

**Transformation Design Committee
Advisory Committee on Financial Issues**

December 17, 2009

1:00PM - 4:00PM

Members Present: Carol Holland; Sharon Osborne; Charlotte McCullough

Others: Pam Anderson (AGO); Dana Phelps (CA); Jann Hoppler (CA); Kelsey ; Michael Bezanson (Ways and Means); Rich Pannkuk (CA); Laurie Lippold (CHS - WA)

Staff Present: Julie Dunnington; Benjamin Berres; Jennifer Strus

Charlotte McCullough discussed the payment options for the Care Coordinator/Master Contract Model.

Overview - Risk Sharing and Performance Based Contracting Models (See Handout)

Global Budget

- Take whatever was in the public agency pot and take that money and pass it over to the private agency. The private agency would then take "all of the risk" using that "set" "fixed" pot of money.
 - Florida and Nebraska have both used this model
 - Nebraska wanted to use Case-Rate, but did not because they were unprepared
- If Washington used this model then, it would be the limited number of master contractors that would be responsible for management of that money
- We would have to include some risk management options

Case Rate

- This was the most common model for the purchase of child welfare services
- Whatever services are in the contract, there is a fixed amount of money per child that would be paid.
 - No two case rates are the same
- Some rates are paid via
 - Child
 - Family
- In most state systems, the ability to tease out the dollar amount is much more difficult to derive a family rate
- Case rate can be:
 - Annual
 - How much money is historically spent on that bundle of services and the rate would be calculated based on this

- Sometimes 1/12 is paid per month
- o Episode of Care Case Rate
 - Used for children that are in foster care
 - Used to get children out of care and make contractors accountable for permanency
 - Looking at the average costs of a child that comes into care
 - This includes all costs and services
 - Sometimes uses an 18-month period
 - CA can pay the rate out over whatever period of time it wants, less time would make the contractor want to get the kid out of care more quickly
 - This model is attractive to private agencies
 - Can use the remainder of the money on other longer cases
 - Could just have a rate for the care-coordinator function, and a different rate for all of the other services
 - A case-rate might stimulate a contractor to push for permanency that might not be safe.
 - Some states have built-in mechanisms for some months after placement where there would be financial incentives where it was understood if there were a re-abuse allegation, the contractor would receive no money for the case, or a reduced rate
 - Blended Rate
 - If there is a large sample size, then we can blend it into a rate that captures all the complexity
 - Stratified Rate
 - Different children might need a higher rate depending on different variables
 - Lots of complexity
 - Lots of unintended consequences
 - Declining Rate
 - The longer a child and family receives services, the less the private agencies are paid
 - Lump-Sum Rates.
 - These are attached to different milestones in a case.
 - Can include additional incentives for performance
 - There are differences in the manner that rates are set
 - Prospective Risk Modeling
 - They factor in scenarios for end-assumptions

- Whether the procurement document would specify a rate or whether the contracting model would price it out
 - Frequently, people get the price wrong
- Rates need to be periodically reviewed
- In many states, no risk management was included in the first few months
- A case rate could work for Phase 1 and Phase 2

Mixed Payment Model

- The contractors would receive a base payment on top of which there would be incentive added or penalty removed
- Penalties are very low, usually, so contractors are comfortable

Pure-Pay for Performance

- Used for adoption contracts
- Not likely for WA to use
- Would not lend itself to either Phase 1 or Phase 2

Comments by Charlotte:

- Sometimes it's best to front-load the money because that is when creative approaches are often used.
 - Requires a very strong and restrained CFO
- Payment models have changed. States do change (e.g. KS)

Risk Mitigating Strategies

- Risk Reward Corridor
 - Defined a point a contractor's losses and profits will be absorbed by a shared risk with the public agency
- Catastrophic Stop Loss
 - Aggregate or individual provisions limit losses when expenditures exceed a certain threshold
 - Loss above a certain threshold would be split between the public and private agency
- Risk Pool
- Risk Reserve/Insurance

Rich Pannkuk asked Charlotte the following question:

- When the bonuses are paid out, how are they used?
 - There is no process
 - States can build into their proposal how that money can be reinvested (Bonuses, savings, etc)
 -

Michael Bezanson asked Charlotte the following question:

- Depending on the model that we take, there is a significant amount of risk on the part of the contractor. How do states do market analysis? How do we know that there is a population

of contractors that can pull off the amount of risk that we decide upon?

- o It would be a good thing to do to ask for information from interested agencies on the front end.
- o It would be good for the state to put out an idea of what we are talking about, and then the private agencies could describe their capacity
- o A survey of private agencies could be used as well.

Carole asked Charlotte the following question:

- How do people get around the source of the money? (IV-E, etc)
 - o You have to look at the allocations of where the funds are coming from
 - o Have to make sure that the private agencies are accurately documenting the information so that you can claim the money
 - o The private agency might not be in the loop, but the private agency still needs to report the right information
- What about balloon payments, divided into annual or annual based payments, do you lose incentives?
 - o Exactly

Jann Hoppler asked the following question:

- Is there any state that keeps the IV-E in the incentive payments?
 - o It depends.
 - o You would not lose IV-E

Sharon Osborne asked the following question:

- What does "early on" mean?
- What is the time to improvement?
 - o A minimum of 12 months before we see any improvement
 - o The degree of improvement depends on the amount of "tinkering" that the state does. We might not lose ground, but we might not gain any ground
- Florida can document how expenditures have changed over time
- When do you think that we'll start seeing some fiscal returns because 12 months seems short.
 - o Illinois probably did see some changes real quickly
 - o Yet, most states didn't use independent evaluators
 - o Outputs 12-18 months
 - o Outcomes 18-24 months
 - o Savings 24-36 months
- Which of the evaluations would be done from the most objective vantage? Are there some that we can look to?
 - o Kansas or Florida,
 - Florida has had at least 6 evaluations performed
 - o We really need some guidance on this.

- Florida has different models and fiscal models, and they are the only place that has this kind of info.

Charlotte made the following comments:

If we do what Denise wants and reduce the number of children in out of home care, we know that we are not going to be claiming the same amount of IV-E dollars. What can we do to offset that loss?

This is the first of what will probably be many conversations regarding cost

Pam Anderson from the Attorney General's Office Made a Presentation on the Impacts of Waiving Sovereign Immunity and Tort Liability in Washington

Sovereign Immunity

- Refers to the right of the government to be free from suit.
 - WA waived its right in 1961
- "The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation."
- "The Washington courts have strictly limited the scope of 'discretionary immunity' for governmental actions"
- Washington doesn't have a liability cap
- The public duty doctrine: a duty owed to all is a duty owed to no one
- Negligent Investigation
 - Can private contractors be liable for the tort of negligent investigation?
 - Contractors could be deemed to be agent of the state and could be co-sued
 - For the last two fiscal years, the tort payouts for the Children's Administration have been \$26M per year, which doesn't include the defense cost
- If CA uses master contracts, does failure to monitor the provision of services by a contracted provider lead to liability?
 - It would be a domino effect, where CA would have the duty to monitor the master-contracting, and the master-contractors would have to monitor the sub-contractors

Sharon Osborne asked the following question:

- Do the cases arise from a "lack of following procedures" or a "lack of procedures"?
 - Doesn't know what the majority would be.

- When a procedure isn't followed, it is often followed by a supervisor that didn't know that the rules were not being followed.
- A lot of time it arises simply from human error, or poor judgment calls.
- From a private agency standpoint, it is important to maintain fidelity to the procedures
- It is also important to follow best-practice regardless of being in the public or private sector

Kelsey asked the following question:

What failure to provide special needs mean?

- It's not specific, it's just that there is an evolving theory about how many services are necessary to provide to meet the needs of a child
 - i.e. educational needs

Pam discussed the legal theory of joint and several liability

- If there are three defendants, and the jury awards \$1M, then the jury would specify the proportion of the liability for each defendant
- Jury must apportion fault among negligent actors
- If one defendant can't pay, then another defendant must cover the difference
- This issue needs to be discussed when risk will be divided between DSHS and its contractors and the contractors and its subcontractors.

Sharon Osborne had the following question:

- Most contracts are personal service contracts that are with individual contractors, not organizations. Those folks carry insurance. If they are sued, then is their liability covered by the state?
 - This is not how it works with contractors.

Pam made the following suggestions to manage tort liability for both the state and its private contractors:

- Make no mistakes;
- Purchase liability insurance;
- Create or use existing tort liability pool;
- Have a legislative limit on liability.

Jann Hoppler passed out a list of Contracted Services by Region

Tasks to be completed for the next meeting:

- Need to know what is going to be defined as core services?
- Need Denise's list of core services generated by Milwaukee;
- Snapshot of how the service array is changing over time;
- A good list of the service array that CA currently pays for;
- What would the ideal service array cost?
- S. Osborne is willing to bring a list of the core services provided by CHS.
 - What it looks like
 - What it costs.
 - Still very concerned about what the state is doing?

Public Comment Taken