

**Fighting for Children's Rights**

## **Children's Mental Health Overview and Recommendations**

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## **Introduction**

Tens of thousands of children in Florida have mental and behavioral health needs. Children who are in care or custody of the Department of Children and Families and those who have involvement with the Juvenile Justice have particularly acute treatment needs. Yet families and other advocates for children face a multi-faceted and fragmented service delivery system as they attempt to obtain mental health assistance for children and youth.

Florida's Children First prepared this report to assist policy makers in their examination and analysis of the State's mental health delivery system as it pertains to children and youth. This document strives to provide an overview of the systems that affect children with mental health needs along with specific recommendations for statutory and policy improvements that will benefit children.

In May of 2007 Florida's Children First assisted the Florida Bar Standing Committee on the Legal Needs of Children in gathering experts from around the state to prepare and present information at a Children's Mental Health Forum presented to the Honorable Steven Leifman, the Chief Justice's Special Advisory on Criminal Justice and Mental Health. A Summary of the Recommendations made by each participant and the Minutes of the Forum are included with all materials presented at the Forum in a Children's Mental Health Briefing Book which is available on the Florida's Children First website, [www.floridaschildrenfirst.org](http://www.floridaschildrenfirst.org) and via CD-Rom by request to [fcf@floridaschildrensfirst.org](mailto:fcf@floridaschildrensfirst.org).

We look forward to providing additional information and assistance to policy makers as they work to improve mental and behavioral health services for Florida's Children.

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## **I. Children / Youth in the Dependency System**

### **A. Screening / Referral for Assessment:**

All children who come into the dependency system should be screened for mental (behavioral) health and substance abuse needs.

The Department of Children and Families agreed, in settling *M.E. vs. Bush* that it would skip screening and provide a comprehensive behavioral assessment for children in the state's "care and custody." That includes children in paid substitute care, shelter care and foster care.

Children who are returned home under supervision or placed with relatives or "non-relative caregivers" do not automatically receive comprehensive behavioral assessments. Nor are they routinely screened for mental health and substance abuse needs.

*FCF recommends that:*

- *Children who enter the dependency system but are not placed into the state's "care and custody" be routinely provided comprehensive behavioral assessments.*
- *If those children are not provided complete assessments, they should be screened for mental health and substance abuse needs and referred for services.*

### **B. Health Insurance / Medicaid Enrollment:**

All children who come into the dependency system should have health insurance.

Most children who enter the dependency system are eligible for Medicaid.

Undocumented immigrant children are routinely thought to be excluded from receiving Medicaid, however immigrant children from Cuba and Haiti who receive Special Immigrant Juvenile status are eligible for Medicaid as parolees.

Community Based Care (CBC) providers routinely apply for Medicaid when children come into their care and custody. However, they report that there are frequently delays in obtaining Medicaid.

CBCs do not routinely apply for Medicaid or seek KidCare for eligible children who are released to their parents (under supervision), relative or non-relative care givers. Some CBCs assist the caregivers with health care applications, others do not. Without assistance, caregivers sometimes fail to fill out the forms properly resulting in the child being denied Medicaid or other health insurance programs.

*FCF recommends that:*

- *CBCs apply for Medicaid for undocumented immigrant children who have been awarded Special Immigrant Juvenile status in the State's care and custody.*
- *The State expand its low-income health insurance program to include undocumented immigrant children.*
- *The State require that CBCs enroll all children who are not eligible for Medicaid or receiving private insurance in the low-income health insurance program.*
- *AHCA and DCF work together to streamline the Medicaid approval process so that children entering state care are enrolled in Medicaid within a week of entering care.*
- *All CBCs ensure that all caregivers apply for Medicaid or other appropriate low-income health insurance program for children in the dependency system not in the state's care and custody, unless the child is otherwise insured. The CBCs should be further required to assist caregivers with completing the initial application, and follow up to correct problems if Medicaid is denied.*
- *The State provide seamless medical and behavioral health care coverage, with consideration of a managed care concept including full risk assumption, that allows foster children to maintain the same coverage and plan throughout their stay in foster care as well as after they are either re-united or placed in a permanent home, when eligible. Children must receive needed services regardless of changes in locale -- the availability of medically necessary services should not depend on where a child lives.*
- *The State create a "presumptive eligibility" status for children entering the system providing full coverage immediately.*
- *The State establish specific transfer criteria to ensure continuity of medical and behavioral health coverage for children leaving foster care.*

### C. Comprehensive Behavioral Health Assessments ("CBHAs"):

A CBHA is an in-depth assessment of a child's emotional, social, behavioral, and developmental functioning within the family, home, school and community. The assessment should include direct evaluation of the child as well as interviews with caregivers and other persons with knowledge of the child.

The purpose of the CBHA is to guide persons in the formulation of the child's case plan. The CBHA should assist with decisions on placement, behavioral issues and treatment needs.

CBHAs are supposed to take place within thirty-one days of a child coming into State care. Children are to be referred within seven days of coming into care and the assessment completed within 24 days of referral. Services are to be provided within thirty days of the identification of the need. See F.A.C. 65C-28.014(5).

Medicaid presumes that all children need CBHAs and does not require prior authorization.

CBHAs must be performed by a licensed mental health professional or under the supervision of a licensed mental health professional.

Infants have mental health needs and they can be assessed. Likewise, children who are non-verbal or pre-verbal can be assessed.

The latest figures from DCF show that almost half of the children coming into care did not receive a CBHA in the required time. A large number of the children who have not been assessed are under the age of 5.

The quality of CBHAs is reported to be very inconsistent, sometimes even “boilerplate.”

Case Managers do not uniformly use CBHAs in creating case plans.

*FCF recommends that:*

- *DCF implement a quality assurance process to ensure the timely completion of CBHAs for all children in dependency.*
- *DCF implement a quality improvement processes to improve quality of CBHAs.*
- *CBCs educate case managers about how to use CBHAs in case planning.*
- *DCF implement a quality assurance process to ensure that CBHAs are incorporated into case plans.*
- *OSCA and DCF educate dependency judges about the importance of the required CBHAs and how they should be used in case planning.*
- *DCF require that CBCs conduct an annual training for all child welfare staff, from program managers down on the utilization of CBHAs and other behavioral health services.*

#### D. Treatment:

All mental health and substance abuse needs identified in the CBHA should be addressed by appropriate treatment and services. For children in the care and custody of the state, treatment should begin within thirty days of the identification of the need. See F.A.C. 65C-28.014(5).

The Early Periodic Screening, Diagnosis and Treatment (EPSDT) provisions of Medicaid require that children receive all treatment and services that are medically necessary to “correct or ameliorate” a diagnosed physical or mental condition. 42 U.S.C. §1396(d)(r)(5)

Placement in a therapeutic foster home is a Medicaid covered service. However, it is considered a treatment placement and not a home. Caseworkers and courts often seek that level of care due to lack of decent foster homes and outpatient mental health and substance abuse services. The problem for children in care is that as soon as the child

shows improvement, he or she is moved to a new home and changes therapists as well. Careful thought needs to be given to how to address these systemic problems that exacerbate or may even create mental health problems for the children.

Judges may order mental health and substance abuse treatment and services for children that are not covered by Medicaid or use terms in an Order that are not congruent with Medicaid covered services.

In all but 3 DCF districts, mental health and substance abuse services are provided by “the Community Based Care Partnership” a managed care partnership between the Community Based Care providers and Magellan.

Children denied Medicaid services (or who have levels of service reduced) have the right to seek a fair hearing from the Department of Children and Families. Currently there is no mechanism to provide legal counsel to children who need to challenge the denial or reduction of services.

*FCF recommends that:*

- *Children be provided counsel to challenge the denial or reduction of mental health and substance abuse services.*
- *Case Managers and CBC staff receive training on services covered by Medicaid and how to advocate for children to receive those services.*
- *DCF, CBCs and the Managed Care providers work together to ensure available, accessible services across the entire continuum of mental health and substance abuse care.*
- *CBCs develop programs that enable children to remain in therapeutic foster homes after the need for therapeutic services has ended.*
- *CBCs develop adequate capacity in their inventory of foster homes to avoid placement in a therapeutic home when placement in a foster home with out patient services would be more appropriate.*
- *Encourage the Community Based Care Partnership to increase utilization of Behavioral Health Overlay Services to maintain children in foster care placements.*

#### E. Residential Treatment Centers (“RTCs”):

Youth may be placed in locked residential treatment facilities as a mental health “treatment.” If their parents do not consent to the residential commitment, the court must approve such placements. Youth who object to placement at RTCs are entitled to appointment of an attorney. However, youth who do not understand their right to object are not provided to counsel with whom to confer. While it is easy to determine when placement options are not appropriate for individual youth, it is much more difficult to locate placement options that are appropriate. CBC staff may not be adequately trained in locating appropriate placements.

Some programs claim to be residential treatment centers but are licensed as “child-caring facilities.” Licensing should reflect actual programming and services of the facility so that monitoring by proper authorities can occur.

*FCF recommends that:*

- *All children facing commitment to locked residential facilities be appointed counsel.*
- *All facilities using residential treatment nomenclature should be reviewed to make sure they are appropriately licensed.*
- *DCF conduct an annual evaluation of existing residential programs for quality and begin to examine outcomes (success data).*
- *DCF assess what types of programs are needed and plan accordingly.*

#### F. Psychotropic Medications:

Alarming numbers of children in dependency are currently taking one or more psychotropic medications. Doctors frequently prescribe medications to manage children with difficult behaviors.

Children in the dependency system seldom have complete medical records and as a result, doctors often prescribe medications without a complete or accurate medical history potentially placing the child at risk.

The current presumption in the child welfare system appears to be that all children can benefit from medication without efforts to attempt other less invasive treatment prior to medicating the child; further, there is rarely an inquiry into the safety, efficacy and appropriateness of a prescribed medication for the individual child and finally, there is rarely a timely review to ascertain if the medication is having the desired effect and if advisable to continue.

Psychotropic medications can have serious side effects, including side effects that mimic psychosis. Caregivers, however, are not trained to watch out for the side effects of medications.

Parents who retain the right to consent to treatment for their children are not given complete information needed to make informed consent. Moreover, they are pressured to consent to medication with threats that a refusal will be viewed adversely in the dependency proceeding.

AHCA/DCF has initiated some work in this area through contracts for “peer review” of unusual prescribing practices, but the efficacy of that work is not discernable, as contractors have not adopted Governor’s Open Government policies.

*FCF recommends that:*

- *All children being prescribed psychotropic drugs are appointed counsel.*



- *Judges, case managers and GALs be trained on the evidence required to ensure appropriate use of psychotropic medications, and what side effects to watch out for.*
- *Standards for reviewing and approving administration of psychotropic medications be developed for the courts.*
- *Judges and representatives of child should review the child's records provided for each Judicial review for completeness and accuracy. If the records were not provided or are incomplete, appropriate actions and follow up should be included in court order.*
- *Prescribing doctors provide information directly to parents in order to obtain informed consent.*
- *AHCA/DCF/CBC be required to provide specific and comprehensive report of the provision of psychotropic drugs to children and youth by age, gender, race, and location, each quarter.*
- *AHCA/DCF/CBCP be required to provide specific reports on children who have been on medications for extended periods or are taking multiple drugs.*
- *AHCA conduct an annual evaluation of the utilization of approved psychotropic medication for children under the managed care services.*
- *ACHA/DCF and its subcontractors should report physicians with unusual prescribing practices to appropriate authorities.*
- *AHCA/DCF should ensure physicians report adverse incidents to the FDA and not only to the pharmaceutical companies.*

## **II. Youth in the Delinquency System**

### **A. Screening:**

The Department of Juvenile Justice is supposed to screen all youth who come into DJJ care. Screening is performed at Juvenile Assessment Centers (JAC). However, Florida does not obtain informed consent from parents or the children.

Suicide risk and mental health screening results are to be provided to the court for youth in delinquency proceedings at disposition.

Screening results should also be provided to Detention Centers to help inform them about how to serve youth, however in at least some parts of the state there is a breakdown in communication between the JACs and the Detention Centers

*FCF recommends that:*

- *DJJ implement measures to ensure that mental health and substance abuse information obtained in the JAC assessment is conveyed to the Detention Center with the youth.*
- *DJJ develop a standard informed consent form and protocols, that meets recognized standards on testing of young incarcerated or detained human subjects.*

## B. Health Insurance:

For youth returned to the community, Juvenile Probation Officers (JPOs) serve as the youth's primary case manager and are responsible for recommending services, managing, coordinating and monitoring services. They make referrals to community mental health and substance abuse services and are supposed to follow up to ensure that at least the first appointment is kept.

Juvenile Probation Officers, JPOs are supposed to provide information on Medicaid and state sponsored children's health insurance to the parents of children who are not insured.

*FCF recommends that:*

- *Families are provided with the resources to obtain health insurance for youth within the families' financial means.*

## C. Comprehensive Assessments:

Youth who remain in detention and for whom a screening indicates a mental health or substance abuse need is identified are supposed to be referred for a comprehensive assessment.

*FCF recommends that:*

- *Comprehensive assessments should be incorporated into a treatment plan for each youth, if the parent and child have given informed consent, or with the child's attorney's consent, or judicial order after a hearing where the child is represented by counsel.*

## D. Pre-Dispositional Behavioral Assessments:

The National Juvenile Defender Center's recent assessment of Florida's delinquency system notes that some courts routinely obtain behavioral assessments which the courts use in decision making. The child's counsel is often not permitted to review the reports for factual accuracy, which can have the unintended consequences of placing "prejudicial, private, irrelevant, incriminating or erroneous information" before the court. Moreover, public defenders do not routinely engage independent experts to establish defenses or an independent look at the child's psychological make up.

*FCF recommends that:*

- *Behavior assessments conducted on children prior to disposition be provided to defense counsel for review and the opportunity to obtain revisions prior to submission to the court.*
- *Public defenders increase their use of independent experts to examine youth and make dispositional recommendations.*

#### E. Treatment:

Youth are not supposed to remain in detention centers for more than 21 days. They are supposed to either be released or committed to juvenile facilities. However, youth deemed incompetent to proceed, and those who need specialized treatment facilities, may remain in detention centers long past 21 days.

Detention centers generally do not have adequate mental health and substance abuse treatment programs. Some are capable of stabilizing youth in crisis – others take youth to community based crisis treatment centers.

There is no provision for the continuity of care for youth who were receiving mental health /behavioral or substance abuse services in the community prior to their entry into the juvenile justice system.

Moreover, youth with serious mental health and substance abuse needs who are delayed in detention centers do not begin treatment until they are moved to a commitment facility.

*FCF recommends that:*

- *DJJ work with community providers to provide youth with access to the mental health and substance abuse services they received in the community.*
- *DJJ initiate provision of mental health and substance abuse services to youth in detention centers.*

#### F. Youth Incompetent to Proceed:

Currently there are a limited number of facilities available to provide competency restoration to youth deemed incompetent to proceed. As a consequence, youth with serious mental illness remain in detention centers for long periods of time. Additionally, most youth are sent far away from home to attend competency restoration programs that deprive them of close communication with their family.

There are no appropriate programs for dealing with youth whose developmental delays will preclude them from ever obtaining sufficient competency to stand trial. These youth may spend months at very expensive programs that cannot provide them with the cognitive capacity to assist counsel in their defense.

*FCF recommends that:*

- *DJJ work with community providers to create community based competency restoration programs.*
- *DJJ investigate best practices in other states to create appropriate systems for dealing with developmentally disabled youth in the criminal justice system.*

### G. Psychotropic Medications:

Youth in the custody of DJJ may be administered psychotropic medications with the consent of their parents. The State must obtain a court order to administer psychotropic medications to youth who do not have parents who consent to the medication. Yet such youth are not routinely appointed counsel to assist them in asserting their right to object to such medication. In some instances where the youth do have counsel, these orders are obtained ex parte without counsel or the child having an opportunity to object.

*FCF recommends that:*

- *All youth who are being involuntarily treated with psychotropic medications should be appointed competent counsel to represent them.*

### H. Court Proceedings:

Juvenile court frequently serves as a training ground for new public defenders, prosecutors, and judges. Youth need competent professional counsel to assist them in defending delinquency and adult criminal charges. They should have counsel who understand the unique needs of youth and particularly of youth with mental health concerns and other disabilities. Prosecutors and judges should likewise have knowledge and understanding of youth and the systems that serve them.

Youth are permitted to enter guilty pleas without first obtaining the advice of counsel. While this practice has serious consequences for all youth, it is particularly dangerous for youth with mental health concerns. Such youth may not fully comprehend the consequences of their plea, nor understand that they may have viable health-related defenses.

A recent study of public defender and private attorney performance in delinquency proceedings in Florida noted that advocacy at the dispositional phase was “routinely weak and inadequate.” Currently public defenders and private attorneys are not well trained on the mental health and substance abuse needs of their clients and they fail to advocate for appropriate services.

Presently most delinquency and dependency courts, routinely bring detained youth in to court in shackles, regardless of whether the youth pose a threat or escape risk. This degrading and dehumanizing practice serves to further traumatize youth with mental health concerns and disabilities.

*FCF recommends that:*

- *Courts immediately order that DJJ stop the indiscriminate shackling of youth.*
- *Courts refuse to allow youth to plead guilty or no contest until they have had a meaningful opportunity to confer with an attorney.*
- *Courts, State Attorneys and Public Defenders cease using Juvenile court as training grounds and work together to enhance the quality of practice in juvenile court.*

- *Public Defenders train their staff on mental health and substance abuse issues for children and implement procedures to enhance the quality of advocacy at the dispositional phase.*
- *Bar associations provide educational programs with CLEs for private attorneys on mental health and substance abuse issues for children and implement procedures to enhance the quality of advocacy at the dispositional phase.*

#### I. Probation and Conditional Release (After-Care):

Youth released to the community receive referrals for continued mental health and substance abuse treatment, but there is no mechanism in place to ensure that they receive the needed treatment.

*FCF recommends that:*

- *The courts routinely require that the JPOs identify treatment providers and ensure that services are in place.*
- *DJJ and DCF work with communities to enhance availability of mental health and substance abuse services for youth released from DJJ custody.*

### **III. Children / Youth With Developmental Disabilities**

Children with developmental disabilities – autism, cerebral palsy, spina bifida, and mental retardation may have co-occurring mental illness and may frequently exhibit behaviors associated with mental health problems in youth.

Presently, such youth are to be served by the Agency for Persons With Disabilities (APD), which administers the Medicaid waiver program that permits them to receive services in the community so they do not need to be institutionalized.

APD employs third party reviewers to conduct and review eligibility and utilization decisions. APD and its 3<sup>rd</sup> party reviewers have a pattern and practice of unwillingness to work with family members and care providers after it has refused or reduced services. Challenges to the denial or reduction of services must be taken to DOAH hearings.

Moreover, given mismanagement in APD thousands of children are presently waiting for Waiver services. Without proper community supports, these youth are increasingly likely to act in ways that can result in their involvement with the criminal justice system. Alternatively, or the family cannot manage having the child at home and children end up in the dependency system.

*FCF recommends that:*

- *Children with developmental disabilities are provided counsel to challenge the denial or reduction of services.*
- *Immediate attention is given to improving the management of APD.*

- *APD implement Ch. 393.065(5)'s priority for enrolling children in the child welfare system in the Medicaid Waiver program for developmental services.*
- *Implement or amend the "crisis tool" to expedite services for families when services would prevent the need for removing the child from the parental home.*