



Office of Public Defense Services

OPDS Teleconference with Oregon Public Defense Providers
April 28th, 2020 10:30am – 11:30am PST

Teleconference Recap

Questions? Please send them to Kaysea.R.Dahlstrom@opds.state.or.us.

Greeting & Welcome (Kimberly McCullough)

- Thank you for joining us. We have a few important updates for you all today.
- We'd like to relay what happened last week with the Emergency Board ("E-Board") and the Special Purpose Appropriation ("SPA") funding, as well as discuss the impact that it's going to have on our agency and what all of this means for provider contracts and such.
- Additionally, we received some questions from folks this week, some of which I hope to address in my description of what happened with the E-Board. If you have a question that you would like to be addressed, please email Kaysea.
- We also continue to update our [COVID-19 Updates webpage](#), and we encourage you to check it out.

Legislative Update (Kimberly McCullough)

- We recognize that things are especially challenging during this pandemic. The work that you are providing is so important, and often mentally and emotionally draining. We see the work you're doing, we recognize the positive impact you're making, and we appreciate that.
- Last week, I sent a letter out to all providers regarding the E-Board hearing. If you did not receive that letter, you are not on Listserv. Being a recipient of one of our Listservs is a great way to stay informed of important updates and notifications from OPDS. The link to sign up for our Listserv is on our [website](#) at the top of the page under "Stay Connected." We have also posted a copy of the [letter](#) to our COVID-19 Updates webpage.
- We also have an [FAQ](#) on our COVID-10 Updates webpage, which is in the process of being updated to answer important questions that have come up. We are hoping to post another update to this FAQ within the next several days.
- In 2019, the Oregon legislature authorized a SPA for OPDS – approximately 20 million dollars. In short, money was set aside for us to come back later with a plan on how we would use it. Our intention was to utilize this funding to add attorneys to workforce to reduce caseloads, increase compensation, help folks pay for support staff, etc. A portion of the funding was addressed to our agency infrastructure needs, and some to address staffing issues we had. Earlier this year during the short

session, the legislature was all set to approve this SPA, but then the Republican walkout happened, and the budget bill subsequently died.

- We then started advocating for the legislature E-Board to release that 20 million. We advocated for the full release and continued to do so throughout the COVID-19 pandemic. It became clear to us that the full amount of funding was at risk, as was the budget for the entire state of Oregon. We have recently learned that all state agencies are facing 20-25% budget cuts in next biennium. The executive branch is already going through the exercise in how to reduce their budget. The budget crisis we are getting ready to face is unprecedented and very serious. We continued to push for that funding and explained to the legislature and Legislative Fiscal Office (“LFO”) that public defense providers are on the front lines in this ongoing crisis.
- We received news on Tuesday of last week that E-Board was going to meet on Thursday, April 23rd. This was a surprise to us because we thought the E-Board would not meet until after the May Revenue forecast.
- Prior to the E-Board hearing, the LFO made a recommendation about how much money of the SPA they thought the E-Board should release to the Public Defense Services Commission (“PDSC”).
- On April 23rd, the E-Board held a hearing and throughout various work sessions, released funding for many important things such as safe shelter and rental assistance, emergency housing for domestic victims of domestic and sexual violence, long-term care worker COVID-19 testing and training, and more. Outside of the PDSC SPA, almost all of the released funding was related to the COVID-19 crisis.
- Quick question from Brook Reinhard: have state agencies been asked to cut funding by 8% (which would amount to an overall 16% budget cut for the next biennium)? We understand that these are initial budget cuts that each executive branch agency is being asked to sketch out as an exercise. We are part of the judicial branch but are going to need to go through a similar exercise.
- As guided by the recommendations of the LFO and outlined in the [letter](#) I sent out last week, here is a breakdown of the funding that the E-Board approved to go to the PDSC (this adds up to a total of \$3.8 million out of what really is \$22 million, since LFO combined funding from a separate \$2 million SPA with the \$20 million SPA authorized in 2019, and we have been told this is likely to be all of the funding we get from either SPA):
 - o \$1.5 million to fund nine existing positions at OPDS. These are staff who are already working at OPDS in limited duration positions. This money is to cover the cost of keeping that staff employed until July of next year, and to prevent layoffs. Our original request included adding new positions, but those positions were not funded. We only received funding to keep things at a status quo. Most of those staff are working on processing payment and NREs, and more than half of these limited duration staff are crucial to getting these

payments out the door. Without these positions, it would make it much more difficult and time consuming to process payments.

- \$1.2 million to fund IT services. This was not funding we were asking for from the E-Board from this SPA. This funding was supposed to come from a separate \$2 million SPA, which we understand will be reabsorbed into the general fund. Our agency has been lacking adequate IT services for many years. Up until recently, we didn't even have any internal IT staff. The goal of this IT funding was to bring us up to speed with other state agencies – and the 21st century – as well as to work on a new financial and case management system so that we can better understand and process all of the data on the work that you all are doing. Essentially, this new system our IT staff are planning to obtain will provide us with a greater understanding of our data and ensure better transparency as an agency. It's also something that would aid in streamlining payments for providers.
- Just over \$860k to increase provider rates for interpreters and investigators. We have made the decision to try to always keep our interpreter rates matched with those of the Oregon Judicial Department (“OJD”). OJD has committed to make adjustments to interpreter rates by 2-4% annually. OJD agreed to delay a 3.3% increase until July 2020 so that OPDS can get caught up. The PDSC must approve increases to interpreter and investigator rates, and this will be voted on at a future PDSC meeting. For investigator rates, it's been about ten years since the last rate increase. The LFO didn't want to cut that increase down to zero, but they did cut it down significantly. That rate increase is the bulk of this 860k chunk. We will have to crunch those numbers to get the specific amount and bring it to PDSC for approval.
- \$150k on a one-time basis to provide training for juvenile dependency attorneys participating in the Parent Child Representation Program (“PCRP”). This, again, was not in our original SPA request, but it was a separate line-item in the 2019 session budget bill. Because that bill didn't pass (due to the Republican walkout), that funding was lost. However, the LFO recognizes that this training is particularly important. Keren Farkas, our PCRP manager, is the one who is working on how that \$150k will be used. She can provide info on that during a future call, as plans develop.
- It's important to note that the bulk of the \$20 million funding we requested is blatantly missing. This is disappointing to all of us. COVID-19, unfortunately, is a very disruptive event that has happened in our lives, and we are feeling its effects across the nation and across the world. That said, the Oregon legislature did make adjustments to attorney compensation in 2019: a 5% rate increase for all provider contracts, and a six-month 2% compensation increase for individuals who volunteered to take part in the ABA timekeeping study. Our budget hasn't been cut yet, so it is remaining at

the status quo at least for now. Although the ABA timekeeping study has ended, OPDS will continue to honor the six-month 2% increase until that ends on July 1st.

Updates from the Executive Director (Lane Borg)

- I want to thank Rep. Nosse for asking some important questions during the E-Board hearing. Historically, Rep. Stark has been really helpful to us in asking very important questions. Rep. Nosse did that for us this last week when he asked for clarification on the legal status of the SPA. He was able to confirm that money that wasn't released would potentially count as a budget cut, so hopefully this means that we will start on higher ground when it comes to facing future cuts.
- We have fundamentally changed the contracting model to one in which we are buying your time and capacity. Moving forward, this helps to set us up in our conversation around budget cuts. When faced with budget cuts, agencies typically do less. I'm committed to be part of that conversation to use our contracting model to explain what we can and can't afford to do moving forward.
- Agency Budgeting 101: money cannot be moved around from one budget area to another budget area. There are set buckets that the legislature authorizes, and the agency must follow that instruction. Money that is put into the Public Services Account ("PSA"), for instance, cannot be used to add staff to the OPDS appellate division. I wanted to make it clear that there are limitations to reallocating money.
- Up until a week before the E-Board met, we had been consistently advocating for the full release of the SPA. This advocacy included a letter that I wrote to the Governor asking for the entire 20 million to be released. We considered this SPA to be an economic stimulus package that would benefit many Oregonians. Additionally, every time we interacted with the Governor's office or with the LFO, we advocated for some money to be put towards rate increases for interpreters and investigators. Unfortunately, we did not get even close to what we were asking for. They did what they did, and they funded what they funded.
- The good news – if there is good news – is that we now know what amount of money is in that PSA. We recognize that we don't have to start making cuts right out of the gate. We can consider, instead, about how much money is spent on certain areas within the PSA, such as NREs, experts, contractors for appellate work, discovery, etc. Within the PSA, we have the legal authority to reallocate money and move those figures around because it's all in the same bucket. We need to be willing to discuss expenditures like polygraphs, which might end up being considered an indulgence we can't afford. \$5.5 million is spent on discovery during the biennium. All told, over \$45 million of the PSA goes to the expenses I've mentioned. Changes to these expenditures, of course, have not yet been decided, but it is important to recognize that there is some flexibility and there are many areas to explore and consider. Don't assume that all cuts have to be borne by the providers. If we have to cut, we

should look at all options and prioritize what we spend our money on. These conversations will be held internally, with commission, and with the stakeholders (all of you).

- As we move forward in facing these budget cuts, we need to have conversations about what it is that we are funding, and the definition of caseload needs to be pulled into budgeting.
- We have made decision about the hourly rate in our RFP. We are going to ask the PDSC to raise it to a \$75 base rate for the hourly attorneys, rather than the higher increase set out in the RFP. Considering the budget, this is all we can afford for now.
- I appreciate all the work you are doing, and all the input we are receiving. This is a time when we are coming together to figure out what to do in the best way we can. We appreciate your input and will never criticize you for asking those questions or making those suggestions.
- As for a contracts update, things are starting to come together. We now know what the PSA will be, and we are waiting on only a few outstanding submissions. Over the next week, we want to determine which counties will need to remain at status quo. We hope to wrap up contracts in these areas soon and expect this to be the case for the majority of counties. There are some places, however, where we already knew we needed to make adjustments and we will work to identify those counties. If we have only five or six counties where we know adjustments need to be made, we believe that can be handled by July 1st. If it's more than that, though, we might need to ask people to extend their current contracts for a temporary period of time. And these contract adjustments might not be addressed all at once. We don't want to do that, and we are hopeful that the number of adjustments is relatively small. We will consider every submission, and then sometime next week we will have a better idea of where we stand.

Open Questions and Announcements from Providers (Kimberly McCullough)

- Will firms have to do layoffs? Why don't we apply for federal government bailout?
 - o At this point, we are not anticipating that any of you need to do layoffs in terms of the funding you receive from OPDS. We recognize that many of you are running your own businesses and may be personally applying for assistance, but I am not speaking to that point. OPDS contract funding has not decreased because we didn't get the SPA, we just didn't get extra money we were hoping for. We may receive notice of budget cuts down the road, but we are looking for ways to offset those, so as to not affect providers. That is our goal.
 - o OPDS and other state agencies are exploring ways to obtain federal funding. For instance, all COVID-19 related expenses, such as technological equipment needs, are being managed through the Department of Administrative Services ("DAS"). Additional COVID-related funding that has been authorized

and is being reported to DAS is the authorization for NREs for case managers to consult with people about juvenile representation where DHS has cut contact.

- Again, you all are individual entities and if you are filing for assistance, that is separate from your involvement with OPDS.
- Will any increases be made to rates for reimbursement for travel time? I currently drive 1.5 hours each way to provide service to rural area, and it is becoming financially unfeasible.
 - We need to have a discussion on that internally. If you wish to email [Kaysea](#) with this question, we can get back to you after we've had that conversation.
- With regard to increases to investigator rates, are they only for contract investigators? Or do they also apply to investigators who are working in public defender offices?
 - That's actually an internal discussion that needs to happen with the specific public defender office since they are the investigator's employer. Our contract analysts could have a conversation with contract administrators, though, about future contracting terms around this.
- The provider homepage on your website says it was last updated on April 7th. Will it be updated again soon?
 - That April 7th date actually refers to the last time the FAQ was updated. The provider homepage and dates for entering/reviewing bills is updated almost daily. We apologize for any confusion there.
- Does it seem more likely that there will be an extension of six months extension or that the two-year FTE model will be approved?
 - Our goal is to award new contracts rather than extend current contracts. That will be easier in some counties than others since in most counties, we aren't expecting there to be much change. However, it's possible that in a smaller subset of counties, a small extension will be implemented while we finalize.

Closing Remarks (Lane Borg & Kimberly McCullough)

- If you have any questions or announcements you wish to make during our next provider call, please email them to [Kaysea](#) or [Kimberly](#).
- Thanks for joining us today and sticking with us in this a really challenging time. We appreciate you and the work you are doing! Take care.