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ADMINISTRATION OF GOVERNMENT GENERALLY: AT-RISK YOUTH AND FAMILIES.

State pool of funds is to be expended for residential and nonresidential services provided to targeted children and their families. Attorney General defers to interpretation of Comprehensive Services Act for At-Risk Youth and Families by state agency that funds not be used to pay administrative or case management costs. Attorney General has no authority to review determination by state agency review team that services rendered under community care coordination constitute services that are duties of local stakeholder staff and not direct services for children that are reimbursable from state pool of funds.

The Honorable Phillip Hamilton
Member, House of Delegates
August 13, 1999

You ask whether community care coordination provided the City of Newport News by the Hampton-Newport News Community Services Board (the "Community Services Board") constitutes case management services eligible for purchase by pool funds under the Comprehensive Services Act for At-Risk Youth and Families¹ (the "CSA").

The intent of the CSA is "to create a collaborative system of services and funding [for] addressing the ... needs of troubled and at-risk youths and their families."² The CSA establishes a state executive council³ and a state management team.⁴ The state executive council is to oversee the administration of the CSA, including the administration of the policies regarding the use and distribution of the state pool of funds established under § 2.1-757(A) of the *Code of Virginia* and the state trust fund established under § 2.1-759(A).⁵

The state executive council appoints the members of the state management team.⁶ One of the duties of the state management team is to "[d]evelop and recommend to the state executive council state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund."⁷ Pursuant to this duty, the state management team recommended and the state executive council adopted the Comprehensive Services Act ("CSA") Manual.⁸ The Office of Comprehensive Services (the "OCS") administers the CSA.⁹

The CSA also requires every county, city or combination of counties and cities to establish a community policy and management team¹⁰ ("CPMT") and requires each CPMT to establish one or more family assessment and planning teams¹¹ ("FAPTs"). The local CPMT is to include the agency head, or his designee, of the following community agencies: the community services board established under § 37.1-195; the juvenile court services unit; the local departments of health and social services; and the local school division.¹² These community agencies deliver services under the CSA and are generally referred to as "stakeholder agencies."

The state pool of funds established under § 2.1-757(A) funds the CSA.¹³ The pool consists of General Assembly appropriations.¹⁴ The fund is to be allocated to CPMT "in accordance with the appropriations act and appropriate state regulations" and is to be "expended for ... nonresidential or residential services for troubled youths and families."¹⁵

Section 2.1-757(B) further provides: "The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 below in the purchase of residential and nonresidential services for children." Subdivisions 1 through 5 describe the target population as: (1) "[c]hildren placed for purposes of special education in approved private school educational programs"; (2) "[c]hildren with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or ... special education day schools"; (3) "[c]hildren for whom foster care services ... are being provided to prevent foster care placements, and children placed ... in suitable family homes, child-caring institutions, residential facilities or independent living arrangements"; (4) "[c]hildren placed by a juvenile and domestic relations district court ... in a private or locally operated public facility or nonresidential program; and" (5) "[c]hildren committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility." There is no language in the statutes suggesting that the fund may be used to pay a locality's administrative costs in providing services for the children.

By stating that the fund is to be used for "the purchase of residential and nonresidential services for children"¹⁶ and by describing the types of services and placements included, it is clear that the General Assembly intended the funds in the state pool to be confined to the payment for services directly provided the children. The CSA Manual is consistent with this conclusion.¹⁷ The CSA Manual provides:

Pool Funds "shall be expended for public or private non-residential or residential services for troubled youths and families." Pool Funds are to be used for services for specific children and their families.^[18]

Moreover, "[t]o assure that Pool Funds continue to purchase direct services for children and their families,"¹⁹ the CSA Manual sets out restrictions on the use of the funds. Pool funds must not be expended for administrative support services incurred by CPMTs and FAPTs. Nor shall pool funds be used to pay for interagency coordinators. Pool funds also must not be expended for case management services related to administering the CSA (e.g., case management services provided by FAPTs, as described in § 2.1-754 of the CSA). Each FAPT, in compliance with the policies of the CPMT, shall (1) provide for review referrals and for family participation; (2) develop individual family service plans and appoint someone to monitor and report their progress; (4) refer to community resources; and (5) recommend expenditures from pool funds.²⁰ With regard to case management services, the CSA Manual excepts those services "that are provided as direct services for children and their families."²¹

You state that in 1997, Newport News and the Newport News CPMT contracted with the Community Services Board for it to assume management responsibility for all activities relating to the CSA.²² As part of its management plan, the Community Services Board adopted a practice known as "community care coordination." You specifically ask whether community care coordination

provided by the Community Services Board is a direct client service for which pool funds may be expended under the CSA.

Whether community care coordination is a direct service for children rather than an administrative expense will depend on an analysis of what the service entails.²³ The OCS in 1998 formed a team consisting of representatives from the State Departments of Education, Social Services and Juvenile Justice. The team conducted a review of Newport News' operation and management of the CSA and considered the community care coordination provided by the Community Services Board. The review team concluded that the services rendered under community care coordination were services that were the duties of, and were primarily performed by, the staff of the local stakeholder agencies. The review team thus determined that the services were not direct services to children and could not be reimbursed from the state pool of funds.²⁴

Prior opinions of the Attorney General defer to the interpretations of the law by an agency charged with administering the law unless the agency interpretation is clearly wrong.²⁵ Pursuant to §§ 2.1-746 and 2.1-748, the state executive council and the state management team are the entities charged with developing and administering policies governing the use of moneys in the state pool of funds. These entities have adopted the policies set out in the CSA Manual and have authorized OCS to administer the policies. Prior opinions also consistently take the position that the propriety of the actions of another entity interpreting matters reserved solely to it is not subject to review by the Attorney General.²⁶

It is my opinion that the policies set out in the CSA Manual providing that the state pool of funds may not be used for the payment of administrative or case management costs is consistent with the language of the CSA. Accordingly, I must defer to the agency's interpretation of the CSA's limitation on the use of the state pool of funds.²⁷ In addition, I must decline to review the decision by OCS that the community care coordination provided by the Community Services Board does not constitute direct services for children that may be purchased with state pool of funds.²⁸ The statutes clearly place decisions regarding the use and distribution of the state pool of funds within the authority of the state executive council and the state management team and its staff. The CSA grants no authority to the Attorney General to review the decisions.

At its 1999 Session, the General Assembly amended the CSA.²⁹ These amendments include the requirement of a public participation process for programmatic and fiscal guidelines for administrative actions and the establishment of a dispute resolution procedure, which is to include an appeals process, should the state executive council find that a CPMT has failed to comply with the CSA.³⁰

¹Va. Code Ann. §§ 2.1-745 to 2.1-759.1.

²See 1992 Va. Acts chs. 837, 880, at 1560, 1561, 1647, respectively (quoting § 2.1-745, not set out in Code).

³See § 2.1-746.

⁴See §§ 2.1-747, 2.1-748.

⁵Section 2.1-746(4).

⁶Section 2.1-746(1).

⁷Section 2.1-748(2).

⁸See CSA Manual (Sept. 1998) (unpublished manual, on file with Office of Comprehensive Services for Youth and Families). Part II of the CSA Manual sets out a certification requirement. See *id.* at 31-32. The locality certifies to the state executive council that it is in compliance with the programmatic and fiscal policies established by the CSA and the council. See *id.* at 32. The CSA Manual states that, upon signing of the certificate by the chairmen of the local CPMT and of the state executive council, the CSA Manual constitutes an agreement between the locality and the state. See *id.* at 2.

⁹The state executive council established the OCS pursuant to its duty under § 2.1-746(7) to provide administrative support for the establishment and operation of local comprehensive services.

¹⁰See §§ 2.1-750 to 2.1-752.

¹¹See §§ 2.1-753 to 2.1-755.

¹²Section 2.1-751.

¹³In addition, § 2.1-759(A) establishes a state trust fund. Monies in the state trust fund are to be expended to develop "[e]arly intervention services for young children and their families" and "[c]ommunity services for troubled youths." Section 2.1-759(A)(1), (2).

¹⁴Section 2.1-757(C).

¹⁵Section 2.1-757(A).

¹⁶Section 2.1-757(B).

¹⁷See CSA Manual, *supra* note 8, at 35-36.

¹⁸*Id.* at 43 (citation omitted) (quoting § 2.1-757(A)).

¹⁹*Id.* at 46.

²⁰*Id.* at 46-47.

²¹*Id.* at 47.

²²In addition to the management responsibilities, the Community Services Board would continue as a provider of established behavioral health care services under the CSA.

²³You state in your letter that community care coordination is a well-accepted community services board practice. You do not describe what the practice involves, and I have no specific information on the practice.

²⁴It is my understanding that if a child needs a service that is not provided by one of the local stakeholder agencies, the local CPMT may contract with another entity to provide the service. In such instances, the necessary case management services that the entity provides would be reimbursable from the state pool of funds.

²⁵See Op. Va. Att'y Gen.: 1998 at 87, 88; 1996 at 124, 126, 127 n.7.

²⁶See Op. Va. Att'y Gen.: 1998 at 28, 29-30; *id.* at 94, 95; 1997 at 10, 12; *id.* at 133, 134; 1987-1988 at 140, 141; *id.* at 352, 352.

²⁷See 1984-1985 Op. Va. Att'y Gen. 180, 181 (Supreme Court of Virginia adheres to rule that considerable freedom to exercise discretion and judgment must be accorded those who administer legislation (citing *Ours Properties, Inc. v. Ley*, 198 Va. 848, 96 S.E.2d 754 (1957); *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579 (1930))).

²⁸A high degree of familiarity with the programs and manner in which they operate is necessary for the type of detailed and factual review conducted by OCS.

²⁹See 1999 Va. Acts ch. 669 (effective July 1, 1999).

³⁰See § 2.1-746(3), (15).