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FORMAL)	
OPINION)	No. 08-02
)	
OF)	AG Alpha: HS CW AGBCN
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Karen L. Beye, Executive Director of the Colorado Department of Human Services, requested an opinion from this office concerning the question of whether, under § 26-5-104(7), C.R.S. (2007), unexpended capped funds for child welfare services may be allocated to counties that have exceeded their capped allocation for child welfare services even if the counties have not experienced caseload increases beyond the caseload estimate used to determine their capped allocation.

QUESTION PRESENTED AND CONCLUSION

Question: Under § 26-5-104(7), C.R.S. (2007), may unexpended capped funds for child welfare services be allocated to counties who have exceeded their capped allocation for child welfare services even if the counties have not experienced caseload increases beyond the caseload estimate used to determine their capped allocation?

Answer: Unexpended capped funds for child welfare services may be allocated to counties that exceed their capped allocation if either: (1) the expenditures were for other than administrative and support functions, or (2) the expenditures were attributable to caseload increases beyond the caseload estimates used to establish the capped allocation for child welfare services.

DISCUSSION

1. Child Welfare Services

The State Department of Human Services (“State Department”) has the duty to adopt rules establishing a program of child welfare services. § 26-5-102(1)(a), C.R.S. (2007). These services include the investigation of allegations of child abuse and neglect, placing children out of their homes (including foster care), services to families to prevent placing children out of home or allowing children to return to their homes, and adoptions. § 26-5-101(3), C.R.S. (2007). This program of child welfare services is supervised by the State Department and is administered by the county departments of social services (“county departments”). The rules governing this program can be found at 12 CCR 2509-1 to 2509-8, § § 7.000 to 7.719.71.

2. Financing Child Welfare Services

Like most social services, child welfare services are financed by federal, state and county funds. See generally State Department of Social Services v. Board of County Commissioners, 697 P. 2d 1(Colo. 1985). If a county department administers its child welfare program in accordance with the rules of the State Department, it is generally entitled to be reimbursed for 80% of the program and administrative costs associated with the program. § 26-1-122(3)(b) and (4)(b) and § 26-5-104(1), C.R.S. (2007).

3. Capped Allocations for Child Welfare Services

State and federal funds to reimburse county departments for the costs associated with the child welfare services program are not limitless. Each year, the General Assembly appropriates a specific amount of funds for the child welfare services program. The statutes require the State Department, with the assistance of a Child Welfare Allocations Committee, to allocate this annual appropriation among all of the county departments. § 26-5-104(3) and (4), C.R.S. (2007). Among many other factors, these allocations are based on an estimated caseload of child welfare cases in each county.

The statute refers to these allocations as “capped” allocations because, except as explained below, a county department is not entitled to reimbursement beyond the amount of the allocation. The statute permits the State Department to make more than one annual capped allocation to the counties for specific child welfare services. § 26-5-104(3)(a), C.R.S. (2007). In practice, the State Department of Human Services makes a single capped allocation to each county department each year, and the capped allocation is treated as a block grant, which allows the county department to use the funds in the capped allocation for any child welfare purpose. This includes administrative and support costs, which include: developing the program, maintaining substantiated complaint files, developing agreements, monitoring program activities for compliance with program requirements, preparing reports, providing local

officials and citizens with information about the program, including the conduct of public hearings, coordination activities, coordination of the resolution of monitoring and auditing findings' evaluation of program results, management of personnel involved in these activities, travel, rent, equipment, and supplies related to child welfare services, administrative and legal services, and other administration functions generally associated with line staff work and first line supervision. See State Department Agency Letter ABA-98-13-I (September 1, 1998).

4. Close Out Process for County Allocations

At the end of each fiscal year, some county departments will have spent less than their capped allocation, while other county departments will have spent more than their capped allocation. Subject to the limitations discussed below, the State Department can allocate unspent capped funds to county departments whose have spent more for child welfare services than their capped allocation.

The relevant statute provides in pertinent part:

(a) ... subject to the limitations set forth in this subsection (7), the state department may, at the end of a state fiscal year ... allocate any unexpended capped funds for the delivery of specific child welfare services to any one or more counties whose spending has exceeded a capped allocation for such specific child welfare services. (b) A county may only receive funds pursuant to the provisions of paragraph (a) of this subsection (7) if the requirements of section 26-5-103.5(4) have been satisfied, for *expenditures other than those attributable to administrative and support functions* as referred to in section 26-5-101(3)(m), as defined in accordance with the provisions of 26-5-103.5(4), and for authorized *expenditures attributable to caseload increases beyond the caseload estimate* established pursuant to subsection (3) of this section for a specific caseload allocation.

§ 26-5-104(7)(a) and (b), C.R.S. (2007) (emphasis supplied). The italicized portions of the statute show that child welfare costs are distinguished in two ways: (1) costs of administrative and support function and costs of all other functions, and (2) cost increases attributable to unanticipated caseload increases and cost attributable to other causes.

In general, we must assume that every word in a statute is intended to have meaning and that no words are superfluous and can be disregarded. As the courts have said, "It is a generally accepted rule of statutory construction that, 'in ascertaining the intent of a legislative body, and the meaning of its enactments, (courts are required) to give effect to

every word, phrase, clause, sentence, and section, if it can be done, and we are not to presume that the legislative body used the language idly and with no intent that meaning should be given to its language.” Blue River Defense Committee v. Town of Silverthorne, 33 Colo. App. 10, 14, 516 P.2d 452, 454 (1973) (citation omitted). *See also* Smith v. Town of Estes Park, 944 P. 2d 571, 573 (Colo. App. 1996).

Applying this rule, we must give meaning to both factors contained in the statute. That is, whether the costs are for administrative and support costs or not, and also whether the costs were caused by unanticipated caseload increases. Logically, this can be done in one of two ways. First, we might conclude that an over expenditure must be *both* for a function other than administration and support *and* caused by an unanticipated caseload increase before it can be reimbursed from unexpended capped allocation funds. Alternatively, we might conclude that an expenditure is eligible for reimbursement if it is *either* for a function other than administration and support *or* if it is caused by an unanticipated caseload increase.

The structure and language of the statute supports the view that over expenditures are eligible for reimbursement if either factor is present. Removing the language that is not relevant to this analysis, the statute says, “A county may only receive funds ... for expenditures other than those for administrative and support functions ... and for authorized expenditures attributable to caseload increases beyond the caseload estimate....”

This appears to be the best reading of the statute because it gives meaning to all of the words and phrases in the statute and to the language and structure of the statute. To the extent that the language of the statute is ambiguous, the interpretation given to the statute by the State Department is entitled to significant deference. Bishop v. Department of Institutions, 831 P.2d 506 (Colo. App. 1992).

This interpretation also leads to a just and reasonable result. Expenditures for functions other than administration and support can fluctuate for many reasons other than caseload increases. Some difficult cases require more intensive and costly services or more expensive and lengthy out-of-home placement than others. In some small counties, a single expensive long-term out-of-home placement could exhaust a significant part of the county’s allocation without any increase in caseload. Administrative and support costs, on the other hand, do not fluctuate nearly as much between cases, and we should not expect administrative and support costs to change significantly in the absence of an increase in caseload.

CONCLUSION

Therefore, I conclude that unexpended capped funds for child welfare services may be allocated to counties that exceed their capped allocation if either: (1) the expenditures were for other than administrative and support functions, or (2) the expenditures were attributable to caseload increases beyond the caseload estimates used to establish the capped allocation for child welfare services.

Issued this 21st day of February, 2008.

JOHN W. SUTHERS
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