

# **Report to the Legislature**

## **PLAN AND TIMELINE FOR IMPLEMENTING THE INVOLUNTARY TREATMENT ACT JUDICIAL COST REIMBURSEMENT**

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## **Executive Summary**

Legislation in 2011 (Substitute Senate Bill 5531) created a process for Regional Support Networks (RSNs) reimbursement of counties' actual judicial costs associated with the county-prosecuted Involuntary Treatment Act (ITA) cases. RSNs deliver mental health services within designated geographic areas. The reimbursement process became available July 1, 2012.

The same legislation directed the Joint Legislative Audit and Review Committee (JLARC) to:

1. Assess the actual direct costs of providing judicial services for involuntary civil commitments in each county;
2. Review and analyze the reasons for differences in costs among counties; and
3. Identify issues and methods for updating the costs to reflect changes over time.

The 2011 legislation assumed the availability of 1) actual ITA expenditure information, and 2) accurate ITA case counts. However, JLARC learned in the course of conducting this study that:

- Twelve of the thirteen counties that have courts do not have processes in place to capture the ITA expenditure data necessary to calculate county average case costs using actual costs;
- No detailed guidance is available for counties on which expenses qualify as reasonable, allowable ITA judicial costs;
- No system is in place to specifically audit or review the county figures; and, while counties report each year to the Administrative Office of the Courts (AOC) on their ITA case counts, AOC does not verify the data submitted by the counties or ensure a consistent definition of what constitutes an ITA case.

## **JLARC Recommendation that DSHS Report to the Legislature**

In its Final Study, JLARC recommended that by January 1, 2013, the Department of Social and Health Services (DSHS) provide to the appropriate committees of the House and Senate a plan and timeline for implementing the ITA judicial cost reimbursement process under RCW 71.05.730. The report should include what should be done to:

- Determine allowable ITA judicial costs for inclusion in reimbursement rates;
- Establish contract provisions with RSNs that limit ITA judicial cost reimbursements to counties for their actual ITA judicial costs;
- Assure that actual cost data is collected, and reviewed or audited;
- Implement a method for updating rates; and
- Ensure that maintenance of effort as required in RCW 71.24.160 is met.

<http://www.leg.wa.gov/JLARC/AuditAndStudyReports/2012/Pages/InvoluntaryTreatmentJudicialCosts.aspx>

JLARC also suggested that DSHS identify any resource needs, and comment on any alternate approaches to reimbursing counties for ITA judicial costs.

### **Determining Allowable ITA Judicial Costs**

The JLARC study finalized in July, 2012 identified issues with the variability of what a county or court system included as court costs. The study listed items found imbedded in the estimates, such as:

- Transportation;
- Mileage;
- Video Link;
- Security;
- Witnesses;
- Interpreters;
- Court Schedulers; and
- Emergency Medical Technician services.

The Department recommends to the Legislature that a workgroup comprised of DSHS, RSN and County staff be convened to determine the services that can be

included in an ITA judicial cost rate. The Department believes that this could be used in any data collection efforts and updating of rates in the future.

### **Establishing Contract Terms that Limit RSNs to Paying Counties only Actual Costs**

In its study, JLARC suggests the Department use its contracting authority to move the system towards an actual cost-based system. By requiring in contract that RSNs only use mental health funds to pay actual costs to counties, JLARC believes the Department would then have the ability to monitor and audit the RSNs for compliance. The Department agrees this is possible but does not believe it is an efficient use of limited auditing resources. Adding the requirement to the contract would be simple, but it would create the need for another level of fiscal monitoring that would require a full-time employee to review both the RSN expenditures and the back-up data collected at the county level. The Department does not currently have the resources for the necessary monitoring.

### **Ensure Maintenance of Effort Requirements are Met by RSNs**

Counties are already required to fund mental health services for minors at a level established in 1984, adjusted for inflation. In meeting the maintenance of effort (MOE) requirement, some counties may have included expenditures for ITA judicial costs. If this is the case, the 2011 legislation requires the share of monies reimbursed to a county under the new process equal to the amount of ITA judicial costs that are already part of its MOE commitment must be used to further treatment of mental health and chemical dependency disorders. In other words, this portion of any ITA reimbursement cannot offset judicial costs. The Department believes its current tracking for MOE captures full expenditure of local funds for mental health services and ensures the appropriate level.

### **JLARC Recommendation of Alternative Methods**

JLARC provided within its study three alternative methods for payment of ITA judicial costs by RSNs to counties and three methods of updating rates over time. It is understood that the proposed alternate methods would require legislative change to the current statute requiring that RSNs pay actual costs. The Department believes actual costs for these services creates a burden not previously bestowed on county courts to track and quantify personnel time for ITA specifically, and may result in a process that is cost prohibitive to counties seeking reimbursement for court time and costs. At the very least, it makes the updating of rates difficult.

In this section, the Department will provide comment on each of the identified alternatives and conclude with a recommendation regarding a fourth and preferred alternative for consideration.

Starting from the premise that the legislation was produced in order to maximize the use of available resources for direct services to people suffering from mental illness, the Department has the following comments on the alternatives put forth by JLARC in the July 2012 study for establishing credible rates.

### **Rate Reimbursement Methods**

#### **Alternative 1 - A single reimbursement rate for judicial costs that applies to all counties and RSNs**

This alternative to an actual cost method would be the easiest to track and update. However, there are issues that would make it unsustainable as a method of payment to the county court system for ITA costs. As was initially established in the JLARC study, the personnel costs for the staff necessary in each county to conduct the ITA hearings varied greatly. A single reimbursement rate is unable to effectively account for these real differences among the counties. This model would likely result in larger counties being under-reimbursed and rural counties being over-reimbursed.

In identifying this alternative, JLARC points to rules in place by DSHS which create standard rates for the civil commitment costs of sexual offenders. Unfortunately, this process does not produce a standard rate, but only creates standard rates for the different pieces of the process such as attorneys, paralegals, experts etc. No set rate per hearing is established as is contemplated in this situation.

#### **Alternative 2 - Tiered rate structure (high, medium, and low)**

This alternative, while stopping short of an actual cost method, recognizes regional differences better than Alternative 1 above. This method would likely result in some counties being over-reimbursed and others being under-reimbursed, but likely to a lesser extent than Alternative 1. However, the method provides a reimbursement structure that can be maintained and updated. This method would also create a need for the Department to collect and review data such as staffing costs.

### **Alternative 3 - Use service bundling method**

JLARC suggests service bundling as a third method of reimbursement. This model mirrors the Federal government's process that creates a rate of payment based on the average cost to deliver care (bundled services) to a patient with a particular disease. The method would require intensive staff effort to compute rates for each court and would require a full time employee to develop, implement and maintain the process.

### **Alternate Rate Reimbursement Update Methods**

The Department feels that it is premature to endorse any process for updating rates as it has not been established how the initial rates should be implemented across the state. JLARC in its initial report repeatedly stated that the counties were unable to report actual cost data and that the items considered part of the case cost were inconsistent across the state.

### **Alternative 1 – Update the rates by the change in the Consumer Price Index**

This method could be used to update the rates on a periodic basis and is consistent across all counties as a measurement process. However, as stated by JLARC in its report, there is no guarantee this process would account for actual cost increases to a county's court system. Therefore, the rates, upon update, would no longer be based on "actual costs" as required under statute. Currently the Department does not have a resource to accomplish this work and would require a full-time employee to do so.

### **Alternative 2 – Adjust rates based on three-year average**

This method is uniform and used by the federal government in updating its federal match rates but does not guarantee that a county will continue to be reimbursed for its costs. This method is the most consistent with the process contemplated under statute for establishing the initial rates. The statute calls for initial rates to be based on the average of judicial costs in a county over the last three years. Currently the Department does not have a resource to accomplish this work and would require a full-time employee to do so.

### **Alternative 3 – Re-evaluate rates when petitioned by a county**

While this method would provide the most accurate accounting of a county's judicial costs in any update, it allows any county to petition the Department at any time to update its rate. This method could be used if it

provided for a regular interval such as at the end of each state biennium. Currently the Department does not have a resource to accomplish this work and would require a full-time employee to do so.

#### **Alternative 4 – Re-evaluate rates when key program changes occur**

This method would be subject to varying interpretations of key program changes and the impact on judicial costs. It is unclear who could initiate and under what circumstances.

### **Recommendations from the Department Regarding Both Establishing Appropriate Rates and Updating Them over Time**

The Department contracts with RSNs to manage and pay for services associated with the state ITA system. Currently, the Department maintains no direct relationships with county courts for ITA services, nor does the statute contemplate these direct relationships be established. The statute seeks to establish a system for counties to bill their home RSN for services rendered and in turn that RSN may bill the RSN associated with the client receiving the services. Based on the relationships as described and the data available currently, the Department proposes the following:

1. The Department convenes a short-term Judicial Cost Workgroup to work with representatives from the RSNs, Counties, and Administrator of the Courts to establish the services and appropriate costs to be accounted for in an ITA judicial case rate. The workgroup should complete its tasks by March 31, 2013.
2. Statute revision to require the RSN where a county court is located to negotiate an ITA judicial case rate based on the guidance established by the Judicial Cost Workgroup to be valid for one biennium.
3. Under revised statute, RSNs will be required to renegotiate rates with their county courts each biennium which will then be inserted into the State Mental Health Contract as required rates of payment for all RSNs using those courts.
4. The rates established by each RSN will be amended into the State Mental Health Contract between the RSN and the Department to require any RSN using a court to pay the negotiated rate for that county to the RSN where the court resides. New contract language will also require the RSN to document expenditures and court information.



5. RSNs will continue to provide expenditures for judicial costs on the Revenue and Expenditure Report every six months.
6. Department monitoring staff will review expenditures and RSN documentation of cases associated with costs to determine appropriate billing and payment.

The Department believes this structure provides the best method for establishing the rates, adequately covers direct costs, and provides for consistency in payment across all RSNs. The Department maintains its responsibility under this method for monitoring the appropriate use of state funds under its contracts with RSNs and ensures that each RSN is being billed and is paying appropriately.

The Department provides the following estimated timeline for meeting this recommendation:

### **Timeline for Implementation**

<b>Task</b>	<b>Due Date</b>
DSHS convenes workgroup on allowable costs	November 30, 2012
Allowable costs established by group	March 31, 2013
Counties and RSNs negotiate ITA court rates	July 1, 2013
DSHS builds rates into RSN contracts	October 1, 2013
Counties and RSNs renegotiate ITA court rates	May 1, 2015
DSHS builds rates into RSN contracts	October 1, 2015