

Office of the
Secretary of Health and Human Resources

**Funding Educational Costs for Students Placed
in Psychiatric or Residential Treatment
Facilities for Non-Educational Reasons**

**Report to the Chairmen of the House Appropriations and
Senate Finance Committees pursuant to Item 279 (N) of
Chapter 665 of the 2015 Acts of Assembly.**

September 21, 2015

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COMMONWEALTH of VIRGINIA
Office of the Governor

William A. Hazel, Jr., MD
Secretary of Health and Human Resources

September 21, 2015

The Honorable Charles J. Colgan
Co-Chairman, Senate Finance Committee

The Honorable Walter A. Stosch
Co-Chairman, Senate Finance Committee

The Honorable Christopher S. Jones,
Chairman, House Appropriations Committee

Dear Legislators:

Item 279 (N) of Chapter 665 of the 2015 Virginia Acts of Assembly (the Appropriation Act) directs the State Executive Council for the Comprehensive Services Act to convene a workgroup to “examine options and make recommendations for funding the educational costs for students whose placement in or admittance to state or privately operated psychiatric or residential treatment facilities for non-educational reasons has been authorized by Medicaid.”

This work is now complete and the State Executive Council has approved the recommendations at its September 17, 2015 meeting. This report is respectfully submitted for your review.

Please contact my office should you have any questions regarding any aspect of the information contained in the report.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Hazel, Jr.", with a stylized flourish at the end.

William A. Hazel, Jr., M.D.

Authority

This report has been prepared and submitted to fulfill the requirements of Item 279 (N) of Chapter 665 of the 2015 Acts of Assembly. This provision requires the State Executive Council for the Comprehensive Services Act to convene a workgroup to “examine options and make recommendations for funding the educational costs for students whose placement in or admittance to state or privately operated psychiatric or residential treatment facilities for non-educational reasons has been authorized by Medicaid. The work group shall include representatives of the Office of Comprehensive Services, the Department of Education, the Department of Medical Assistance Services, the Department of Behavioral Health and Developmental Services, local school divisions, and public and private service providers. The State Executive Council shall report on its recommendations to the Chairmen of the House Appropriations and Senate Finance Committees by September 1, 2015.”

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Executive Summary

The 2015 Appropriation Act required the State Executive Council (SEC) for the Children's Services Act (CSA) (formerly the Comprehensive Services Act¹) to "examine options and make recommendations for funding the educational costs for students whose placement in or admittance to state or privately operated psychiatric or residential treatment facilities for non-educational reasons has been authorized by Medicaid."

The circumstances leading to this situation have evolved over the past 15 years as the state Medicaid plan allowed for children with significant behavioral health difficulties to be placed in Level "C" psychiatric residential treatment facilities through authorization and reimbursement by Medicaid without involvement of local CSA structures and processes. The provision of educational services for children placed in these facilities is required by licensing regulations. Medicaid does not allow payment for educational services. A "disconnect" therefore exists between the required educational services and the availability of public funds to support that service. In FY2015, 524 children were placed in residential treatment through Medicaid outside of the CSA process and without any state funding for educational services.

Both the General Assembly and the SEC have identified this issue as needing resolution. Several task forces and work groups have attempted to address the issue over the past year and public comment has been solicited. The problem is complex and potential solutions have significant fiscal and administrative impacts on the state, but especially the local government level.

This report summarizes the work and provides recommendations endorsed by the SEC as called for by the Appropriation Act. These recommendations include short term fiscal measures and suggestions for areas needing additional consideration toward a longer term solution to these complex issues.

The recommendations are as follows:

1. State general funds should be allocated to cover the full cost (no local match) of educational services for children placed through Medicaid without CSA involvement in a PRTF. This should be a short-term solution (beginning no later than FY2017) while additional work is completed to fully integrate "Medicaid-only" placements into the CSA system or to determine another funding mechanism.
 - a. The estimated fiscal impact of this recommendation is \$10.7 million per year based on the average costs for FY2013 and FY2015 (FY2014 data is not available due to the transition in December 2014 to Magellan as the behavioral health services administrator for DMAS and discontinuity in that year's data). A more detailed fiscal impact analysis is provided in Appendix A.

¹ Effective July 1, 2015 the Comprehensive Services Act is renamed as the Children's Services Act and the Office of Comprehensive Services (OCS) as the Office of Children's Services. The new naming will be used throughout this report except where the use of the prior name is more historically accurate.

- b. The recommended mechanism for administering this funding is through the Department of Medical Assistance Services and its Behavioral Health Services Administrator, Magellan. This would be distinct from a Medicaid funded service.
2. The General Assembly, DMAS, the SEC, local governments and other interested parties should consider elimination or recalculation of the local Medicaid match requirements for children placed through CSA in PRTFs.
3. The Office of Children's Services, DMAS, Community Services Boards, parent representatives and local CSA staff should develop and implement a practical, short-term data collection project that will provide necessary information about the process of accessing residential treatment. Such data would include, but not be limited to, what entity is issuing the Certification of Need required by Medicaid, time frames for accessing an assessment by the local CSB, and time frames for accessing the local FAPT and CPMT for case planning and service implementation.

Background

Children placed under a physician's order in a psychiatric residential treatment facility (PRTF) for non-educational reasons are required by licensing regulations of the Department of Behavioral Health and Developmental Services (12VAC 35-46-970) to receive educational services while in placement. Prior to 2000, all public funding for the placement of a child in a PRTF required a parental agreement through the Comprehensive Services Act (CSA, §2.2-5200 et seq, COV), with the involvement of the local Family Assessment and Planning Teams (FAPT) and Community Policy and Management Teams (CPMT) organized under the CSA. Placement through the CSA provided funding for the full range of costs for the placement (including education) through a combination of CSA state pool funds, local CSA matching funds, and parental contributions.

To draw down federal matching funds for these services and to reduce the fiscal impact on state and local government budgets, the state Medicaid plan was amended in 2000 to include coverage for PRTF placements for Medicaid-eligible participants. Additionally, provisions for Medicaid eligibility for children (regardless of prior Medicaid eligibility) after 30 days in placement (the "family-of-one" income provision) was implemented in the same year (2000). Placement through the Medicaid process does not require any CSA involvement. However, without a CSA parental agreement, there is no available public funding for educational services as federal Medicaid rules do not permit coverage of educational costs. In these instances, the only source of funding for the required educational services in a PRTF placement is parental payment or waiver of the fees by the PRTF providers. For some time, many providers have absorbed these costs.

The current circumstance is that there are two "tracks" for children to be placed in a PRTF:

1. The "CSA and Medicaid track" provides the benefits of locality-based multi-disciplinary case planning and funding for education, which is covered by CSA, while the treatment services are reimbursed by Medicaid. Children placed through this process trigger local matching fund obligations for treatment and education.
2. The "Medicaid-only track" does not provide the benefit of locality-based multi-disciplinary case planning and eliminates access to funding for the educational services. No local matching funds are required if a child is placed outside the CSA process.

Potential problems inherent in this two track approach were identified by the State Executive Council (SEC) for the Children's Services Act in its biennial Strategic Plan in September 2012. In support of the "implementation of a singular, unified system of care that ensures equal access to services for at risk youth across the Commonwealth", the SEC adopted a strategy to:

Examine and address inadvertent fiscal incentives for residential placement, parental placement, avoidance of FAPT/MDT process, e.g.:

- *Medicaid match*
- *Family-of-one eligibility*
- *Education costs*

The inclusion of this strategy acknowledged that the “Medicaid-only” track could potentially result in local CSA (local government) avoidance of local matching share for educational services and the local match for Medicaid-eligible children. In addition to the local CSA matching share on educational services in the “CSA and Medicaid” track, when the state Medicaid plan was amended to cover PRTF placements, localities were held partially responsible for the 50% state Medicaid match requirement. The exact amount varies and is based on a locality’s specific CSA match rate.

Data through FY2013 indicates that while the total number of children placed in PRTF placements receiving any Medicaid funding (includes the “Medicaid-only” and “CSA and Medicaid” tracks) has remained basically unchanged since 2005, the number of such placements through the “Medicaid-only” track increased from 136 to 556 (an approximately fourfold increase), while those placed through the “CSA and Medicaid track” have declined by a relatively similar number (from 1450 to 1103).²

CSA Review and Work Groups

While the State Executive Council studied this issue through the work of the State and Local Advisory Team for the CSA (SLAT), organizations representing private providers of PRTF services initiated dialogue with the SEC. The private providers sought to resolve the dilemma of being required by regulation to provide comprehensive educational services without compensation for children placed via the “Medicaid-only” track.

In April 2014, the SEC directed the Office of Children’s Services to (i) document the lack of public funding for education for children placed via Medicaid in a PRTF outside the CSA process (the “Medicaid-only” track), and (ii) identify potential solutions. At an SEC retreat in June 2014, the issue was discussed in-depth and a task force was appointed to recommend solutions. This task force (see membership in Appendix B) met in the fall of 2014 and reported to the SEC in December 2014. A policy was recommended that would have directed all children and families seeking publicly funded placement in a PRTF through the local Community Services Board to the FAPT and CPMT where the child resides. This would have resulted in CSA involvement with all children placed in a PRTF and accounted for their educational costs through the CSA process.

² While final FY2015 data is available from DMAS, final 2015 CSA placement data was not available at the time of this report as the CSA fiscal year does not close until September 30. FY2014 data on Medicaid placements was split between DMAS and their contracted Behavioral Health Services Administrator (Magellan) which began work on December 1, 2013 and so integrated Medicaid data for the full year is not available.

At its December 2014 meeting, the SEC discussed and verbally received public comment on the proposed policy. It then directed the formation of a broadly representative work group to review the policy and make recommendations for revisions for consideration at its March 2015 meeting. This work group (see Appendix B for membership) met on three occasions and reported to the SEC on March 19, 2015. Concurrently, the General Assembly, through the Appropriation Act, directed the SEC to form a work group to study this issue and make recommendations.

On March 19, 2015, the SEC again heard public comment and voted to place the proposed policy (as revised) out for a 60-day period of formal written public comment prior to its scheduled June meeting. Additionally, the SEC directed the continuance of the work of the (slightly reconstituted) work group to address implementation issues should the proposed policy be adopted. That work group (see Appendix B for membership) meets all of the requirements of the Appropriation Act language authorizing this study.

The work group met on three occasions in May and June 2015, reviewed the written public comments received and offered additional recommendations to the SEC. The group was unable to reach a consensus position about a direct resolution to the issues as they are very complex and there remain significant implementation concerns. At its June 18, 2015 meeting, the SEC reviewed the 116 public comments, took additional testimony, identified areas of consensus from the work of the various task forces and work groups, and discussed in detail various options and recommendations. The SEC deferred action on the proposed policy and directed a small work group of SEC members to complete the report and recommendations required by this study and to present it to the SEC for approval and submission to the chairmen of the House Appropriations and Senate Finance Committees.

Core Areas of Consensus

The following were areas of consensus emerging from the work of the various task forces, work groups and public comments:

- The “status quo” of a lack of funding for required educational services for children placed in a PRTF utilizing Medicaid-only funding was unacceptable and needs resolution.
- There are a variety of reasons why children are placed in a PRTF without CSA involvement and no single reason could be identified as adequately explaining the full scope of the issue. Unfortunately, there is no data to objectively quantify these reasons. Anecdotal information includes parents who do not seek CSA involvement in the placement of a child, localities which might direct Medicaid-eligible children to the “Medicaid-only” track, or admissions to a PRTF directly from an acute psychiatric hospital stay without any CSA involvement, among others.
- Any changes to statute and/or regulation that address this issue must balance the fiscal impact on state and local government with reasonable processes by

which the affected entity plays a significant role in placement decisions having fiscal implications.

- The locally-driven system of care approach exemplified through the CSA was strongly supported and seen as a value added aspect for children, families, and communities.
- The implementation of the proposed “CSA and Medicaid” policy carries with it significant fiscal, procedural and human resource challenges to local CSA operations. For example, movement of all FY2013 PRTF placements from the “Medicaid-only” to a “CSA and Medicaid” track has an estimated local government fiscal impact of over \$11 million (approximately \$3.6 million in the local matching share on CSA funded education services and \$7.8 million in the local Medicaid match on CSA involved PRTF placements). The fiscal impact on the state general fund would be a savings of \$1.4 million (additional CSA state pool funds of \$8.2 million for the educational services and savings of \$9.6 million from local Medicaid matching dollars).

Recommendations

After extensive study, the work of several groups, and broad public comment, the State Executive Council for the Children’s Services Act, at its September 17, 2015 meeting, adopted the findings of this report and the following recommendations:

1. State general funds should be allocated to cover the full cost (no local match) of educational services for children placed through Medicaid without CSA involvement in a PRTF. This should be a short-term solution (beginning no later than FY2017) while additional work is completed to fully integrate the “Medicaid-only” placements into the CSA system or to determine another funding mechanism.
 - a. The estimated fiscal impact of this recommendation is \$10.7 million per year based on the average costs for FY2013 and FY2015 (FY2014 data is not available due to the transition in December 2014 to Magellan as the behavioral health services administrator for DMAS and discontinuity in that year’s data). A more detailed fiscal impact analysis is provided in Appendix A.
 - b. The recommended mechanism for administering this funding is through the Department of Medical Assistance Services and its Behavioral Health Services Administrator, Magellan. This would be distinct from a Medicaid funded service.
2. The General Assembly, DMAS, the SEC, local governments and other interested parties should consider elimination or recalculation of the local Medicaid match requirements for children placed through CSA in PRTFs.
3. The Office of Children’s Services, DMAS, Community Services Boards, parent representatives and local CSA staff should develop and implement a practical,

short-term data collection project that will provide necessary information about the process of accessing residential treatment. Such data would include, but not be limited to, what entity is issuing the Certification of Need required by Medicaid, time frames for accessing an assessment by the local CSB, and time frames for accessing the local FAPT and CPMT for case planning and service implementation.

Appendix A

Fiscal Impact Projections

Projected Fiscal Impact Funding Non-CSA Medicaid Parental Placements in Psychiatric Residential Treatment Facilities (Level C)

	Level C Non-CSA Placements	Average Educational LOS per Youth (Days)	Average Per Diem Education Cost	Total Educational Cost
FY2013	556	114	\$ 160	\$ 10,141,440
FY2015	524	135	\$ 160	\$ 11,318,400
		Average Annual Cost		\$ 10,729,920

Column Descriptors and Data Sources

Level C Non-CSA Placements = Total unique Medicaid-only admissions (FY2013 Data from DMAS; FY2015 data from Magellan via DMAS)

Average Educational LOS = Total length of stay in PRTF x .71 (5 days of 7). (LOS data from Magellan)

Average Per Diem Education Cost (Data derived from average reported residential education fees in the CSA Service Fee Directory for “regular” education, special education, and special education (intellectual disability)).

Total Educational Cost = # of non-CSA placements x average educational LOS x average per diem educational cost

Note: Due to the transition on December 1, 2014 of authorizations and claims payment for PRTF placements from DMAS to Magellan. FY2014 data is not fully integrated and is not therefore, reported here.

Appendix B – Work Group Membership Rosters
(Reverse chronological order of group activity)

Final State Executive Council Review Group (July – August 2015)

Hon. Robert Coleman, Vice Mayor	City of Newport News
Pamela Kestner, Special Assistant	Office of the Secretary of Health and Human Resources
Cindi Jones, Director	Department of Medical Assistance Services
Greg Peters, Chief Executive Officer	United Methodist Family Services

Work Group Membership (May 12 – June 2, 2015)

Participant*	Representing	SLAT Member?
Lesley Abashian*	CSA Coordinators	Yes
Carl Ayers	VDSS	Yes
Sheila Bailey	VCASE	Yes
Brian Campbell	DMAS	Yes
Cristy Corbin*	Parent	No
Bill Elwood	Private Providers	No
Jim Forrester	Magellan	No
Cristy Gallagher*	Parent	Yes
Gail Giese*	Private Providers	No
Pat Haymes* (co-facilitator)	VDOE	Yes
Ryan Ickes	Magellan	No
Mills Jones	CSA Coordinators	No
Jamie Molbert*	Private Providers	No
Angie Neely*	VCASE	No
Bill Phipps	Magellan	No
Karen Reilly-Jones	VACO	No
Scott Reiner (co-facilitator)	OCS	No
Joel Rothenberg	DBHDS	No
Ivy Sager*	VACSB	No
Phyllis Savides*	VML/LSSE	No
Paulette Skapars	VACSB	No
Rebecca Vinroot	VML	No
Tammy Whitlock*	DMAS	No
Amy Woolard	Voices for Virginia's Children	No

**member of previous work group that refined proposed policy*

Work Group Membership (February 12 – March 4, 2015)

Participant	Representing
Lesley Abashian	CSA Coordinators
Wanda Barnard-Bailey	Virginia Municipal League
Ron Belay	SLAT/Court Service Unit Directors
Sandy Bryant	Virginia Association of Community Services Boards
Susan Clare	Office of Comprehensive Services
Cristy Corbin	Parent
Michael Farley**	Private Provider
Christy Gallagher	Parent
Gail Giese	Private Provider
Paul Gilding	Department of Behavioral Health and Developmental Services
Pat Haymes (co-facilitator)	Department of Education
Lelia Hopper** (co-facilitator)	Office of the Executive Secretary, Supreme Court of Virginia
Karen Kimsey**	Department of Medical Assistance Services
Jamie Molbert	Private Provider
Angie Neely	Virginia Council of Administrators of Special Education
Joe Paxton**	Virginia Association of Counties
Scott Reiner	Office of Comprehensive Services
Ivy Sager	Virginia Association of Community Services Boards
Phyllis Savides	League of Social Service Executives
Amy Walters	Family Advocacy Organizations
Paul McWhinney**	Department of Social Services

***member of SEC Task force that developed original policy proposal*

Initial State Executive Council Task force (October 30, 2014)

Mary Bunting	Local Government, City of Hampton
Michael Farley	Private Provider Elk Hill Farm
Lelia Hopper	Office of the Executive Secretary, Supreme Court of Virginia
Joe Paxson	Local Government, Rockingham County
Paul McWhinney	Virginia Department of Social Services
Susan Clare and Scott Reiner	Office of Children's Services (staff support)
Brad Burdette	League of Social Service Executives (consultant)
Melanie Bond	CSA Coordinator, Chesapeake, VA (consultant)