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**From:** Habib, Fred (EHS) [mailto:Fred.Habib@state.ma.us]  
**Sent:** Thursday, March 23, 2006 3:47 PM  
**To:** laurie@leesix.com  
**Subject:** Questions

Laurie,  
Here are the answers to your questions. Sorry for the delay but the research took a little longer than we expected. Please notice the tab included in the spreadsheet that explains the provider billing list locations.

Fred Habib

1. Question: We were told that \$2.5 billion goes towards providing social services from the State to private non profits. Is this for the entire EOHHS umbrella of organizations? Are there other organizations, such as parole and DOC that have separate contracts?

Answer:

Spending for FY05 was actually about \$2.1B. This covers Purchase-of-Service spending by all EOHHS organizations. Other Secretariats and Departments that are outside EOHHS also have contracts that provide for direct services, such as child care or residential education programs for special needs students. These include the Department of Education, Department of Early Education and Care. We are also unable to provide you with information regarding the departments of the Executive Office of Public Safety and ask that you direct these questions to that office.

2. Question: The State is still providing direct services. How much does that come to and is it included in the \$2.5 Billion figure? What are the details of this: i.e., homes, offices

Answer:

The Commonwealth provides a range of direct services. These include case work and case management services that are delivered by Commonwealth employees in many EOHHS departments. They also include facility based services. These state-operated programs range from outpatient clinics, public health hospitals, psychiatric hospitals, and long-term care settings for adults and children with mental retardation or mental illness. The \$2.1B does not include these services. EOHHS spends approximately \$870 million on state-operated programs and \$690 million on personnel dedicated to these state-operated services.

3. Question: Can we get a listing of the 1100 non profit organizations, and are they sorted by location?

Answer:

A listing of organizations contracted via the Purchase of Service system is attached. Users of this information should note that most of these records are billing addresses for providers. Many, but not all, may also be actual program sites. We have provided provider names, town, and zip code. Since some of these records may in fact be program sites that are homes to our clients, we cannot release exact address information, out of our obligation to protect their privacy. You will note that the total number is less than 1100, because some of the entities who are listed as organizations in the Purchase of Service system are cities and towns, and individuals providing foster care services.

4. Question: Is it correct that Wet Shelters (so-called) are not covered by the Dover Amendment or Federal Fair Housing Law.?

Answer:

This issue has not been decided by the courts. The “Dover Amendment” appears in General Laws Chapter 40, Section 3 of the state Zoning Law. It provides in pertinent part that:

No zoning ordinance or by-law shall . . . prohibit, regulate or restrict the use or land or structures for religious purposes or for educational purposes on land owned or leased by the . . . a nonprofit educational corporation; provided that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard size, setbacks, open space, parking and building coverage requirements.

It has been consistently held to protect non-profits social service providers from unreasonable restrictions on the use of land for such purposes as residential group homes for individuals with mental disabilities, for individuals who are homeless and receiving training to be able to obtain work. In the case of individuals with substance abuse, programs that offer education and treatment fall within the same limitation on zoning restrictions. Similarly, the Federal Fair Housing Laws and Americans with Disabilities Act protect the right of individuals with disabilities to reside in communities including residential group homes.

To our knowledge, however, there has not been a state court ruling under either the “Dover Amendment” or under the federal Fair Housing or Disabilities Act that would apply such legal protections to so-called “wet shelters”, *i.e.*, shelters that house individuals who are not in treatment for substance abuse and are still engaging in use of addictive substances. The ADA does not consider individuals, who are engaging in the addictive or illegal use of drugs or alcohol and not in treatment, to be individuals with disabilities entitled to the protection of the Act. Similarly, the “Dover Amendment” only protects non-profit social services facilities that perform an educational function. It is not clear that a “wet shelter” could meet that legal standard, and whether AA meetings would constitute an educational use within the Chapter 40, §3.

5. Question: Does EOHHS fund Sober Houses? If so, why is there no licensing of these?

Answer: EOHHS does not fund or contract with Sober Houses. To the extent that such congregate living situations received public funding it would be from federal sources such as HUD or local municipalities. They are regulated by local authorities.

6. Question: How does Dover apply to siting of a sober houses or residences with more than 6 unrelated individuals?

Answer: We are not aware of any court decisions regarding the status under state zoning laws of living arrangements for individuals seeking to become or remain sober. It is not clear that such sober houses would be protected by the "Dover Amendment," since they do not appear to provide an educational function, but rather are living arrangements. Other residences with more than 6 unrelated individuals, if operated and licensed by nonprofit social services agencies to provide housing and education to individuals with disabilities or homeless families receiving education and training would appear to be protected by the "Dover Amendment." Such facilities are also subject to local municipal control including the boards of health and building inspectors.

7. Question: Are residences for clients that cannot comply with the rules of a sober house that permit continued use of drugs or alcohol, supported under Dover? Are these similar to "wet shelters" except that they are actual residences or SROs? Are these funded by EOHHS?

Answer: Again, we are not aware of any court decisions regarding the status of these living arrangements, and they do not appear to perform an educational function that would be protected by the "Dover Amendment". Such facilities are subject to local municipal control including the boards of health and building inspectors. The Department of Transitional Assistance funds some shelters for individuals who continue to use addictive substances; however, it does not license or regulate such facilities. The Bureau of Substance Abuse of the Department of Public Health (BSAS) provides services to individuals in such residences with the goal of engaging them in treatment. It does not license such programs, however, because they do not provide treatment.