



LOSS OF FEDERAL MEDICAID FUNDS FOR CHILDREN AND YOUTH IN RESIDENTIAL CARE

HEALTH AND HUMAN SERVICES AND EXECUTIVE OFFICES AND CRIMINAL JUSTICE SUBCOMMITTEES
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ISSUE BRIEF

TIMELINE OF MAJOR EVENTS

February 8, 2007 – Departmental Appeals Board Upholds Medicaid Sanction in New York – the federal Departmental Appeals Board (DAB) upholds a disallowance of \$7.6 million in Medicaid funding previously claimed by New York as medical assistance for certain services provided to children and youth who reside in private residential facilities.

Federal Medicaid Agency Bases its Disallowance on Inspector General Audit - the Centers for Medicare and Medicaid Services (CMS) bases its disallowance on an Office of the Inspector General (OIG) audit report finding that New York has improperly claimed federal Medicaid financial participation for providers who do not meet the Medicaid definition of “inpatient psychiatric services for individuals under age 21”.

Federal Medicaid Agency Begins Similar Review of Other States - as a result of the DAB ruling with regard to New York, CMS begins to review all states to determine if services provided to children and youth who reside in private residential facilities qualify as medical assistance.

September 22, 2008 – Federal Officials Discuss Areas of Concern with Utah – federal officials, based upon a national directive, hold a discussion with Utah officials in order to ensure Medicaid is not paying for non-medical services or paying providers who do not meet acceptable Medicaid qualifications. Federal officials begin a review of what services are being provided, who is providing them, and what are the qualifications of those providing the services.

November 5, 2008 – Department of Human Services Holds Initial Meeting with the Youth Provider’s Association (YPA) to Inform Utah Providers of the Visit by Federal Officials and the Expectation of Changes Related to Federal Medicaid Funding for Residential Care Services – the department holds similar update meetings with the YPA over the coming months and enlists YPA members to participate in work groups to help develop options. These department/provider workgroups take place between March and December of 2009.

March 11, 2009 – Federal Officials Provide Utah with a Formal Letter of Corrective Action - this formal letter is based upon the informal conversations held in September 2008. CMS outlines July 1, 2010 as the date after which Utah must comply with the areas of concern.

September 2009 – Department of Human Services Determines Estimate on Annual Loss of Federal Medicaid Funds as \$27 million and Makes This Request in its Budget Submission to the Governor’s Office - after months of review, the Department of Human Services estimates the net loss of federal funding will total \$27 million - \$18 million in DCFS and \$9 million in JJS.

INTRODUCTION

Utah becomes the guardian for children and youth when they are placed in state custody by the Courts due to abuse, neglect, dependency, and delinquency. It is the divisions of Child and Family Services and Juvenile Justice Services who accept custody of these youth and provide the guardian role. These two state divisions contract with private providers to supply many of the services required by these youth. Federal

Medicaid funds have historically been used to help finance much of the residential care and related costs for these youth. The federal Medicaid agency has informed Utah that after July 1, 2010 it will no longer pay for non-medical costs associated with residential care. The federal Medicaid agency has also defined what it considers medical assistance associated with residential care. Based upon these changes, the department of Human Services estimates it will have \$27 million less in FY 2011 to pay for residential care for youth in state custody.

SUMMARY

- ***The Court can and does order children and youth into the custody of the divisions of Child and Family Services (DCFS) and Juvenile Justice Services (JJS) due to abuse, neglect, dependency, or delinquency.*** The issue discussed in this brief involves a smaller portion of these youth – those who are subsequently placed in residential treatment settings after they have been committed to the state.
- ***For many years in Utah, federal Medicaid funding has been a substantial part of financing residential care and other related costs for youth in custody.*** The federal Medicaid agency has informed Utah that as of July 1, 2010, it will stop participating in financing many residential care costs. This agency has now determined that much of its previous payments for residential services have actually been for *care and supervision* – not for *medical assistance*.
- ***The federal Medicaid agency is now stating that it will only pay for the medical needs of youth in these residential facilities*** – that basic care and supervision is the responsibility of a parent, or in this case, the state as the legal guardian of the youth.
- ***The \$27 million General Fund request by the Department of Human Services is to continue current service levels provided to these youth by using state funding to make up for the anticipated Medicaid shortfall.*** Of the \$27 million, \$18 million is associated with DCFS and \$9 million with JJS. The Governor has recommended funding \$15 million to DCFS and \$9 million to JJS, for a total of \$24 million.
- ***Of the \$27 million requested by the department, approximately 89 percent (\$24 million) of the request involves lost funding for 24 hour residential care and related costs.***
- ***The remaining 11 percent (\$3 million) involves a group of facilities over 16 beds now determined not eligible for Medicaid funding.*** The denial of funding revolves around the definition of *Institutions for Mental Disease* or IMDs. An IMD is defined in federal law to mean “a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services” (section 1905(i) of the *Social Security Act*).
- ***The federal Medicaid agency asked Utah in March of 2009 to “evaluate all facilities with more than 16 beds to determine their IMD status”.*** Under federal law, Medicaid payment is not available for any medical assistance provided to individuals who are under age 65 and who are patients in an IMD. Medicaid allows an exception to its IMD rule for Psychiatric Residential Treatment Facilities or PRTFs, but PRTFs are not part of Utah’s State Medicaid Plan. So far, our own State Medicaid Agency has determined it too costly to include such a category in Utah’s State Medicaid Plan.

THE STATE CONTRACTS WITH PRIVATE PROVIDERS FOR RESIDENTIAL TREATMENT SERVICES

The Court places the state in the role as guardian for these children and youth. As the guardian, the state has chosen to contract with a variety of private providers to offer the daily services these children and youth need. These providers include basic foster parents up through moderate residential care (group homes) as well as high intensity residential care. The \$27 million in funding being denied by Medicaid has previously been part of the financing of contract payments made to these private providers for residential care and related costs. The first of the following two figures depicts children and youth in custody for DCFS and youth in JJS community programs, a subset of all youth in custody for JJS. Figure 2 depicts the cost per youth for both DCFS and JJS using the same populations as shown in the first chart. DCFS costs are lower due in part to the inclusion of all placements which would encompass lower cost alternatives such as basic

foster care. Cost per youth is also calculated on all youth throughout a year. The cost of a placement slot for an entire year could be much higher than the amounts shown in figure 2.

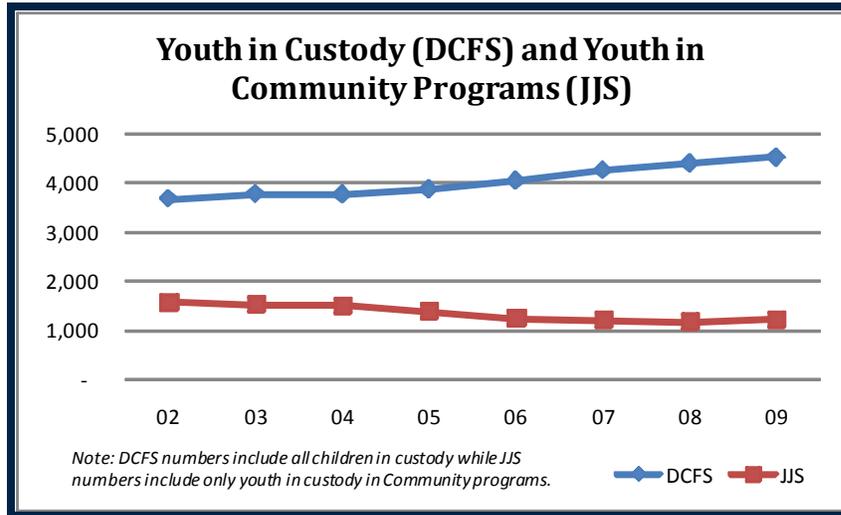


Figure 1

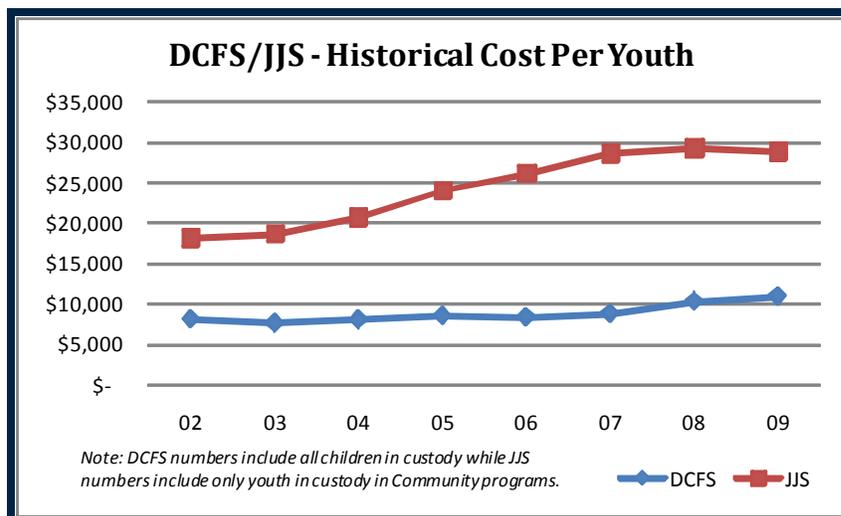


Figure 2

THE STATE CONTRACTS FOR BASIC FULL-TIME CARE AS WELL AS SPECIALIZED CARE

Acting as the guardian for these children and youth in custody, the state is responsible for all their full-time (around the clock and seven days per week) basic needs. Many of these youth have severe issues arising from their backgrounds. As the guardian, the state is also responsible for providing services to address any additional special needs these children and youth may have. Meeting a youth’s basic needs might consist of providing food, shelter, clothing, and transportation as well as an education. Meeting a youth’s basic needs also includes active care and supervision. This watchful oversight is required throughout the day as that youth participates in all daily events. Care and supervision also includes helping a youth in developing basic life skills.

Meeting a youth’s special needs would include adding supports. With these children in youth in these added supports could also include helping deal with violent tendencies, sexual acting out, and mental health treatment services.

As mentioned earlier, the state contracts for most basic and specialized care for these youth through a private provider system. Private providers offer a wide variety of settings to meet the range and severity of the issues manifest by each child or youth in state custody. The state pays a daily rate that ranges from a

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low of approximately \$15 per day (a basic foster care setting) up to \$257 per day (a high intensity residential setting). The rate varies significantly based upon the severity of the needs and the care being contracted for.

One of the major Utah providers has offered the following information as an example of basic revenue sources and costs in some of his residential care operations. The numbers reflect the period of July through November of 2009. The numbers also reflect five group homes – three for adolescent boys and two for latency age children (age six through 12). All five homes are within the Salt Lake Valley. The numbers, while unverified, are meant only to present basic concepts and issues surrounding providing residential care to children and youth in custody.

**EXAMPLE OF A YOUTH RESIDENTIAL TREATMENT PROVIDER
CONSOLIDATED COST CENTERS - 5 GROUP HOMES LOCATED IN SALT LAKE COUNTY
July 2009-November 2009**

	5 Month Average of 3 Group Homes for Adolescent Boys	Average Daily Amt. Per Child	%	5 Month Average of 2 Group Homes for Latency Age (6-12)	Average Daily Amt. Per Child	%
<i>Average occupancy per group home</i>	6.22			5.69		
REVENUE SOURCES						
Division of Child & Family Services (1)	68,612	72	61%	100,454	115	73%
Juvenile Justice Services (1)	23,865	25	21%	-	-	0%
Other Agencies (2)	6,207	7	5%	17,426	20	13%
Other States (3)	11,579	12	10%	16,796	19	12%
Private Payments	2,604	3	2%	3,397	4	2%
TOTAL REVENUE	112,867	119	100%	138,073	159	100%
EXPENSES						
Personnel	123,600	130	72%	113,756	131	70%
Client Costs	3,577	4	2%	3,825	4	2%
Conference/Workshops	1,989	2	1%	840	1	1%
Food	8,154	9	5%	7,193	8	4%
Furniture/Equipment	2,475	3	1%	2,909	3	2%
Insurance	11,491	12	7%	11,491	13	7%
Miscellaneous	3,096	3	2%	2,821	3	2%
Prof. Fees (Contract Therapist)	1,270	1	1%	400	0	0%
Space Costs (4)	6,656	7	4%	5,317	6	3%
Supplies	2,839	3	2%	2,654	3	2%
Travel/Transportation	4,870	5	3%	3,739	4	2%
CAPITAL (5)	1,861	2	1%	3,356	4	2%
Mortgage Interest	-	-	0%	4,113	5	3%
TOTAL EXPENSES	171,878	181	100%	162,415	187	100%
NET SURPLUS/(DEFICIT)	(59,011)	(62)		(24,342)	(28)	

FOOTNOTES:

- (1) This provider indicates they are paid by the State of Utah: \$117/day/adolescent youth and \$152.55/day/latency age child
- (2) Other Agencies, for this provider, include payments from a local mental health center to preserve an adoption placement.
- (3) This provider is currently taking youth from both Montana (\$158.72 per day) and California (\$165 per day) for adolescent youth and Idaho (\$206 per day) for a latency age child. This provider is able to charge these other states for school costs (not included in the rates previously shown). Revenues from school rates are used to offset the losses in the residential cost centers.
- (4) Space costs include building and grounds maintenance, janitorial services, power and fuel, some minor lease payments, etc.
- (5) This provider indicates that capital costs for these 5 group homes have, for the most part, been paid off.

NOTES:

- a) This provider indicates they subsidize losses in these homes with private fund-raising and transfers from another more profitable cost center. Neither of these transfer actions is reflected on this sheet.
- b) This provider indicates that in their last audited financial statements, the total agency program cost was \$9,572,230 with total management and general overhead at \$734,583, or 7.7 percent.
- c) This provider indicates that the maximum occupancy in these adolescent homes is 8 while the maximum in the latency age homes is 6.

Table 1

STATE AND FEDERAL FINANCING HISTORY FOR RESIDENTIAL YOUTH TREATMENT SERVICES

In the Division of Child and Family Services, all costs associated with this issue are contained in one single accounting unit (Out-of-home Care). In Juvenile Justice Services all residential costs are contained in two accounting units (Community Programs and Rural Programs). The two JJS accounting units contain other costs besides residential care with residential care making up 42.9 percent of the total FY 2009 cost). As a

result of mixed services in the JJS accounting units, just the DCFS funding history for residential care has been reflected in the following graph (FY 1998 through FY 2011). FY 2011 estimates are included in the final two far-right columns showing: 1) no additional funding and 2) the Governor’s addition funding recommendation.

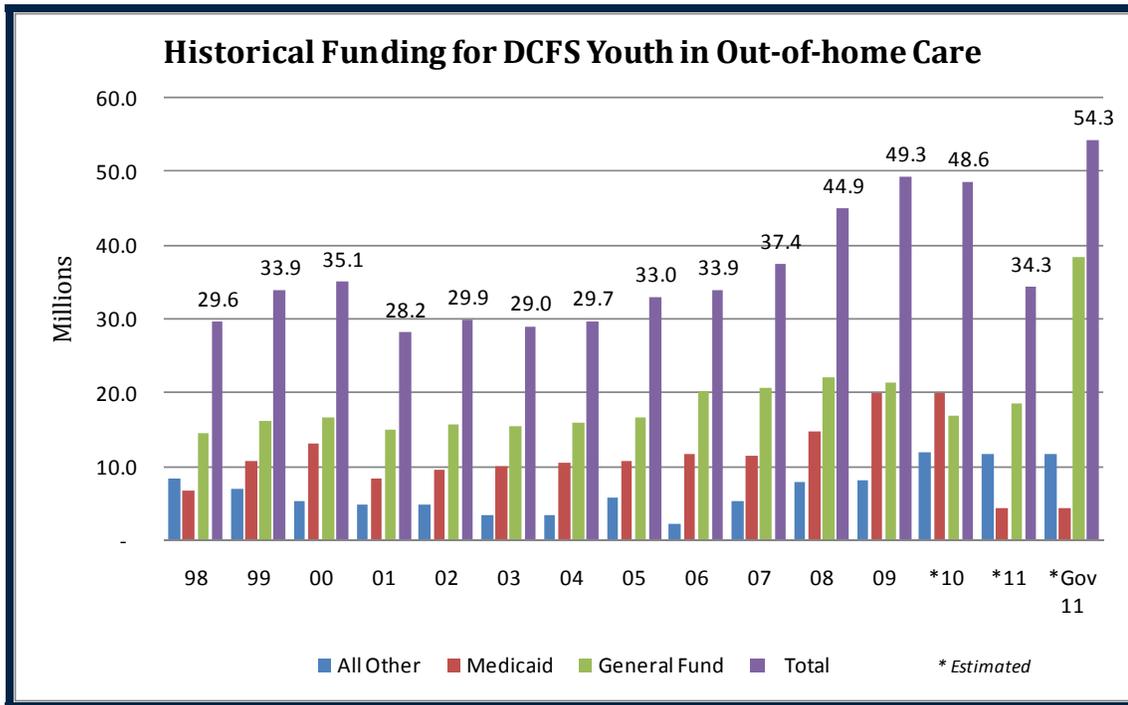


Figure 3

OPTIONS FOR THE LEGISLATURE TO CONSIDER

- **Do not provide any additional funding.** DCFS and JJS will have to adjust operations to whatever extent possible to accommodate the services provided to children and youth currently funded with Medicaid dollars. It is likely some services to children and youth won't be accommodated. It is also likely the two divisions will need to alter current ways of doing business. This could include such changes as adjusting required staff to youth ratios. The Court may have to adjust sentencing and placements.
- **Delay any action for now.** The Department of Human Services has yet to determine and present a detailed action plan to the Legislature for: 1) no additional funding or 2) various lesser levels of funding. The Legislature and the Executive Branch also don't yet know the federal Medicaid agency's full formal response. When all formal and complete information is known, the Governor can call a Special Session or the Legislature can address the issue later as a supplemental appropriation during its 2011 General Session. This would likely require the department to proceed as if there was no additional funding but still allow the Legislature to supplement funding based upon the department's actual experience going forward.
- **Consider different budget and policy decisions for the two separate populations of youth.** DCFS children and youth are in state custody as the result of abuse, neglect, or abandonment. JJS youth are primarily in state custody as the result of delinquency. The Legislature could determine different budget and policy responses for each group of youth.
- **Provide some of the request or the entire request with one-time funding.** Providing one-time funding allows the issues and options to continue to be discussed over the coming year. It also necessitates the department continue to provide ongoing input and reporting as the issue evolves.
- **Require the Department of Human Services to reallocate internally to absorb the funding loss by reprioritizing and finding efficiencies.**

The Legislature could reallocate the funding loss to several different organizational levels. For example, \$18,000,000 is 36 percent of the total FY 2010 DCFS Out-of-home Care budget. \$18,000,000 is 10.6 percent of the total FY 2010 DCFS budget and it is 3 percent of the total FY 2010 Department of Human Services budget. For the Division of Juvenile Justice Services, the \$8,900,000 is 13 percent of the JJS total FY 2010 Community and Rural Program budgets and 8.5 percent of the entire JJS FY 2010 budget. If the combined DCFS and JJS \$27,000,000 was absorbed by the entire Department of Human Services FY 2010 budget, including JJS, it would

equate to a 3.8 percent. When considering just General Fund, the \$27,000,000 equates to 7.9 percent of the FY 2011 General Fund base budget for the combined agencies of Human Services.

Point 1: The Legislature could require DCFS and/or JJS to absorb some of the lost federal funding in efficiencies while making up the remainder with some other funding option. The Legislature could require some portion of the lost funding be made up solely within DCFS and/or JJS while funding the remaining portion with one-time or ongoing funds or with reductions to other areas. One potential area to ask these divisions to find efficiencies is that of staff. 41 percent of the entire DCFS budget is made up of salary and benefits while 51.6 percent of the entire JJS budget is salary and benefits. If other staff-related expenditures are included, it is 51 percent of the total DCFS budget and 56 percent of the total JJS budget.

Point 2: DCFS uses the same caseload standards today for its caseworkers that it used when the David C. lawsuit was settled and funding was significantly increased in 1994. No adjustment in caseload standards has been made since as a result of improvements in technology. The Division of Child and Family Services uses the same caseload standards today that were applied in 1994 when the state originally settled the *David C.* lawsuit. There have been many advances in technology during the past 15 years, including the addition of a DCFS Management Information system known as SAFE, the use of mobile phones, and the provision of transcription services for caseworkers in the field. SAFE appears to have been highly successful in gathering critical case-related information, electronically coordinating with other critical partners such as Juvenile Court, and assisting caseworkers and their management in accomplishing the many tasks associated with detailed and complicated child welfare work.

Point 3: Using a methodology established by DCFS, the Fiscal Analyst estimates that \$2,480,400 in General Fund could be saved by increasing caseload standards 10 percent. For a Child Protective Service (CPS) worker this would mean carrying 16.5 instead of 15 cases. DCFS uses a standard methodology each year to calculate increased needs for caseworkers. The methodology is based upon estimated caseload increases, current caseworkers, and established caseload standards. DCFS uses the calculation to request funding increases when case counts go up. Using this DCFS methodology, the Fiscal Analyst estimates a \$2,480,400 savings in General Fund when caseload standards are adjusted upward by 10 percent. The current caseload standard for CPS and In-home workers is 15 cases. A 10 percent increase assumes that CPS and In-home workers can carry 16.5 cases. A 10 percent increase in caseload standards would also require a Foster Care worker to carry 13.2 cases rather than the current standard of 12.

Point 4: The Legislature may want to ask DCFS to review and report back to it regarding other uses of technology that could potentially increase efficiencies in performing child welfare work. Some of these might include video conferencing for youth who move away or are placed at large distances from original case workers or the use of technologies such as facebook, MySpace, email, and texting to take advantage of more recent communication methods in helping avoid bottlenecks associated with traditional ways of making visits. It is also estimated that less than 25 percent of workers in the field currently possess and use laptops equipped with wireless cards to accomplish their work-related tasks.

- ***Provide some lesser amount of funding and require that the Department of Human Services come back in the interim prior to the 2011 General Session with fiscal action plans for several predetermined funding levels, such as 50 percent and 75 percent.*** The Legislature can then determine the amount, if any, of additional funding to provide to the department based upon detailed plans the department presents as well as discuss and resolve additional concerns it may have with the department's proposed plans.
- ***Request a Legislative audit and/or interim study request(s) for one or both of these divisions.*** In combination with other options, the Legislature can determine which parts of both divisions and which elements of concern to incorporate into the scope of an audit or into its interim study requests.
- ***Provide the Governor's recommendation - \$15 million for DCFS and \$9 million for JJS.*** The Governor has recommended funding \$3 million less in DCFS than was originally requested and the full amount requested for JJS. The Legislature may want to ask DCFS how the \$3 million will be absorbed. Also, since both DCFS and JJS use many of the same providers, the Legislature may want to consider equalizing the funding between the two divisions in order to maintain a consistent rate structure for the two divisions. The Legislature may also consider attaching intent language requiring the department to report back on any concerns the Legislature may have with the funding.
- ***Provide the full amount of ongoing funding originally requested - \$27 million between the two divisions (\$18 million for DCFS and \$9 million for JJS).***