

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
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John Sylvia
Director

November 23, 2016

The Honorable Craig Blair
Room 217W, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

The Honorable Gary G. Howell
Room 213E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Chairmen:

Per your April 5, 2016 request, the Performance Evaluation and Research Division (PERD) is providing a response to your questions regarding the West Virginia Traumatic Brain and Spinal Cord Injury Fund Board (Board) and Traumatic Brain Injury (TBI) Waiver program. The Legislative Auditor finds that the Board is obsolete since the Department of Health and Human Resources now carries out the responsibilities of the Board. While the Board currently continues to exist, it has not met regularly, cancelling six of its last eight meetings. **The Board also has no funds and has not received any funding since 2009. Therefore, the Legislative Auditor determines that the Board's continued existence is unnecessary and recommends that the Legislature abolish it and amend West Virginia Code as necessary.** In order to provide adequate responses to your questions, we begin by explaining the current state of TBI services as they are offered in the state, and how the current situation came to be. Following that explanation, please find PERD's response to your specific questions.

The Traumatic Brain Injury Waiver and the "Funds for You" Programs Have Replaced the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board

Services for West Virginians with TBIs have changed significantly since the Rehabilitation Fund Act was established by the Legislature in 1999. The Act (*W. Va. Code* §18-10K-1 et seq.) created the Board to provide services that would allow individuals with traumatic brain and spinal cord injuries to live independent of the care of a nursing home or hospital. The Board operated its program from 1999 through 2012, from which time the Department of Health and Human Resources (DHHR) established two new TBI-related programs under its authority: the TBI Waiver program through the Bureau for Medical Services (BMS) and the TBI “Funds for You” program through the Bureau for Behavioral Health and Health Facilities (BBHFF). The Rehabilitation Fund Act also requires the Division of the Rehabilitation Services (DRS) to administer the program’s fund. However, DRS agreed to acquiesce its responsibility for administering the fund to DHHR and now only maintains its membership on the Board. Finally, the Rehabilitation Fund has not received legislative appropriations since fiscal year (FY) 2003 and has not received federal grant money since FY 2009. The Board still exists, but no longer functions as the Legislature intended.

The shift in authority from the Board to DHHR was a result of interagency agreements made in the *Hartley v. Matin* case before the Kanawha County Circuit Court. First in 2004, the Court-appointed monitor in the case facilitated the creation of a memorandum of understanding (MOU) which reduced the Rehabilitation Fund Board’s role from being the administrator of TBI-related services in the state to that of an advisory council responsible for providing “...*information and assistance in establishing adequate programs and services for individuals with TBI.*” Then in 2007, DHHR signed a settlement agreement with the Court in which it agreed to expand its role to provide TBI-related services. Under the settlement agreement, DHHR and a newly created “TBI Oversight Group” were responsible for developing a “TBI System of Service” and identifying an independent funding source to provide those services. While the settlement order only mentions DRS as a member of the Oversight Group, the overhaul of TBI-related programming through the settlement agreement essentially removed DRS from administering the fund. Ultimately, the MOU and the consent order resulted in the creation of DHHR’s TBI Waiver program and the Traumatic Brain Injury “Funds for You” program in 2012.

While the consent order diverted the authority over funding and program management from the Rehabilitation Fund Board and DRS to DHHR, West Virginia Code remained unchanged. However, House Bill 2349 from the 2012 regular session would have eliminated the Rehabilitation Board and codified the Waiver and “Funds for You” programs. It also would have created the “Traumatic Brain Injury Fund” with a dedicated funding source from fees for reports generated by county sheriff’s offices, and from court fees for certain criminal proceedings; however, the bill died in committee and has not been reintroduced.

Q & A

1. *Is the Board in compliance with applicable statutes, holding meetings, and has the board established criteria for the disbursement of funds from the fund?*

Response: No. The Board does not hold regular meetings. The Board cancelled all six of its scheduled meetings between September 2014 and March 2016. The Board is not in compliance with the following statutes:

- *§18-10K-6(a)*: The Board has not established priorities and criteria for fund disbursements. For instance, although the Board has existed since 1999, it has not developed a method for determining the number of people in West Virginia with a TBI.
- *§18-10K-6(b)*: The Board has not investigated the needs of citizens with TBI and SCI, identified the gaps in services to these citizens, nor does it issue an annual report to the Legislature with recommendations for meeting the identified needs, improving coordination of services and summarizing its actions during the preceding year.

2. Is the Board duplicative of Division of Rehabilitation Services programs, and can or should the Division be authorized to administer the fund independent of the Board?

Response: No, the Board is not duplicative of DRS' vocational rehabilitation services because vocational rehabilitation is a time-limited service provided to individuals with a disability seeking employment. Whereas, the purpose of the Rehabilitation Fund under *W. Va. Code §18-10K-5(e)* is, "...to increase opportunities for and enhance the achievement of functional independence, and a return to a productive lifestyle for individuals who have suffered a traumatic brain injury or a spinal cord injury." Functional independence is the ability to perform the activities of daily living autonomously in a domiciliary context.¹ The Rehabilitation Fund Act does not specify the types of services that can be provided by the fund and thus does not exclude vocational rehabilitation as a potential service, but it is not the intent of the Act to necessarily provide it either.

As to the second part of the question, regarding DRS administering the Rehabilitation Fund independent of the Board, PERD can only respond by informing the committee that DRS' statutory mandates were limited by the Court in the Hartley case. The agency has also informed PERD staff that it does not believe that it can or should administer the program, since the agency's mission and federal grant stipulations limit it to only providing vocational rehabilitation services to disabled individuals who desire to return to work. The services provided under the Rehabilitation Fund's program includes non-vocational services, which are prohibited under the federal grant DRS receives from the federal Rehabilitation Services Administration.

The Waiver program is completely separate from the Rehabilitation Fund program and the TBI "Funds for You" program. The Waiver is under the authority of the BMS and the Rehabilitation Fund Board and West Virginia University Center for Excellence in Disabilities (CED) have both stated that their only involvement with the Waiver program is to help disseminate information to potential clients and to provide guidance on the management of the program during the Board's meetings. The Waiver program could not be placed under the authority of the Board

¹ Since *W. Va. Code* does not provide a definition for functional independence, PERD adapted the definition from Curzel, Juliane, Luiz Alberto Forgiarini Jr., and Marcelo de Mello Rieder, *Evaluation of Functional Independence After Discharge from the Intensive Care Unit*. *Revista Brasileira de Terapia Intensiva*, 25, no. 2 (April-June): 93-98. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4031825/>.

or DRS, since BMS, as the designated state agency, is the only agency under federal law that can administer Medicaid programs in West Virginia.

3. Is the fund being properly utilized to enhance the functional independence of the client community?

Response: No, the Rehabilitation Fund, as statutorily created, does not currently exist in the state budget. The Rehabilitation Fund has not received a state appropriation since 2003, and the Board has not received a federal grant since 2009. When the Rehabilitation Fund was receiving state and/or federal money, it was listed as part of the DRS' appropriations in the Legislature's budget bill and the executive budget; however, since funding ceased, the Rehabilitation Fund no longer exists in either.

4. Are there programs that could be utilized or developed to better serve the appropriate client community?

Response: The "Funds for You" could be better utilized to serve the appropriate client community. The TBI Waiver program was underutilized until FY 2016, when BMS had filled all but one of its allocated slots. In FY 2017, BMS filled all of the slots and implemented a "Managed Enrollment List" (a waitlist). If federal and state funding are available and were appropriated, the Waiver program could be improved by increasing the number of recipients in the program.

"Funds for You"

The Legislative Auditor concludes that BBHFF could better serve the TBI client community by ensuring that it provides adequate oversight of the purchases made by the "Funds for You" application review team, so that only those services that will lead to clients living independently are purchased. The application review team is a three-member panel which currently includes a representative from DHHR, a member of the Rehabilitation Fund Board, and a TBI survivor's mother/caregiver. PERD has identified several purchases made for clients through the "Funds for You" program that may be inappropriate.

The "Funds for You" program is intended to be a payer of last resort, to cover goods and services not covered by other services, such as the Waiver program. According to the program's policy, the services and goods intended to be covered by "Funds for You" include:

- Durable medical equipment
- Assistive technology
- Therapies
- Medical/dental/vision services and supplies
- Case management
- Family support services
- Attendant care

- Home accessibility modifications
- Other items/services as approved by the TB/SCI Rehabilitation Fund Board

All but one of the items listed above clearly have a medical or independent-living association and most of the purchases that PERD reviewed fit into one of the categories listed above. However, PERD found several purchases that could only fit within the “other items/services” category and do not appear to be within the objective of the “Funds for You” program. Some of these purchases include:

- In 2013, the “Funds for You” Application Review Team approved a client’s request for taxidermy supplies, a taxidermy correspondence course, a rotary tool, a laptop, and a shed for taxidermy projects at a cost of \$3,646. DRS is responsible for providing vocational rehabilitation services for individuals with disabilities; however, the client stated in his application that he had not explored other options for assistance with purchasing these services and the service coordinator did not direct the client to DRS.
- In 2012, a client requested assistance to purchase a generator, snow tires, and a snow blower. The application review team approved the purchase of the generator and tires, but denied the request for the snow blower. However, the snow blower purchase was approved and paid. In total, the generator, tires, and snow blowers cost the program \$2,075. According to DHHR, the Application Review Team denied the purchase of the snow blower in September, but the vendor’s invoice was approved in November. DHHR states that, *“It is believed this invoice was approved and paid in error as the request for the snow blower was not approved during the documented ART review.”*
- The Funds for You program was used to purchase a laptop, an LED television, and a TracPhone, among other things for a client in 2013. According to BBHFF, the laptop was approved to be used as a communication device and to allow for software to be used for brain training games while the phone was approved to allow the individual to maintain contact with family members. BBHFF did not provide an explanation for the necessity of the television, and the applicant’s reason for requesting it was that his old one broke. BBHFF did not have a provision in the Funds for You policy at the time regarding the purchase of televisions, computers, or tablets; however, in 2014 the agency made a policy change prohibiting the purchase of televisions with program funds and limiting the amount the program could contribute towards computers or tablets to \$500.
- In November 2013, the Application Review Team approved \$746 in funding for the purchase of an iPhone 5c and service contract so that a client could continue working in his current position. The 5c version had been on the market for less than two months, and less costly versions of the iPhone were available as well as other smartphones with similar capabilities as the 5c. Since this was a vocational-related request the service coordinator and/or Application Review Team should have directed the client to DRS’s services.

Based on a review of the applications from the five cases discussed above, PERD has determined that the application review team did not ensure applicants performed due diligence in seeking out similar services from other sources prior to requesting them from “Funds for You” as required by the program’s policy. The application includes the questions: *Have you explored other options to meet these needs? Who have you contacted in attempts to receive these services/products?* Only two of the five applicants stated that they had explored other options. One client indicated that he had requested the services from his employer, but the employer could not provide them. The second client stated, “No funds available.” PERD could not determine from the documentation provided by DHHR, if the application review team did any follow-up with any of the five clients to seek out other services. **Since “Funds for You” is payer of last resort, BBHFF should ensure that the application review team is requiring clients to seek out other service providers and assist them in seeking out alternatives before evaluating requests.**

BBHFF also does not follow up with clients after they have received services through the program. BBHFF contracts the CED to monitor clients as they receive services, but once the client’s case is closed that monitoring ends. BBHFF stated that former clients occasionally provide written statements to the application review team in which they describe how the services they received benefitted them. While these letters provide some evidence of the program’s success, they alone are insufficient to measure the program’s performance. If BBHFF tracked the “Funds for You” clients after they have received services, then it could use the data it collects to measure the program’s performance and determine areas where the program needs improvement. **Therefore, the Legislative Auditor recommends that BBHFF develop a system to track and monitor the impact case services have on improving its clients’ level of independent living after their cases are closed.**

The TBI Waiver Program²

The Waiver program could be improved by increasing the allocated number of recipients receiving services. The allocation for TBI Waiver recipients in a given year is established through the TBI Waiver application that BMS submits to CMS for approval every five years. The most recent application was approved in FY 2015 and reauthorized the Waiver program through FY 2020. BMS requested to have its allocation reduced in that application starting in year one from its FY 2015 allocation of 125 slots to 74 slots in FY 2016, with additional reductions in subsequent years. The reduction in allocated slots over the next five years is shown in Table 1.

² *The TBI Waiver is part of the state’s Medicaid program. Specifically authorized under the provisions of 1915(c) of the Social Security Act, it waives the requirement that recipients must be institutionalized in a facility, such as a hospital or nursing home, in order for the cost of their services to be covered by Medicaid. Services covered by the Waiver program include case management, personal attendant services, and non-medical transportation to community activities and essential errands.*

Year	Unduplicated No. of TBI Waiver Slots
2016	74
2017	70
2018	66
2019	62
2020	59
<i>Source: West Virginia Bureau for Medical Services, Approved application for a §1915(c) Home and Community-Based Services Waiver (2015).</i>	

The decline in allocated slots for a given year is the result of BMS making certain assumptions in the formula it uses to calculate the annual allocation. Specifically, BMS assumes that the average annual per member costs for personal attendant services will increase by 5 percent. Additionally, BMS assumes that the State’s matching funds will remain static and that the projected federal match will decline slightly from year to year. As a result of these factors, the program cannot support a constant number of recipients. This decline in West Virginia’s allocation could lead to active recipients losing the services they already receive and approved applicants being placed on a waitlist for the first time.

Since West Virginia’s TBI Waiver program began in February 2012, the State has never filled its allocated slots. As Table 2 shows, the allocation for Waiver services increased from 75 in FY 2012 to 125 in FY 2014 and 2015. At the request of BMS, CMS reduced the State’s allocation for FY 2016 to 74. During this time period, BMS received a total of 297 applications for Waiver services, of which only 49 percent (147) were deemed medically eligible.³ The program has served a total of 102 individuals since its inception over four years ago, with 37 people leaving the program between FY 2013 and FY 2016. Of those 37, the majority of clients (26) left the program for an unspecified reason, while seven died, and four entered a nursing home or hospital. **BMS should determine a way to better track clients who leave the TBI Waiver program, in order to gain a better understanding of why clients leave the program, and use that information to determine ways to improve the program.**

³ *In order to meet medical eligibility, participants must require the same level of care as someone living in a nursing home.*

State Fiscal Year	No. of Allocated Slots	No. of Applications Received	No. of Medically Approved Applicants*	No. of Newly Enrolled Recipients	No. of Closed Cases	Total No. of Recipients at Years End
FY 2012 (partial)**	75	14	6	1	0	1
FY 2013	100	58	34	19	0	20
FY 2014	125	87	48	27	9	38
FY 2015	125	64	34	31	11	57
FY 2016	74	74	25	24	17	64
Totals		297	147	102	37	

* Applicants must meet financial eligibility requirement in addition to medical eligibility to receive TBI Waiver services. The numbers in this column does not exclude applicants deemed financially ineligible for TBI Waiver services.

** Numbers in this row are for the time period from the beginning of the TBI Waiver program to the end of the FY 2012 (February 1, 2012 through June 30, 2012).

Source: West Virginia Bureau for Medical Services. Data within the tables has not been audited.

5. Are the funds being utilized by the intended client population and if not, what are the barriers preventing utilization of services and funds as intended by the client community?

Response: Since the Rehabilitation Fund does not currently exist, PERD cannot determine if the intended population is being assisted. As to the “Funds for You” program, the answer is no, since that program is not inclusive of individuals with spinal cord injuries as the Rehabilitation Fund Act intended. **Therefore, the Legislative Auditor recommends that the “Funds for You” program be expanded to include individuals with spinal cord injuries.** As stated in response to Question #4, the Waiver program has filled its allocation of slots and implemented the “Managed Enrollment List”.

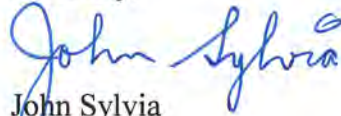
Conclusion

DHHR’s TBI Waiver and “Funds for You” programs are essentially performing the responsibilities of the Rehabilitation Fund Board. While the “Funds for You” program has had issues with providing adequate controls over funding decisions, most of its services appear to be in line with its and the Rehabilitation Fund Board’s missions. BMS is the appropriate agency to oversee the Waiver program since it is part of Medicaid. With all of its responsibilities covered by DHHR, the Rehabilitation Fund Board’s continued existence is no longer necessary. **Therefore, the Legislative Auditor recommends that the Legislature consider abolishing the Rehabilitation Fund Board and amending West Virginia Code as necessary.**

Recommendations:

1. *The West Virginia Department of Health and Human Resources should create appropriate oversight controls for the "Funds for You" program.*
2. *The West Virginia Department of Health and Human Resources should expand the "Funds for You" program to include individuals with spinal cord injuries.*
3. *The Legislature should consider abolishing the Rehabilitation Fund Board and amending West Virginia Code as necessary.*

Sincerely,


John Sylvia

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

November 18, 2016

Ginger Dearth, Chairman
Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board
959 Hartman Run Rd.
Morgantown, WV 26505

Dear Chairman Dearth:

This is to transmit a draft copy of the letter report on the Traumatic Brain and Spinal Cord Injury (TB/SCI) Rehabilitation Fund Board, "Funds for You" program, and Traumatic Brain Injury Waiver program. This report is scheduled to be presented during the December 2016 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization on Tuesday, December 6, 2016. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions committee members may have during or after the meeting.

We received the Board's response on September 7, 2016 and discussed the findings of the letter report by telephone on September 9, 2016. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Monday November 28, 2016 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,


John Sylvia

Enclosure

Joint Committee on Government and Finance

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

November 18, 2016

Karen L. Bowling, Cabinet Secretary
WV Department of Health and Human Resources
One Davis Square, Suite 100 East
Charleston, WV 25301

Dear Secretary Bowling:

This is to transmit a draft copy of the letter report on the Traumatic Brain and Spinal Cord Injury (TB/SCI) Rehabilitation Fund Board, "Funds for You" program, and Traumatic Brain Injury Waiver program. This report is tentatively scheduled to be presented during the December 2016 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization on Tuesday, December 6, 2016. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have regarding the portions of the report dealing with the "Funds for You" and/or Traumatic Brain Injury Waiver programs, please notify us by Monday, November 21, 2016. We received the Bureau for Behavioral Health and Health Facilities response on September 8, 2016. We have not received a formal response from the Bureau for Medical Services (BMS). If BMS would like to submit a written response, please provide it by noon on Monday, November 21, 2016 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Monday, November 28, 2016 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in blue ink.
John Sylvia

Joint Committee on Government and Finance

C: Brian Cassis, Internal Control/Policy Director
Cynthia Beane, BMS Commissioner
Victoria Jones, BBHMF Commissioner
Damon Iarossi, BBHMF Deputy Commissioner
Stacie Haynes-Legg, Director of Budget and Accounting Services
Melanie A. Pagliaro, Legislative Liaison
Cheryl Henry, Executive Assistant to the Cabinet Secretary

Enclosure



**West Virginia
Traumatic Brain
and
Spinal Cord
Injury
Rehabilitation
Fund Board**

P.O. Box 50890
State Capitol
Charleston, WV 25305-0890
Phone: 304-766-4870
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The Board comprises representatives
from the following state agencies
Bureau of Employment Programs
Bureau of Medical Services
Department of Education
Department of Education and the Arts
Department of Health and Human
Resources
Division of Military Affairs and
Public Safety
Office of Behavioral Health Services
Office of Emergency Services
Division of Rehabilitation Services
Other selected gubernatorial
appointees

September 7, 2016

Keith Brown, Research Analyst

Performance Evaluation and Research Division

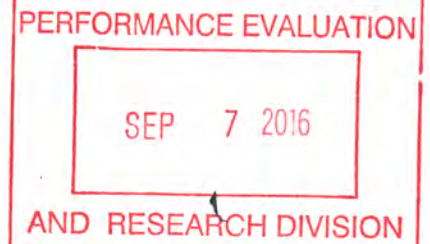
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1900 Kanawha Blvd East

Charleston, WV 25305-0610

(sent via email to keith.brown@wvlegislature.gov)

Mr. Brown,



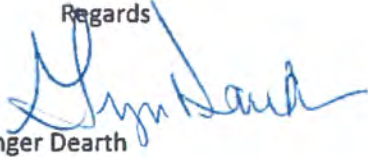
This letter is in response to written response request to the Performance Evaluation and Research Division. (see attached letter)

1. The Board does not hold regular scheduled meetings:
 - a. The board has not held regularly scheduled meetings due to the lack of attendance from membership. There has been recent letter sent to each appointed board member as well as agency appointment member, regarding attendance at upcoming September 14, 2016 board meeting. Additionally there were full meetings held on March 30, 2016 and May 18, 2016. The meeting scheduled for January 2016 was cancelled due to state of emergency by West Virginia Governor.
 - b. The unmet needs of West Virginian's is submitted to WVDHHR in monthly report, there is lack of formal reporting to the board on these needs.
 - c. With abolishment of the board there would be no independent oversight and collaboration of these services within West Virginia. Addiotnally all partners would lack ongoing collaboration and development of unmet needs for West Virginian's.
2. The Board is duplicative of services within other agencies
 - a. While the board does not have funds to provide services we do provide oversight to the Fund for you services.
 - b. The board responsibility to provide heightened overview of all services available within West Virginia, this has been difficult to perform due to lack of attendance by membership

For example: Trauma registry reporting number if injury occurrences, and educational reporting number of TBI students registered within school system

3. Recommendation would be to continue the board but with reconstruction of roles and responsibilities in order to maintain independent oversight all services within West Virginia.

Regards



Ginger Dearth

Chair

West Virginia Traumatic Brain and Spinal Cord Rehabilitation Fund Board



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Earl Ray Tomblin
Governor

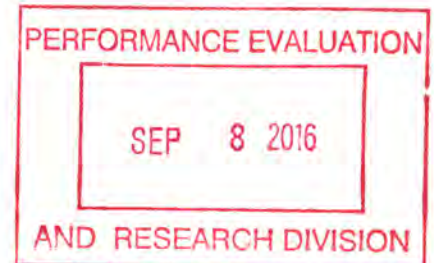
Bureau for Behavioral Health & Health Facilities

350 Capitol Street, Room 350
Charleston, West Virginia 25301-3702
Telephone: (304) 356-4811 Fax: (304) 558-1008

Karen L. Bowling
Cabinet Secretary

September 8, 2016

Mr. Keith Brown, Research Analyst
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610



RE: West Virginia Traumatic Brain and Spinal
Cord Injury Rehabilitation Fund Board and
Traumatic Brain Injury (TBI) Waiver
Program Draft Report

Dear Mr. Brown:

The West Virginia Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities (BBHBF) offers the following responses to the draft report submitted for review to the Department of Health and Human Resources on August 29, 2016.

Recommendation #1: "The West Virginia Department of Health and Human Resources should create appropriate oversight Controls for the "Funds for You" program."

The BBHBF concurs with the Legislative Auditors recommendation to create appropriate oversight controls for the "Funds for You" program. BBHBF would like to note that the four (4) specific purchases addressed in the report were from either the 2012 or 2013 calendar years and closely followed the creation of the "Funds for You" program in 2012. The BBHBF would like to add that ongoing oversight and administration since the program's inception have led to many changes and improvements to the program, including but not limited to:

- Lowering the funding cap from \$2,000 to \$1,500 to maximize the potential number of individuals receiving assistance.
- Revising policy to include guidance that specifically removed certain items from consideration.
- Inclusion of case management services and neuropsychological evaluations to the list of items eligible for funding.
- Revising policy to include a requirement that for many items the applicant must submit 3 estimates for consideration.
- Provision of training to staff on facilitation strategies and mediation skills.

- Meeting with CED management and staff to provide technical assistance on how to improve the program and to more clearly define the roles of all individuals.
- Requiring individuals to provide an impact statement as to how the requested assistance will improve their living situation, keep them out of the hospital or keep them in the community.

These efforts were made in response to the BBHFF's goal to adequately administer the "Funds for You" program and were done as part of the development and progression of the program. It will be with the same level of commitment that the BBHFF will address the Legislative Auditors specific recommendations and comments included in the report.

Legislative Auditors comment page #6: *"Since 'Funds for You' is payer of last resort, BBHFF should ensure that the application review team is requiring clients to seek out other service providers and assist them in seeking out alternatives before evaluating requests."*

BBHFF concurs with this assertion and will work with the Application Review Team and revise its policies to ensure that clients pursue all other avenues of funding prior to utilization of "Funds for You". In addition, the BBHFF will work to make sure that the documentation of those efforts is included in application package for verification purposes.

Legislative Auditors comment page #6: *"Therefore, the Legislative Auditor recommends that BBHFF develop a system to track and monitor the impact case services have on improving its clients' level of independent living after their cases are closed."*

The BBHFF concurs that the collection of additional data could assist with measuring performance and determining where the program needs improvement; however, we want to express caution with the indiscriminate development or expansion of a tracking and monitoring system. Factors that should be taken into consideration for any tracking and monitoring system include:

- The BBHFF would like to note that for this program we are not a direct service provider and as such the Bureau generally does not have any direct contact with the "Funds for You" program participants.
- The existing program is designed to define and address specific needs that will allow individuals to live independently. While the program may be successful in meeting a current need of the individual there is no assumption that the meeting of this one need will provide for ongoing independence. For example, the purchase of Durable Medical Equipment may meet a current need that allows for independent living, but a subsequent event or need could impact the individual and their ability to live independently.
- BBHFF does not have the ability to enforce responses related to the ongoing monitoring. If an individual chooses not to participate in any follow up, there is no way to obtain that information, and that leaves the BBHFF with an incomplete data set, which could skew the data as the program provides services to a limited number of individuals during the program year.

Mr. Keith Brown
September 8, 2016
Page Three

- The program allows for the purchase of items ranging from \$50 to \$1,500. With the limited budget and the large need for service, wide ranging efforts could be administratively cost prohibitive to the actual performance of the program. Specifically, any increase in administrative costs without the provision of additional funding could eat away at the funding available for individuals.

With the current program structure, the program participants work with the West Virginia Center for Excellence in Disabilities (CED), who assist in the preparation of the applications and work with the clients to address their needs. The CED continues to work with these clients until such time as their case is closed, and the BBHMF believes that at that time, an effective assessment can be made as to whether the services met the intended purpose of assisting individuals to live independently. While the BBHMF believes the current system provides an adequate means to monitor program performance, the BBHMF also concurs that the opportunity for improvements always exists, and we agree to the recommendation to review the current policy and procedures for opportunities to efficiently improve the monitoring of program performance.

Recommendation #3: "The West Virginia Department of Health and Human Resources should expand the "Funds for You" program to include individuals with spinal cord injuries"

Due to the circumstances surrounding the evolution of the "Rehabilitation Fund Board" and the creation of the "Funds for You" program, the BBHMF has concerns that the current system was not designed/intended to include the provision of spinal cord injuries. Spinal Cord Injuries do not fall within the identified array of Behavioral Health services nationally or within the state of West Virginia, and as such the BBHMF does not have the expertise to oversee this program.

Additionally, it should be noted that any increase or expansion of the population will create additional administrative and programmatic cost for BBHMF. Since the transition of the services to BBHMF, there have been no transfers, appropriations or funding allocations awarded for the provision of these services. The BBHMF has sustained the program utilizing previously awarded General Revenue dollars intended for individuals with Intellectual/Developmental Disabilities. Any unfunded expansion of the "Funds for You" program will directly result in a reduction in other services provided by the BBHMF.

We appreciate the opportunity to respond to the report.

Sincerely,



Damon Iarossi
Deputy Commissioner

DI:dm

cc: Victoria Jones, Commissioner, Bureau for Behavioral Health and Health Facilities
Karen Bowling, Secretary, Department of Health and Human Resources
Stacie Haynes-Legg, Director of Budget and Accounting Services
Melanie A. Pagliaro, Legislative Liaison
Cheryl Henry, Executive Assistance to the Cabinet Secretary
Brian Cassis, Director of the Office of Internal Control and Policy Development



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

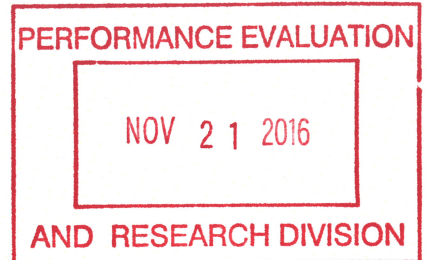
Earl Ray Tomblin
Governor

Bureau for Medical Services
Office of the Commissioner
350 Capitol Street – Room 251
Charleston, West Virginia 25301-3706
Telephone: (304) 558-1700 Fax: (304) 558-1451

Karen L. Bowling
Cabinet Secretary

November 21, 2016

Mr. Keith Brown, Research Analyst
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610



Re: West Virginia Traumatic Brain and Spinal
Cord Injury Rehabilitation Fund Board and
Traumatic Brain Injury (TBI) Waiver
Program Draft Report

Dear Mr. Brown:

The West Virginia Department of Health and Human Resources, Bureau for Medical Services (BMS) offers the following responses to the draft report submitted for review to the Department of Health and Human Resources on August 29, 2016.

Response #1:

Page 7, Paragraph 1, Last Sentence – “This decline in West Virginia’s allocation could lead to active recipients losing the services they already receive and approved applicants being placed on a waitlist for the first time.”

The last sentence is incorrect. A person receiving TBI Waiver services would never lose their TBI Waiver services due to the slot allocation reducing – West Virginia would seek an amendment to the current waiver application to increase the number of slots to cover those currently receiving services. The decline of the slot allocation may mean that newly approved applicants for the TBI Waiver would go onto a Managed Enrollment List (MEL) until a slot becomes available.

Mr. Keith Brown
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Response #2:

Page 7, Paragraph 2, Last Sentence - *“BMS should determine a way to better track clients who leave the TBI Waiver program, in order to gain a better understanding of why clients leave the program, and use that information to determine ways to improve the program.”*

The last sentence suggests BMS find a better tracking stem of the reasons TBI Waiver recipients leave the program. In December 2014, BMS expanded the tracking as to why participants left the TBI Waiver program. The reasons listed below are reported monthly during contract meetings with the Utilization Management Contractor:

- Participant no longer a WV Resident
- Participant deceased
- Participant ineligible
- Participant voluntarily declines waiver program
- Participant was unable to be contacted for re-evaluation
- Participant failed to respond to request for re-evaluation/denial
- Other

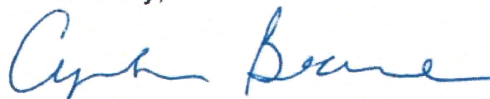
Response #3:

Page 9, Recommendation 3 – *“The Legislature should consider abolishing the Rehabilitation Fund Board and amending West Virginia Code as necessary.”*

BMS does not have a response to this recommendation because having the Rehabilitation Fund Board does not affect the TBI Waiver program one way or the other. BMS does support the need for a “Funds for You” program.

We appreciate the opportunity to respond to the report.

Sincerely,



Cynthia Beane
Acting Commissioner

CB:bak

Cc: Karen Bowling, Secretary
Jeremiah Samples, Deputy Secretary
Brian Cassis, Director Office of Internal Control and Policy Development