providers received increases in their daily tuition rates from WDE, ranging from 3 to 112 percent, as a result of the FY ’05 implementation of individual cost-based rates for education services. In addition, some have attained the national accreditation that qualifies them to receive Medicaid reimbursement for providing medically necessary residential treatment to COPs. Medicaid rates are higher than DFS rates, in part because of the increased staffing necessary to meet accreditation standards.

St. Joseph’s Children’s Home has billed Medicaid for RTC services for qualified children since January 2003 at individually-negotiated rates of up to $233 per day. Attention Homes, Inc. has billed Medicaid since mid-2004 at rates ranging from $170 to $212 per day, and in FY ’05, Cathedral Home for Children began billing Medicaid for RTC services at $205 per day for qualified children.

Providers want a DFS rate increase for children not covered by Medicaid.

The rate increase some providers are seeking from DFS, as described above, is for children who receive residential services that are not covered by Medicaid. These are children placed with providers which are not Medicaid-eligible, or they are children in Medicaid-covered facilities who are no longer in medical need of treatment at an RTC. DFS must continue paying for their care until the courts terminate their placements.

Providers receive higher rates from other sources

If they take them, providers get different rates for children whom entities other than Wyoming Juvenile Courts place in their care. Some of these placements come from agencies and courts in other states. Providers say that rates paid by out-of-state payers subsidize low Wyoming rates. Frontier Correctional Systems, Inc. also provides detention services for cities and counties, and it receives rates from Wyoming local governments that differ from DFS rates. Providers’ different rates are not publicly available, nor could we determine the magnitude of placements in Wyoming RTCs from entities other than Wyoming Juvenile Courts. DFS does not track the number of children, other than those in DFS custody, who are placed in the facilities it certifies.

Rates paid by other states subsidize low Wyoming rates, providers say.

At our request, DFS attempted to obtain a census showing the

DFS does not track Wyoming provider census, so out-of-state occupancy is unknown.

number of placements in each state-approved facility for all levels of Wyoming judicial placements, as well as all other placements, as of a date certain: July 1, 2003. Only five providers **(**three RTCs and two BOCES**)** responded to this request, and just two of those reported out-of-state placements on that date, for a total of 70 children. The BOCES showed placements from member school districts, which typically account for 50 percent or more of their placements. None of the reporting providers accepted lower court placements. Thus, this incomplete census count indicates that payers other than the State of Wyoming covered almost 17 percent of the DFS total licensed capacity for these residential treatment centers (590), on July 1, 2003.

DFS Rules Call for the Determination of Standard Costs of Services

DFS has not consistently determined standard costs for services.

Although department rules indicate that rates should be cost-based, DFS has not documented its justification for daily rates. DFS rules for RTCs and group homes require that it determine "standard costs for services," including a variety of direct (food, clothing, treatment, salaries and benefits) and indirect (building maintenance, office supplies, administrative) costs. The rules date from 1989, and require that DFS promulgate standard costs on a yearly or more frequent basis. However, DFS has not consistently done so.

Establishing allowable costs is a standard practice

In-state providers likely have encountered the concept of allowable costs when dealing with other states. For example, a provider that also receives payment from Nebraska Medicaid noted that that entity had set allowable costs. Another neighboring state, North Dakota, has detailed rules for rate-setting for RTCs, including provisions to:

Other states have detailed rules for RTC rate-setting.

- Limit allowable administrative costs included in the established rate to no more than 15 percent of the total allowable costs, exclusive of administrative costs.
- Establish the cost allocation for center operations, such as salaries for direct care employees and supervisory personnel, and plant and housekeeping expenses.
- Itemize non-allowable costs, such as compensation for

officers (unless services are actually performed and required to be performed), lobbyist and fundraising expenses, and all costs for services paid directly by the state agency to an outside provider.

- Require centers to identify income to offset costs when applicable so state rates do not supplant or duplicate other funding sources.

Medicaid also can employ a cost-based approach

Wyoming Medicaid plans to develop a cost-based model for RTC reimbursement.

The Wyoming Office of Medicaid plans to develop a cost-based reimbursement approach for COPs providers in 2005. It will have substantial flexibility in establishing payment methodologies and setting payment amounts because Medicaid requirements for rate-setting are fairly broad. One major consideration is ensuring that provider reimbursement is sufficient to maintain beneficiaries' access to care relative to others' access for the same services in the community. Another is that states must ensure that payment rates are consistent with efficiency, economy, and quality of care. "Reasonable" costs include both direct and indirect provider costs but exclude those that are "unnecessary in the efficient delivery of services covered by the program." Wyoming's state Medicaid Officer summarizes this as reimbursing providers for the "cost of the care, not the cost of doing business."

Medicaid allows states to define allowable and non-allowable costs.

Wyoming Medicaid rules use a cost-based methodology for nursing homes and also define allowable and non-allowable costs. Allowable costs are those documented as patient-related on cost reports, and those which contribute directly or indirectly to patient care. The rules itemize specific non-allowable costs, such as wages paid to non-working officers, employees or consultants, and public relations expenses. There are also capital and operating cost components specified in rules.

Finally, Medicaid payment rates are subject to a public process requirement, including publication of proposed rates and the methodologies and justifications underlying them. A part of this process is allowing providers and beneficiaries the opportunity to review and comment upon the rates and methodologies.

DFS Has No Contracts with RTCs, Only Payment Authorizations

Although statute authorizes DFS to "contract with any child caring facility for the care and custody of Wyoming children which have been placed therein by court order under the Juvenile Court Act or otherwise," DFS does not formally contract for these services. DFS has no actual contracts with providers that specify the services providers should deliver under the general description of "room, board, and treatment."

Caseworkers authorize payments to RTCs, with little specification of services to be provided.

Instead, DFS' payment system is highly decentralized. Individual caseworkers and their supervisors, at the local office level, authorize payments to RTCs through forms generated by the department's on-line automated case management system (WYCAPS). At the state level, DFS' Financial Services Division conducts post audits of 10 to 25 percent of WYCAPS payments, which include many more categories of services than residential treatment. According to a DFS financial official, these audits rarely find items that should not have been paid.

DFS payment authorizations have little specificity regarding the services to be provided, instead serving essentially to confirm and secure available space to house and treat children. We reviewed 135 files from COPs cases that had an RTC placement during FY '03,[1] and for the most part, saw payment authorizations that lacked detail. They included wording such as "(Child's name) will attend a drug therapy program," or "The provider will improve (child's) self-image," or "The provider will provide residential treatment for (child)."

Payment Authorizations Do Not Meet Attorney General Standards

By rule, DFS can authorize payment for up to six months of residential and treatment costs on any court-ordered placement at one time. In our file review, we found that caseworkers

[1] The selection was a stratified systematic sample covering each of the three legal categories (abused and neglected, CHINS, and delinquents) of juveniles in court-ordered placements. The selection included cases from all counties and judicial districts; files requested from the Wind River Indian Reservation were not provided.

Payment authorizations often exceed the $7,500 level at which the AG Manual calls for contracts.

typically authorized payments for residential treatment for periods of three to four months. At one of the lower DFS daily provider rates ($105), a payment authorization for three months of residential treatment totals $9,450, well exceeding the $7,500 level at which the Attorney General Contract Manual for State Agencies says a contract must be in writing and approved as to form by the Attorney General (AG). DFS has not requested AG approval of its payment authorizations, nor would these documents meet AG standards in their current form.

Even without contracts, the state is indemnified from liability.

If DFS were to use contracts that meet AG requirements, they would include basic elements such as the purpose of the contract; contractor responsibilities, which the AG advises should state clearly the services expected; indemnification of the state from liability which may arise out of the contractor's performance; and provisions to terminate the contract in the event the Legislature does not continue funding. Without explicit contracts, the state is still protected from liability by the Wyoming Governmental Claims Act, but the stipulation of services to be delivered has to come from case planning documents, which also tend to be non-specific (see Chapter 5).

DFS does not maintain provider placement agreements that meet rule specifications

DFS uses an electronic document that does not match rules.

DFS certification standards call for maintenance of a document for each placed child, the provider placement agreement, which would better define expected services than do payment authorizations. DFS standards say that providers should keep these agreements on file and provide them to all signing parties, including the agency with custody (DFS). However, DFS now uses a WYCAPS screen for this agreement that does not meet the specifications set out in rules.

If these agreements matched rules, they would detail such expectations as family contact; nature and goals of care, including any specialized services to be provided; anticipated dates for the development of treatment plans; anticipated discharge dates and plans; and the responsibilities of all agencies and persons involved with the child and family. In the course of our study, DFS developed a paper form to serve as the provider placement agreement, although it lacks much of this important information.

Providers Are Seeking Cost-Based Rates Before DFS Has Defined Expected Services

Providers want to use essentially the same methodology they developed with WDE.

Absent DFS initiative in this area, providers are moving ahead to define both allowable costs and payment terms. Some of the major non-profit RTCs joined together and recently presented DFS with individual cost-based proposals for higher rates, based on essentially the methodology they had developed together with WDE to set individual cost-based rates for education payments. From what we learned of these proposals, however, they are not in line with what we have seen from other states, or with what Wyoming Medicaid defined as allowable costs for nursing homes.

Further, some aspects of the WDE methodology may not be compatible with DFS priorities. For example, WDE individual rates were calculated to reimburse providers for 100 percent of their education program costs, as statute requires, but DFS does not have a similar statutory mandate or agency policy. Nonetheless, the providers' proposals, based upon the WDE methodology, call for DFS rates that would reimburse them for various levels of total residential treatment costs, from 64 to 100 percent, and for various levels of certain cost categories. Without guidance from DFS, providers have inconsistent interpretations of what might be allowed rates of reimbursement.

Without DFS guidance, providers inconsistently interpret allowable levels of cost reimbursement.

In addition, some providers have added categories of reimbursable costs, such as fundraising and advertising, to WDE allowable costs. They have requested widely ranging amounts for reimbursement for administration salaries and benefits, from approximately \$60,000 to \$306,000. This suggests a lack of limits in allowable costs for administration, as there are in North Dakota rules. Finally, providers' proposals and actions continue the practice of private negotiations between DFS and individual providers (or associated providers) rather than a public rule-based process as Medicaid requires.

Title 14 Disposition Purposes

For children adjudged neglected, dispositions should place the child in the least restrictive environment consistent with what is best for the

Provider business decisions can trump DFS objectives

By not having established allowable costs or contract specifications, DFS lacks business controls over the quality, quantity, and efficiency of the services for which the state pays. Through their orders, the courts (as advised by MDTs) direct the "purchase" of services from specific providers. Even so, DFS has an important role in implementing controls to ensure that state funds support the objectives outlined in Title 14 (at left).

Without guidance from DFS, providers have discretion in how they use the portion of their revenues that comes from state COPs payments. For example, one non-profit provider made a nationally publicized high compensation award to organization officers for 2002 from cash reserves that may have in part been built from state payments. Through our research, we also learned that Wyoming providers are increasing their residential capacity, enhancing their services, and otherwise expanding the residential treatment industry in the state. Further, some are marketing these services to those making placement decisions and recommendations.

By defining allowable costs and contract specifications, DFS could ensure that state funding is focused toward support for the state's objectives. For example, North Dakota has controls that limit the level of officer compensation allowed as a cost for rate calculation. It also has rules that specify how rates will be adjusted to reflect facility increases in capacity. These controls enable that state to direct its payments primarily toward direct services.

The COPs provider network benefits the state because providers can offer flexible, community-based services, and enable the state to limit the size of government. Providers, both for-profit and nonprofit, generate jobs and spending in the economy. However, DFS must be an active partner in identifying needed services and capacities. This is especially important if the system becomes cost-based; otherwise, DFS may find itself supporting expansion and services that do not support Title 14 objectives.

DFS plans to move to cost-based rate-setting

DFS officials acknowledge that rate adjustments are necessary, and although planning to move toward a cost-based system, they have not yet established a methodology to do so. They also intend to establish more accountability in the provider payment system, but predict this will be a lengthy process. Officials discussed incorporating accountability measures such as contracts to specify services, a cost-based methodology as envisioned in rules, and an enhanced monitoring capability.

DFS officials want to establish more accountability and enhance monitoring.

In developing a cost-based methodology, DFS officials intend to review providers' operating expenses. This is done in Colorado, where the state requires RTC providers to submit independently audited cost reports. Although DFS has access to providers' annual financial audits through its certification requirements and now reviews them through its Financial Services Division, it has not established a process for conducting periodic program and on-site fiscal reviews of the operations of all providers.

The Three Agencies Funding COPS Develop Their Rate Methodologies Independently

Since WDE has already implemented a cost-based funding methodology, and the WDH Office of Medicaid reports plans to do so, if DFS goes forward with its plans, this will be a third separate approach. However, according to a National Conference of State Legislatures (NCSL) publication on Medicaid cost containment, one agency's rate-setting may affect providers' business decisions in ways that may not be in the state's overall best interest. NCSL says states need to carefully consider program objectives because different rate strategies inevitably affect what providers will do.

Agencies' rate-setting approaches can cause providers to make business decisions that are not in state's overall best interest.

Already, there is some evidence that the rate negotiations of one agency have affected another. For example, WDE increased rates to an extent that, combined with existing DFS rates, can reduce providers' incentive to become eligible for Medicaid reimbursement. We learned that one provider bills other states' Medicaid programs for their placements, but for Wyoming placements, prefers to take WDE tuition rates and the lower Wyoming DFS rates. This avoids the Wyoming Medicaid review for medical necessity of ongoing services, allowing adolescents to stay longer, which better fits this provider's treatment program stay longer, which better fits this provider's treatment program. However, having children in out-of-home placement for longer periods conflicts with DFS requirements under the Adoption and Safe Families Act to seek permanency for children in foster care (which, under federal definition, includes placement in RTCs) for 15 of the last 22 months.

Higher WDE rates may allow providers to avoid Medicaid and its periodic review of the necessity of ongoing services.

Both providers and state officials say that meeting the national accreditation standards necessary to be approved as a Medicaid provider improves treatment services. It also increases total costs of services, but because the federal government (through Medicaid) pays a portion, children receive higher quality services without the state having to fully fund them. This enables the state to share the cost of children placed with Medicaid providers as long as the children are medically needy.

WDH assumption affects DFS purposes

In its policy development, WDH has made a funding assumption that potentially contradicts DFS purposes: it has determined that current DFS rates cover residential services only, not treatment. The implication of this decision is that RTCs receiving only the DFS rate for all or some placements are not being paid to provide treatment to those children. However, DFS does consider the rate as inclusive of treatment, and courts are placing children with that expectation. This also raises questions about how Medicaid-approved RTC providers will differentiate the services they provide to Medicaid-funded and DFS-funded children in placement. If they do not differentiate the services, Medicaid-funded placements will subsidize DFS-funded placements.

WDH says the DFS payment does not cover treatment.

By independently setting rates through separate cost-based methodologies, state agencies do not see how costs are allocated among the other payers. This creates the potential for duplicated payments for some services. For example, all three funding sources cover mental health counseling. If not coordinated, the three-prong funding system risks redundancy and inconsistency, when its purpose should be to ensure quality of and access to care for children who are being placed in RTCs.

The potential exists for the three agencies to pay for the same services.

Recommendation: DFS should develop a cost-based rate methodology

in collaboration with the other agencies funding COPs, and develop a contracting process that facilitates monitoring.

DFS should proceed with its plans to make the payment system for residential treatment more accountable. It should establish allowable costs, and with more specificity than current rules require. As examples, both the Wyoming Medicaid rules for nursing home reimbursement and the North Dakota rules for RTCs better reflect the breadth of considerations involved in determining rates that use state and federal dollars as the primary support for private businesses.

However, it will be counter-productive for DFS to develop a cost-based rate-setting methodology without obtaining necessary expertise and collaborating with both the Departments of Health and Education. Further, the process should be a public process that identifies the methodologies underlying the rates and that gives all interested parties an opportunity for review and comment.

It will be counter-productive for DFS to act independently from WDE and WDH in developing cost-based RTC funding.

Along with developing the rate justification methodology, DFS should work with the Office of the Attorney General to establish a contract process with providers that specifies services to be provided and performance data to be monitored. DFS should also move forward with its intention to develop a means to monitor services being provided in RTCs. According to management literature, monitoring is the key to privatization because when a government's direct role in the delivery of services is reduced through privatization, more sophisticated monitoring and oversight are needed to protect the government's interest. If DFS cannot reconfigure existing resources to accomplish this oversight, it should develop a proposal to request necessary resources and expertise.