

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Philip C. Hunsucker, Chief Civil DPA

DATE: June 21, 2024

SUBJECT: Settlement of the Counties Litigation against DSHS

STATEMENT OF ISSUE:

The Washington State Association of Counties (WSAC) and most Washington counties, including Jefferson County, filed an action against the Washington State Department of Social and Health Services (DSHS) force it to perform its statutory duties related to persons evaluated for mental competency in criminal cases. The duties of DSHS related to: (1) the receipt and evaluation of patients by the State referred there by court order under RCW 10.77.086(7); and, (2) advance notice by the State of release of committed persons under RCW 71.05.425.

After a very unsuccessful detour to federal court for the State, the Pierce County Superior Court issued a preliminary injunction against DSHS requiring it to perform the statutory duties. The DSHS appealed, but saw the handwriting on the wall. Accordingly, DSHS has been complying with its statutory requirements. There is no particularly graceful way for the case to end for good because prosecuting attorneys and superior court judges have discretion independent of county legislative bodies and cannot be required by DSHS to be bound to processes that DSHS would like them to and the parties must work together because part of what the preliminary injunction requires is cooperation.

Nevertheless, WSAC and the counties have achieved their litigation objective. But they also face a small risk of reversal on appeal. So, their lawyers have agreed on an MOU that memorializes practical agreements between DSHS about working together in a way that benefits all sides. The appeal has been essential stayed pending the finalization of negotiations.

The AG's office proposed an MOU and counsel for WSAC and the counties proposed changes, which the DSHS has finally accepted. The MOU calls for coordination between the State and the Counties to facilitate the operation of, and compliance with, state law, federal law, and federal court orders.

Once the MOU is signed, DSHS will dismiss the appeal and the entire case will be dismissed without prejudice. This means that if DSHS starts up with the same type of conduct as before the preliminary injunction was entered, we can sue it again and seek the same relief.

ANALYSIS:

An MOU, along with a dismissal without prejudice, will settle the case settlement with DSHS. The PAO recommends entering into the settlement. Assuming the County accepts the PAO's recommendation, someone must be designated by the County to sign the MOU on behalf of the County.

FISCAL IMPACT:

WASC has been funding the litigation and doing almost all the work. The settlement of this case will have a minimal positive effect on PAO resources. There will not be a budget impact, but there will be a slight increase the capacity of the Chief Civil DPA. In contrast not joining the MOU will force the county to proceed on its own.

RECOMMENDATION:

That the Board authorize the County Administrator or the Chief Civil DPA to sign the MOU on behalf of the County.

REVIEWED BY:

 6/24/24
Mark McCauley, County Administrator Date