

Analysis

Item 20: Department of Human Services and Oregon Youth Authority

Behavior Rehabilitation Services

Analyst: Laurie Byerly and Julie Neburka

Request: Increase General Fund by \$5,037,231 and increase the Federal Funds expenditure limitation by \$2,647,644 for the Department of Human Services; and increase General Fund by \$3,364,035 for the Oregon Youth Authority to support behavior rehabilitation services program rate increases.

Analysis: Behavior Rehabilitation Services (BRS) provide behavioral intervention, counseling, and skills-training services to children and young adults in Oregon's child welfare and juvenile justice systems. Both the Department of Human Services (DHS) and the Oregon Youth Authority (OYA) contract with BRS providers for a range of services in various settings. Service providers are paid a daily rate ranging from \$197.65 to \$384.97 per youth, based on the type of service provided. BRS rates were last increased in July 2019.

The current rate setting methodology is the result of a comprehensive BRS program review that was required under a 2014 settlement agreement reached to resolve a lawsuit filed against the state by BRS providers. However, even with rate increases and associated funding now routinely built into agency budgets, some BRS providers are still facing challenges in keeping their doors open and retaining qualified staff. Minimum wage increases, along with state and federal law changes, have all contributed to driving up provider costs. Other factors influencing an individual provider's costs include facility condition, geographical location, and local workforce competition.

Approval of the agencies' request would support rate increases and methodology changes consistent with recent recommendations from the BRS rate methodology subcommittee. This group, which is composed of providers and state agency staff, was originally formed during the 2014-15 BRS program review. The subcommittee reconvened between July and October 2019 to evaluate the current funding model for BRS services and to identify law or other changes impacting the rate model; the group also gathered and reviewed information on provider costs. The result of these efforts are recommendations for rate increases or methodology changes in three areas:

- 1) Family First Requirements – Under the Family First Prevention Services Act (Family First), a residential treatment program used by DHS or shared by DHS and OYA must be accredited by July 1, 2020 and meet “qualified residential treatment program” (QRTP) criteria as set out in the federal law. QRTPs have to meet more service requirements than current programs; these include offering 180 days of aftercare, using only evidence-based treatment models, and providing 24-hour access to nursing services. While not all of the state's current BRS providers will choose to be accredited, the subcommittee's recommendation is for the QRTP requirements be met by all BRS providers to uniformly improve the quality of services throughout the residential treatment system. This approach is expected to also help avoid moving to a bifurcated rate model.
- 2) Oregon Wage Information – One of the rate methodology changes arising from the original BRS rate review was to use Oregon Wage Information (OWI) from the Oregon Employment

Department as a factor to help set rates more closely aligned with actual wages being paid to direct care staff and workers in this sector. However, the timing of OWI publication, which occurs each June, does not mesh neatly into the state's budget preparation timelines. This results in a lag of between one and three years if the OWI used during budget preparation is not subsequently updated prior to the final legislatively adopted budget. For example, the current rates are based on the 2017 OWI; the request is to update these rates by using the 2019 OWI. In addition, the agencies and providers are proposing that in future budget development cycles BRS rates be adjusted to reflect the OWI that is published just prior to the end of the odd-number year legislative session.

- 3) **Vacancy Factor** – The residential treatment system, like other systems, benefits from maintaining a certain amount of “slack,” but BRS providers are paid only for occupied treatment beds. While the published rates include an “absent day” rate for circumstances such as hospital visits, the current reimbursement system does not account for vacant beds and their impact on a provider's fixed costs. The associated recommendation is to build a vacancy factor into the BRS rates that is based on half the cost of an occupied bed (the absent day rate) and equal to 5% (eighteen days) annually.

Collectively, if approved, these recommendations would increase rates from 15.4% to 21%, depending on the service type, over the current rates; the funding request is priced assuming a July 1, 2020 implementation date. Due to passage of SB 171 (2019) and discussions around Family First implementation, the QRTP component of the request was anticipated to come forward at some point during the 2019-21 biennium. For DHS specifically, there is a related \$4 million General Fund special purpose appropriation that could be tapped to pay for some of its costs.

The other elements of the request materialized after the 2019 legislative session, which means they were unavailable for review or prioritization within the 2019-21 legislatively adopted budget. While the proposed BRS rate increases and changes appear to warrant consideration for action during the 2020 legislative session, a specific funding recommendation will need to be developed based on the availability of and legislative priorities for statewide General Fund resources. Further analysis of the request by the Legislative Fiscal Office may also influence or inform that recommendation.

Legislative Fiscal Office Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means defer action on the request to the 2020 legislative session.

Department of Human Services/Oregon Youth Authority Webb/Lisper

Request: Report on requested Behavior Rehabilitation Services (BRS) rate increases for both the Department of Human Services (DHS) and the Oregon Youth Authority (OYA). Appropriate \$5,037,231 General Fund to DHS and \$3,364,035 General Fund to OYA, and increase Federal Funds expenditure limitation by \$2,647,644 for DHS to fund requested BRS rate increases.

Recommendation: Acknowledge receipt of the report and consider the request during the 2020 Legislative Session.

Discussion: The Behavior Rehabilitation Services (BRS) Program is defined in OAR 410-170-0020 as providing “services and placement-related activities to the BRS client to address their debilitating psychosocial, emotional, and behavioral disorders in a community placement utilizing either a residential care model or a proctor care model.” Services delivered in the BRS program include behavioral intervention, counseling and skills training. BRS can be delivered in a variety of settings depending on client needs, including Qualified Residential Treatment Programs (QRTPs). The QRTPs utilize a trauma-informed model to deliver appropriate services for a child’s behavioral challenges. Services can also be delivered in a proctor setting, such as the foster care system.

The proposed rate increases included in the budget requests have been recommended by the BRS rate review subcommittee. Currently, BRS providers are paid as a result of the 2014 settlement agreement between providers (through the Oregon Alliance of Children’s Programs), Department of Human Services (DHS), Oregon Health Authority (OHA) and Oregon Youth Authority (OYA). The net results from the agreement were incorporated into the BRS program, including updating and memorializing a staff-based rate method using the most current Oregon Wage Information (OWI) data created by the Oregon Employment Department. The first complete biennial review was performed in 2017-19. BRS rates for the 2019-21 biennium used the 2017 OWI data to build the 2019-21 rates, since it was the most current data available at the time.

The rate review subcommittee chose to meet multiple times between July and October 2019, to determine if the rate increase included in the 2019-21 Legislative Adopted Budget (LAB) was still relevant for BRS providers, since it was developed using the 2017 OWI data. In addition to the rate review, it was determined by the committee that recent federal legislation would impact BRS providers. The federal Family First Prevention Services Act (FFPSA) was passed on February 9, 2018 through the federal H.R. 1892 – Bipartisan Budget Act of 2018, which requires national accreditation for QRTPs and for access to 24 hour nursing care.

When the BRS rate review subcommittee reviewed the existing BRS rates, plus the new federal legislation, the following was proposed: 1) QRTPs are required to conform to FFPSA and receive national accreditation by July 1, 2020, plus offer services beyond those required by Oregon administrative rules; 2) include the 2019 salary data from the OWI report in the rate model because it is greater than the OWI data used during the 2019-21 budget development process, which is impacting providers’ ability to recruit and retain their staff; and, 3) update the BRS rates to include a bed vacancy factor to allow providers to make immediate placements for children experiencing immediate BRS needs.

The committee determined that recent OWI data should be included in evaluating BRS provider rate increases. The first review was performed in the 2017-19 biennium and provider rates were increased based on OWI data, however, updated OWI salary data, including inflation adjustments, was not available during the 2019-21 budget development process.

Due to the above factors, DHS and OYA have requested additional funding to increase BRS rates effective July 1, 2020. The following three rate changes are being proposed by the BRS rate review subcommittee: 1) FFPSA compliance, 2) staffing increases based on the 2019 OWI, and 3) an increase to include a vacancy factor.

	Requested General Fund (12 Mos)	Requested Total Funds (12 Mos)	% Increase From 2019-21 LAB	24 Month Increase (Total Funds)	24 Month % Increase From 2019-21 LAB
#1 FFPSA Compliance					
DHS: QRTP Providers	\$ 1,792,998	\$ 2,918,133	8.8%	\$ 5,836,266	17.7%
DHS: Non-QRTP Providers	\$ 797,200	\$ 1,358,283	4.4%	\$ 2,716,566	8.8%
OYA Providers	\$ 1,309,772	\$ 1,309,772	2.0%	\$ 2,619,544	3.9%
Total DHS + OYA	\$ 3,899,970	\$ 5,586,188	4.9%	\$ 11,172,376	8.5%

	Requested General Fund (12 Mos)	Requested Total Funds (12 Mos)	% Increase From 2019-21 LAB	24 Month Increase (Total Funds)	24 Month % Increase From 2019-21 LAB
#2 Staffing Alignment with OWI					
DHS: QRTP Providers	\$ 861,706	\$ 1,433,995	4.3%	\$ 2,867,990	8.7%
DHS: Non-QRTP Providers	\$ 575,173	\$ 964,310	3.1%	\$ 1,928,620	6.2%
OYA Providers	\$ 1,261,262	\$ 1,261,262	3.3%	\$ 2,522,524	3.8%
Total DHS + OYA	\$ 2,698,141	\$ 3,659,567	3.5%	\$ 7,319,134	5.6%

	Requested General Fund (12 Mos)	Requested Total Funds (12 Mos)	% Increase From 2019-21 LAB	24 Month Increase (Total Funds)	24 Month % Increase From 2019-21 LAB
#3 Include Bed Vacancy Factor					
DHS: QRTP Providers	\$ 546,146	\$ 546,146	1.7%	\$ 1,092,292	3.3%
DHS: Non-QRTP Providers	\$ 464,008	\$ 464,008	1.5%	\$ 928,016	3.0%
OYA Providers	\$ 793,001	\$ 793,001	1.2%	\$ 1,586,002	2.4%
Total DHS + OYA	\$ 1,803,155	\$ 1,803,155	1.4%	\$ 3,606,310	2.8%

	Requested General Fund (12 Mos)	Requested Total Funds (12 Mos)	% Increase From 2019-21 LAB	24 Month Increase (Total Funds)	24 Month % Increase From 2019-21 LAB
Total of All Requests					
DHS: QRTP Providers	\$ 3,200,850	\$ 4,898,274	14.9%	\$ 9,796,548	29.7%
DHS: Non-QRTP Providers	\$ 1,836,381	\$ 2,786,601	9.0%	\$ 5,573,202	18.1%
OYA Providers	\$ 3,364,035	\$ 3,364,035	7.6%	\$ 6,728,070	10.0%
Total DHS + OYA	\$ 8,401,266	\$ 11,048,910	9.8%	\$ 22,097,820	16.9%

If all of the requested rate increase components are approved for both DHS and OYA, it will increase projected total funds expenditures by 9.8 percent for the 2019-21 biennium LAB. The additional General Fund need is \$8,401,266, an approximate 11.7 percent increase. This increase is based on a rate increase effective date of July 1, 2020 and represents 12 months of increased rates. If a full biennium's costs are considered (24 months), the total funds budget impact is about \$22 million, or a 16.9 percent increase. The budget projections above are based on a variety of factors including provider types, underlying provider BRS rates, estimated BRS beds and federal funds match rates. Actual rates received by individual providers may be different from the increases shown above.



Oregon

Kate Brown, Governor



December 9, 2019

The Honorable Representative Dan Rayfield, Co-Chair
The Honorable Senator Betsy Johnson, Co-Chair
The Honorable Senator Elizabeth Steiner Hayward, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE H-
178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Request

The Oregon Youth Authority (OYA) and the Department of Human Services (DHS), in collaboration with the Oregon Health Authority (OHA), request the Committee to acknowledge receipt of this report and recommend an increase of \$5,037,231 General Fund for DHS, an increase of \$3,364,035 General Fund for OYA, and an increase in Federal Funds expenditure limitation of \$2,647,644 for DHS to fund Behavior Rehabilitation Services (BRS) rate increases.

This request is specific to the Special Payments budget category, with no impact to the Personal Services or Services and Supplies categories. The additional funding is being requested to allow these agencies to make a good faith effort to pay BRS providers daily rates that adequately and appropriately compensate them for services rendered, and to abide by the terms of a settlement agreement reached in 2014. If funding is approved by the Legislature, these agencies are prepared to increase the daily rates for all levels of BRS including additional levels necessary to satisfy recently enacted legislation taking effect July 1, 2020. DHS was provided a \$4,000,000 General Fund special purpose appropriation (SPA) for Child Welfare. Part of DHS funding request, the General Fund amount associated with Qualified Residential Treatment Programs (QRTPs) could potentially be met from this SPA as it ties directly to Family First legislation.

Agency Action

Oregon's BRS program was most recently reviewed in 2014-2015 by a large group of state program stakeholders. Regular review is expected by ORS 414.065 and 42 CFR 447.201-204

and confirmed by the settlement agreement of June 27, 2014 between the Oregon Alliance of Children's Programs and the State of Oregon through OYA, DHS, and OHA. In the 2014-2015 review, subcommittees were established in 3 areas: BRS Standards and Design, BRS Eligibility and Referrals, and BRS Rate Methodology. Subcommittees were professionally facilitated and worked on these issues for more than 16 months. The recommendations made by the workgroups were incorporated into the existing BRS program, including updating and memorializing a staff-based rate methodology using the most current State of Oregon Employment Department's Oregon Wage Information (OWI) data for each of the occupational categories that make up the program's service levels and staffing models.

In late June 2019, the BRS rate review subcommittee was reconvened for two primary reasons: first, to review how well the model was operating (i.e., determine whether any cost elements were missed and whether any factors needed revision); and second, whether there had been changes in state/federal law and rules that impact the rate model. Membership in the group included representation from state agencies, BRS providers, and stakeholders.

The subcommittee met 8 times between July 10, 2019 and October 4, 2019. The group identified a few changes impacting the system since 2015, including Oregon Senate Bill 1515 (2015), the Federal Family First Prevention Services Act (2018), and Oregon Senate Bill 171 (2019). Additionally, the group identified a few timing issues in updating rates in the model. The provider community completed an extensive survey of costs by agency. Costs included personnel (salary and fringe), materials and supplies, and administrative costs. An analysis of BRS provider costs was carried out by state agency staff to ensure the model accurately accommodated provider costs.

The total requested funding referenced above is based on three recommendations described below. Each recommendation stands alone and builds on the prior recommendation(s). In other words, recommendation 2 includes the cost of recommendation 1 as well as the additional cost of recommendation 2, recommendation 3 includes all of 2 and 1 as well as the extra for the third recommendation.

1. Include Family First and Prevention Services Act programmatic requirements in BRS daily rates

The Family First Prevention Services Act (Family First) has several implications for Oregon's system of BRS proctor/foster and residential services. BRS residential treatment programs utilized by DHS or shared by DHS and OYA are required by Family First to be accredited by a national accrediting body by July 1, 2020. Additionally, Family First requires that residential programs (referred to as "qualified residential treatment programs" or QRTPs) use treatment models that are evidence-based. The Act requires 180 days of aftercare services be made available by QRTPs to clients (versus the current Oregon Administrative Rule BRS aftercare requirement of 90 days). Lastly, Family First requires QRTPs to have access to 24/7 nursing services.

The subcommittee recommends that the entire BRS service system, including proctor/foster programs and non-QRTP residential programs (but excluding shelter programs), provide the following:

- 180 days aftercare services to best meet the needs of children/youth
- Employ evidence-based programming such as Collaborative Problem Solving or Aggression Replacement Training
- Converting one Social Service staff position in the rate model to Senior Social Service staff to account for the increased need for training, coaching, oversight and use of evidence-based models to fidelity
- An adjustment to assure that a larger proportion of direct service staff possess a level of education and experience to meet evidence-based programmatic expectations
- Adding certification capacity to assure adequate safety oversight of proctor/foster homes
- Only QRTPs be subject to accreditation by JCAHO, CARF, or COA, and have 24/7 nursing availability (provided by OHP) as required by Family First legislation.

The daily rate impacts of Family First are as follows:

QRTP programs:	Accreditation (\$4.21); Program Enhancement, Training and Oversight (between \$7.70 and \$15.56, depending upon service level); Aftercare (\$5.38); Nursing Services (provided through OHP)
Non QRTP programs:	Program Enhancement, Training and Oversight (between \$7.70 and \$15.56, depending upon service level); Aftercare (\$5.38)
Proctor/Foster programs:	Program Enhancement, Training and Oversight (\$13.79 Proctor and \$14.40 Proctor Enhanced); Aftercare (\$5.38)

Rate changes with implementation of Family First Act

Shelter	Ind. Living Programs	Proctor	Enhanced Proctor	Residential*	Intensive Residential*	Intensive Behavioral Support*	ILP Enhanced*
\$205.86	\$215.46	\$217.86	\$232.80	\$254.84	\$289.97	\$415.47	\$254.63
4.1%	9.0%	9.6%	9.3%	7.3%	7.1%	7.9%	7.6%

*Non-QRTP Residential:	\$250.62 (5.5%)
*Non-QRTP Intensive Residential:	\$285.75 (5.5%)
*Non-QRTP Intensive Behavioral Support:	\$408.91 (6.2%)
*Non-QRTP ILP Enhanced:	\$250.42 (5.8%)

Fiscal Impact July 1, 2020 through June 30, 2021:

DHS: \$797,200 GF (non-QRTP)
DHS CW SPA: \$1,792,998 GF (QRTP) \$1,686,218 FF \$4,276,416 TF
OYA: \$1,309,772 GF \$1,309,772 TF

2. Update Oregon Wage Information (OWI), which is foundational to the staffing-based model, on a more frequent basis throughout the budget building process

Salaries that keep up with inflation and prevailing wages are crucial to the recruitment and retention of staff. Studies have found clear correlation between staff training and turnover and delays in permanency, making staff stability an important factor in child/youth outcomes. Under supervision of professional social services staff, direct care staff provide the core of skills-training and skills-building practice. Providers have reported, however, that in the current economic climate (with the minimum wage increasing 6.5% this year), it has become increasingly difficult to recruit and retain direct care service staff. St. Mary's School for Boys reports a 41% direct care staff turnover rate and an inability to expand a unit on campus for DHS youth because of direct care staffing issues. It took Looking Glass Youth and Family Services much longer than anticipated to maintain required staff-to-youth ratios because of difficulty in recruiting and retaining direct care staff.

For the 2019-21 biennium, BRS rates were adjusted based upon the most current OWI available at the time agency continuing service level budgets were developed in April 2018. The most current data available from the Employment Department was the June 2017 published OWI (the Employment Department publishes OWI annually in June, with data from the first quarter of the year). Because the rate model does not include inflation adjustments throughout the biennium, BRS rates for the 2019-21 biennium are entirely based upon March 2017 OWI salary data published in June 2017.

The committee recommends that effective July 1, 2020, BRS rates be updated using 2019 Oregon Wage Information. The committee further recommends that future DHS and OYA budgets for BRS be adjusted along the state budget building process to assure that the most current salary data for direct care and other staff are used in the agencies' legislatively approved budgets. For the 2021-23 biennium, the committee recommends the Legislature updates agency budgets for BRS programs using the 2021 OWI which is published mid-June 2021, just before the Legislature adjourns. This will ensure the programs will have the most updated OWI at the start of the budget cycle.

Rate changes with implementation of Family First Act and applying 2019 OWI salary update

Shelter	Ind. Living Programs	Proctor	Enhanced Proctor	Residential	Intensive Residential	Intensive Behavioral Support	ILP Enhanced
\$222.56	\$232.17	\$227.63	\$243.95	\$273.99	\$312.56	\$448.63	\$275.59
12.6%	17.4%	14.5%	14.5%	15.3%	15.4%	16.5%	16.4%

*Non-QRTP Residential: \$269.78 (13.6%)
 *Non-QRTP Intensive Residential: \$308.35 (13.8%)
 *Non-QRTP Intensive Behavioral Support: \$442.07 (14.8%)
 *Non-QRTP ILP Enhanced: \$271.38 (14.7%)

Cumulative Fiscal Impact July 1, 2020 through June 30, 2021:

DHS: \$2,234,079 GF (non-QRTP)
DHS CW SPA: \$1,792,998 GF (QRTP) \$2,647,644 FF \$6,674,721 TF
OYA: \$2,571,034 GF \$2,571,034 TF

3. Include in the BRS daily rate structure adjustment for utilization

The current BRS system compensates providers for filled beds only, without accounting for beds that are vacant. As a result, the system does not have enough capacity to allow for placement matching of children/youth, or for a bed to be held for a child. And, of course, provider costs remain fixed in terms of salaries, fringe and administrative overhead. This recommendation provides a 5% annual rate retainer to provide for available space. This daily rate adjustment for utilization provides funding to retain capacity while keeping in place the incentive to maintain full utilization of available beds.

Rate changes with implementation of Family First Act, applying 2019 OWI salary update, and utilization adjustment

Shelter	Ind. Living Programs	Proctor	Enhanced Proctor	Residential	Intensive Residential	Intensive Behavioral Support	ILP Enhanced
\$228.05	\$237.89	\$233.24	\$249.97	\$280.75	\$320.30	\$465.84	\$282.39
15.4%	20.3%	17.4%	17.3%	18.2%	18.3%	21.0%	19.3%

*Non-QRTP Residential: \$276.53 (16.4%)
 *Non-QRTP Intensive Residential: \$316.08 (16.7%)
 *Non-QRTP Intensive Behavioral Support: \$459.28 (19.3%)
 *Non-QRTP ILP Enhanced: \$278.18 (17.5%)

Cumulative Fiscal Impact July 1, 2020 through June 30, 2021:

DHS: \$3,244,233 GF (non-QRTP)
DHS CW SPA: \$1,792,998 GF (QRTP) \$2,647,644 FF \$7,684,875 TF
OYA: \$3,364,035 GF \$3,364,035 TF

Action Requested

OYA, DHS, and OHA request that the Committee acknowledge receipt of report and recommend an increase of \$5,037,231 General Fund for DHS, an increase of \$3,364,035 General Fund for OYA, and an increase in Federal Funds expenditure limitation of \$2,647,644 for DHS to fund Behavior Rehabilitation Services (BRS) rate increases.

Legislation Affected

1. OAR 410-170-0110, which specifically provides current billable care day rates for Behavior Rehabilitation Services (adopted as Exhibit 1), if approved, will need to be updated with the revised rates.
2. OYA - SB5541, chapter law 427, 2019 laws, Section 1 (1)
3. DHS – ch 668 1(3) General \$5,037,231
4. DHS – ch 668 3(3) Federal \$2,647,644

If you have questions, please contact Sara Fox, Child Welfare Treatment Services Program Manager at: sara.b.fox@dhsoha.state.or.us for DHS and for OYA contact Amber Forster at Amber.Forster2@oya.state.or.us.

Sincerely,



Eric Luther Moore
DHS Chief Financial Officer



Amber Forster
OYA Chief Financial Officer

cc: Laurie Byerly, Legislative Fiscal Office
Ken Rocco, Legislative Fiscal Office
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George Naughton, Department of Administrative Services
Tamara Brickman, Department of Administrative Services
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