



testimony of Bennie Barnes, Linda Giesler, Charles Carbone, Ben Toole, and Steven Hill. Exhibits 1, 2, 4, 5, 8, 10, 11, 13, 14, 16, 17, 18, and 20 were admitted. The Department presented the testimony of Baldwin Bunkley, Ivor Groves, and Philip Fleisher. Exhibits 27-34 were admitted in evidence. A transcript of the hearing was filed, the parties filed their proposed recommended orders on February 26, 1990. Rulings on proposed findings of fact are made in the Appendix to this Recommended Order.

The motion filed by South County on February 26, 1990 for official recognition of House Bill 217 filed in the 1990 legislative session is denied. The filing of that bill sheds no light on the meaning of the 1989 General Appropriations Act.

## FINDINGS OF FACT

### Crisis Stabilization Units

1. The Legislature dealt comprehensively with the subject of mental health when it enacted Chapter 394, Florida Statutes, in 1971. The Act is officially known as the Florida Mental Health Act, and popularly known as the Baker Act. The Act established programs in the Department to reduce the occurrence, severity, duration and disabling aspects of mental, emotional, and behavioral illness or disorders. The Department was directed to "coordinate the development, maintenance, and improvement of [mental health] receiving and community treatment facilities within the programs" of HRS districts in Florida. The Legislature also required that "the least restrictive means of intervention [i.e., treatment] be employed based on the individual needs of each patient within the scope of available services." Sections 394.451 and 394.453, Florida Statutes (1971). 1/

2. Mental health services provided by community treatment facilities under the Baker Act may include emergency screening services, mobile crisis response teams, crisis stabilization units, short-term residential treatment centers which provide inpatient care and short-term hospitalization in a psychiatric hospital or psychiatric unit. Long term psychiatric hospitalization is not funded with Baker Act appropriations. Community treatment facilities provided most of their care by purchasing services from hospitals prior to 1979. The rates paid for those hospitalization services had been increasing constantly. Most inpatient psychiatric hospitals now charge patients \$300-400 per day.

3. Crisis stabilization units (CSU) were developed as a less costly alternative to psychiatric hospitalization. A CSU was designed to provide treatment to help the individual through an immediate psychiatric crisis, to provide a rapid assessment of the client's needs, and direct the client to appropriate programs, which could include inpatient pay hospital care, if necessary. The time required to stabilize a patient in a psychiatric crisis, to evaluate the patient and determine the most appropriate and least restrictive treatment program is generally about 14-15 days. Short-term residential treatment is provided as an alternative to psychiatric hospitalization for those needing therapy for up to 90 days.

4. Some community treatment facilities established their own inpatient hospital programs about the time CSUs were first established. These psychiatric hospitals are regulated in the same manner as other specialty hospitals under Chapter 395, Florida Statutes. Once a community treatment facility had the approval to establish a hospital, that hospital obtained the ability to bill "third parties," usually insurance companies, for the psychiatric crisis

stabilization services they provided. These facilities are able to use that reimbursement to offset, to some extent, any losses incurred in treating Baker Act patients. Most policies of health insurance will not provide reimbursement for crisis stabilization care provided by a CSU, such as South County. On the other hand, Medicaid will not reimburse a free-standing psychiatric hospital such as 45th Street for its services.

5. When CSUs were first organized, they were not regulated by the state. As with hospitals, the size of a CSU is measured by its number of approved beds. Sections 394.878(4) and 395.003(4), Florida Statutes. After their establishment, some units sacrificed quality of care in order to minimize costs, and as a result the Legislature established a program of departmental licensure and regulation for CSUs in 1985. Under those statutes, a CSU may not be licensed for more than 30 beds. South County is licensed as a CSU.

6. HRS District IX includes Palm Beach County. The 45th Street Mental Health Center operates in a portion of Palm Beach County. It was one of the community treatment facilities which established a hospital under Chapter 395, which had 44 beds. It can treat psychiatric patients as inpatients, but as a matter of fact it operates almost solely as a CSU. It takes all indigent patients in psychiatric crises who are brought to them by the police or others, without regard to the patient's ability to pay for the services it renders to them. Licensed CSU facilities, such as South County, also take all patients brought to them.

7. Recently, 45th Street Mental Health Center also licensed a CSU at its hospital with 16 beds.

8. The Legislature has recognized the value of crisis stabilization beds in providing quality, low-cost treatment to citizens suffering from acute bouts of mental illness. It has not, however, directed or specifically funded the establishment of crisis stabilization beds in every HRS district. The Legislature has funded and directed the establishment of a specific number of crisis stabilization unit beds in some HRS districts. These are known as "appropriated beds." The Department also has had the authority to devote some of the money generally appropriated for Baker Act services to establish crisis stabilization beds where it believes they are needed. These are generally known as "unappropriated beds," because they have not been established by specific legislative direction and funding.

9. The Department usually distinguishes between in-patient psychiatric treatment and CSU treatment. CSU beds, short-term residential treatment beds, and in-patient psychiatric hospital beds are usually treated as separate points on the continuum of services available to those with psychiatric problems. Ordinarily, hospital beds are used for longer-term care of patients whose psychiatric illness is such that confinement is the least restrictive means to provide the patient necessary mental health services. A CSU ordinarily limits itself to helping the patient get over his current crisis, evaluating a patient after stabilization, and referring the patient to some other provider for long-term care. The referral may be to out-patient counseling for mild cases of mental illness, to day treatment, to a short-term residential treatment facility, up to hospitalization in a psychiatric unit for serious mental illness.

10. Legislatively appropriated CSU beds are licensed as CSU beds, and not as inpatient psychiatric hospital beds. Appropriated and unappropriated CSU beds are funded at different rates depending on whether or not they were

legislatively established, and when they came into existence. The price level adjustment made available in specific appropriation 895 was a legislative effort to reduce the disparity in funding of CSU beds around Florida, since all provide similar services.

11. The Florida Council for Community Mental Health (Florida Council) represents most community treatment facilities before the Legislature. Increased funding for acute Baker Act services, which include CSU beds and inpatient hospital beds, has been a high priority issue for the Florida Council for several years. In 1987, the Florida Council surveyed CSUs to determine their costs for providing services, as distinct from their reimbursement rates.

12. The Florida Council did not obtain additional funding in the 1987 legislative session. In preparation for the 1988 legislative session, the Florida Council conducted a second survey. This survey also distinguished between CSU and in-patient hospital beds, and was intended to gather information on both of those Baker Act services for use in its lobbying activities.

13. The Florida Council summarized the survey results in a chart identified as "Crisis Stabilization Unit Deficiency Distribution" and "Inpatient Baker Act Hospital Deficiency Distribution" (Exhibit 30). The Florida Council's survey results categorized 45th Street as an inpatient hospital, and calculated its reimbursement as \$59 per bed per day, but its costs as \$160 per bed per day. The reimbursement rate was so low that it was incurring an operating deficit.

14. Independent of the Florida Council's efforts, the Department wanted to identify the Baker Act services that it purchased with public funds throughout the state, and to determine what the Department was paying for those services. The program office in Tallahassee conducted a telephone inventory of CSU beds, by contacting each of the Department's district offices. In response to the survey, the Department's District IX reported sixteen unappropriated CSU beds at South County and no CSU beds, appropriated or unappropriated, at 45th Street. All of 45th Street's inpatient services were reported as "other Baker Act services" in that survey. The survey did not ask District IX officials whether the beds at 45th Street functioned as CSU beds rather than as psychiatric hospital beds.

15. Departmental administrators ultimately produced a spread sheet based on the information derived from its informal, internal telephone survey. It showed 52 unappropriated CSU beds in District IX, which included beds at South County, but none at 45th Street's inpatient psychiatric hospital. 45th Street's beds were shown in a spreadsheet column entitled "number [of] mental health center in-patient beds". (Exhibit 1, Attachment 1, Col. 23.). No funding deficiency was identified by the Department for 45th Street's beds on the spreadsheet.

16. During 1989, the Department's central office was notified that the Legislature might be able to appropriate as much as \$2.2 million more for Baker Act services, and the Department was requested to suggest appropriate uses for those funds. The administrators in the Department's central office created a document entitled "Funds needed to increase all CSU beds to \$113 per day, Baker Act Funds" (Exhibit 8). The methodology employed by the administrator to produce that spreadsheet did not include any data for inpatient hospital beds; it included only licensed CSU beds. It therefore did not include any of 45th Street's inpatient beds but did include money to increase reimbursement for the 52 unappropriated CSU beds at South County. The Department based its

calculations on an estimated split of 75 percent/25 percent in the use of Baker Act funds for the state as a whole between CSU services (75 percent), and other services, including emergency screening, mobile crisis response teams, short-term residential services and inpatient services (25 percent), for fiscal year 1987-88 (the most recent data available). The 25 percent includes inpatient psychiatric hospitalization services which can be provided to clients needing them after stabilization in a CSU.

17. In its calculations, the Department's central office reduced the \$2.2 million which the appropriations committee staff had indicated might be available by \$717,590 which was needed to increase the funding level for previously appropriated CSU beds to the target level of \$113 per bed per day. The remaining funds would not be enough to fund all unappropriated CSU beds in the state at the target level of \$113 per bed per day, so a plan was devised to prorate the remaining amount over the unappropriated CSU beds. The prorated share for District IX was .2723 of the available funds, which would equal \$403,636. These internal calculations made by the Department's central office included no money for 45th Street's inpatient beds. The Department's calculations were ultimately delivered to appropriations staff at the Legislature. This information was not broken down by agency within each district (Tr. 55).

18. The 1989-90 General Appropriations Act appropriated \$2 million (not the anticipated \$2.2 million) in specific appropriation 895 for crisis stabilization unit beds. \$717,590 was allocated for appropriated CSU beds in the same manner suggested by the Department to legislative staff. The remaining \$1,282,410 was divided among unappropriated CSU beds. This is 29 percent of the money needed to bring all unappropriated beds up to \$113 per bed per day. While the allocations made in the General Appropriations Act are similar to those suggested by the Department (Finding 17), it is impossible to determine from the language in specific appropriation 895 whether the members of the Legislature intended to adopt the methodology implicit in the Department's suggested pro rata distribution. The text of the appropriation proviso does not speak to the distribution of funds within a district. The application of the Department's pro rata formula does yield the same increases specifically allocated by the proviso language to each HRS district. It is by no means clear, however, that the use of that suggested percentage figure for each district was also meant to serve as an appropriation to each CSU provider in each district of the amount of money which can be found in the workpapers prepared by the HRS central office, but which were never sent to the Legislature. For District IX, the pro rata share of .2723 would yield \$349,179, the amount which is contained in the proviso language for District IX. The evidence offered fails to prove that the Legislature had any specific will as to the distribution of the monies among providers within a district. The Legislature's focus, to the extent it can be discerned from the proviso language itself, appears to have been the funding of CSU services, without regard to licensure status of those providing the services. The beds at 45th Street provide CSU services.

19. Proviso language for specific appropriation 895 states that the entire \$2 million would be used for a "price level increase directly relating to the operation of CSU beds, and not to other Baker Act support services". The proviso language requires the Department to insure that the contracts with providers identify the amounts associated with the operation of CSU beds, as opposed to emergency screening and "other Baker Act services". Chapter 89-253, Law of Florida, specific appropriation 895.

20. Specific appropriation 895 also allocated \$291,404 to "community mental health centers that operate licensed psychiatric hospital beds" from general revenue to reimburse them for assessments paid to the Public Medical Assistance Trust Fund. That portion of the proviso language was vetoed by the Governor, and is not significant here.

21. The meaning of the proviso language actually included in specific appropriation 895 has been subjected to varying interpretations, and as would be expected, South County advances the interpretation which would grant it the greatest funding.

#### Actual Distribution of Funds in District IX

22. After the Department received the proviso language for specific appropriation 895, all districts were sent a memorandum (including attachments) which required them to establish a plan for spending the funds made available under specific appropriation 895. The plan each district submitted to the Department was known as its "CSU -Deficiency Funding Distribution Plan". In the Department's memo, Assistant Secretary Ivor Groves stated "this analysis addresses only the funding levels of CSU beds and does not speak to increasing the funding levels of SRT [short-term residential treatment] beds or inpatient beds operated by community mental health centers". (Exhibit 1, pg. 3). The memo noted that funds would be allocated based upon the 75/25 ratio of CSU bed funding to funding for other services, and the memorandum specifically requested information on each district's suggested formula for the equitable distribution of funds to providers which operated unappropriated CSU beds. Each district was asked to identify the amount of money it paid to contractors providing CSU beds. The districts reported separately amounts paid to contractors for "other Baker Act services," which would have encompassed inpatient services.

23. After receiving the Department's memorandum about the CSU price level increase, the program supervisor for District IX handling mental health programs was concerned that the memorandum did not appear to permit funding for inpatient beds from the \$2 million special appropriation. She consulted with the Department's program office and local legislators, 2/ and determined that the distinction between CSU beds, and the in-patient beds operated by 45th Street was irrelevant in District IX. This was so because although 45th Street was licensed as an inpatient psychiatric hospital, the beds located at 45th Street functioned as crisis stabilization beds. There is no crisis stabilization unit in the catchment area for District IX other than the 45th Street Mental Health Center. The police and others bring people suffering acute psychiatric crisis to 45th Street for the purpose of crisis stabilization, and ultimate referral to appropriate psychiatric treatment. Generally, 45th Street does not utilize its beds as inpatient short-term psychiatric hospital beds. Instead, they operate exactly as the crisis stabilization unit beds operated by other providers, such as South County, under their CSU licensure under Chapter 394.

24. 45th Street's Baker Act-funded inpatient hospital beds serve as crisis stabilization unit beds. 45th Street was also in need of the special price level increase monies to permit it to continue to operate those beds as the crisis stabilization beds for its catchment area.

25. 45th Street is not the only facility which operates short-term psychiatric beds as crisis stabilization unit beds. It is, however, the only facility licensed as a short-term psychiatric hospital whose reimbursement rates were so low that it already did not recover at least \$113 per patient per day for crisis stabilization services. Thus, it is the only facility licensed as a

short-term psychiatric hospital under Chapter 395 which would stand to gain any additional funding under specific appropriation 895.

26. In order to deal with this unique circumstance in District IX, a district program supervisor struck out the term "CSU beds" in the form attached in Assistant Secretary Ivor Groves' memorandum (Finding 22), and substituted the all-encompassing term "Baker Act beds" when calculating the CSU deficiency funding distribution plan for District IX. She included in that calculation the funding of the short-term psychiatric inpatient beds at 45th Street, as well as other licensed CSU beds operated by other providers in District IX.

27. In order to determine the increases necessary to bring all "Baker Act" beds up to the same reimbursement rate per bed per day, the District IX mental health program supervisor had to determine the rate at which District IX reimbursed each provider for the CSU services it made available to the Department. She did so by dividing the number of Baker Act patient days for each agency for the previous year into 75 percent of the Baker Act funds the agency received from the Department that year. The .75 multiplier was used to reflect the statewide 75/25 split in the use of Baker Act funds (see Finding 16 above). In performing this calculation for South County, the Department included all Baker Act funds South County had received. When performing the calculation for 45th Street, the Department did not include all funds that 45th Street had received that year; this had the effect of lowering the rate of reimbursement per bed per day computed under the formula, which in turn had the effect of requiring greater allocations of the deficiency appropriation to 45th Street for fiscal year 1989-90 in order to bring it up to the same reimbursement rate received by other providers, such as South County.

28. The funds excluded from 45th Street's calculation were:

(1) a special allocation the Department made to it to reduce the \$150,000 operating deficit incurred in a prior period. This was not money used to provide Baker Act services during 1988-89, was not recurring money and was properly excluded;

(2) \$258,776 45th Street had received for CSU beds newly appropriated for 45th Street that year, even though those beds had not yet been opened, (only \$59,000 actually was used for start-up costs, the rest also was applied toward 45th Street's operating deficit). The start-up costs were not recurring, and were properly excluded; and

(3) any "profits" from third party reimbursement that may have been paid to 45th Street due to its ability to be reimbursed by third party insurers. The amount of such reimbursement, if any, was not proven at the hearing. 45th Street had provided 10,845 days of CSU services for eligible Baker Act patients in 1988-89; its total reimbursement was \$619,326. This was multiplied by .75 (see finding 16), to estimate the total CSU reimbursement it had received. This in turn was divided by the 10,845 patient days to yield a reimbursement rate of \$42.42 per bed per day in fiscal year 1988-89. This is obviously a rough approximation of the reimbursement rate, but the methodology used is reasonable.

29. When District IX calculated its distribution of the \$349,179 available to providers of CSU services, the District included 30 beds at 45th Street in the formula, even though 45th Street had 44 beds. The volume of its services was such that 45th Street did fill 30 beds all year with Baker Act CSU patients.

30. The Department's distribution of the CSU deficiency money in District IX does permit patients treated in licensed psychiatric inpatient beds at 45th Street to be billed for in-patient services if they have insurance, but will also consider them CSU patients if they are receiving treatment under the Baker Act. There is no proof, however, that any significant number of patients the police or others bring to 45th Street for crisis stabilization have private insurers which 45th Street can bill. No evidence of any such reimbursement was introduced at the hearing.

31. South County complains that the Department's "functional" interpretation, which treats 45th Street's beds as CSU beds, is improper because it did not use this interpretation when it provided data to legislative staff, and that the Department has never utilized this interpretation in any rule, policy or procedure. The record does not indicate that any other CSU deficiency appropriations have been made, however, so there has been no occasion for the Department to face this question before. It is not surprising that no prior rule, policy or procedure dealt with this issue. In addition, the data provided to legislative staff was necessarily general data. Legislative staff sought and received a suggested plan for distribution of funds among districts, not among providers. The Department's suggestion was never intended to account for special or unique situations, such as that in District IX, where 45th Street, while licensed as an inpatient psychiatric hospital, functions as a crisis stabilization unit, but received such a low reimbursement rate per patient per day that it was operating in a deficit.

32. The Department's interpretation means that South County, which has 31 percent of the CSU beds in District IX, will receive only 7 percent of the deficiency appropriation, while 45th Street will receive 83 percent of the deficiency funding. This results from the low reimbursement rate which 45th Street has been receiving, and is consistent with the legislative intent to try to raise all providers of CSU services toward the goal of reimbursement at the rate of \$113 per bed per day. 45th Street will receive \$68.83 per bed per day under the Department's distribution plan. The Indian River Community Mental Health Center received none of the CSU deficiency distribution funds, because it already was receiving more than \$86 per bed per day.

33. After the issue of the Department's interpretation of the proviso language came up, both parties attempted to obtain correspondence from the members of the appropriations committees in the House and Senate giving their view of the proper interpretation of the proviso language. The positions expressed in these letters are irreconcilable. These after-the-fact statements from individual legislators lack evidentiary value.

#### CONCLUSIONS OF LAW

##### Jurisdiction

34. The Division of Administrative Hearings has no jurisdiction over this dispute. The preparation, modification or allocation of agency budgets are not reviewable in Section 120.57(1) substantial interest proceedings. The legislative definitions of the terms "rule" and "order", when read together, exempt the budgeting issues South County has raised from administrative challenge. Section 120.52(16) defines what a rule is. Under subsection (c), "rule" is defined so as not to include "the preparation or modification of: 1) agency budgets." An "order" is defined in Section 120.52(11) a: "a final agency decision which does not have the effect of a rule which is not excepted from the



definition of a rule. . ." Thus, the preparation or modification of agency budgets are neither rules nor orders.

35. The current definition of "rule" found in Section 120.52(16)(c)1., Florida Statutes, is remarkably different from that contained in the Reporter's Final Draft of the Administrative Procedure Act prepared by The Florida Law Revision Council for the 1974 Legislature.

36. The definition section of the Reporter's Final Draft, Section 0120.2, defined "rule" in subsection 11 as follows:

"Rule means any statement of general applicability by an agency made to implement, interpret, or prescribe law or policy; to describe the organization, procedure, or practice requirements of an agency; to allocate or spend state resources and finds; or to amend or repeal a prior rule... The term does not include (a) internal management memoranda which do not affect either the private interest of any person, or any plan or procedure important to the public, (b) legal memoranda or opinions issued to an agency by the Attorney General or counsel to the agency prior to their use in connection with agency action, or (c) the allocation of trust funds within an agency which derives none of its resources from the general revenue fund of the state. (emphasis added) See Volume 3, England and Levinson, Florida Administrative Practice Manual, Appendix B, Reporters Final Draft Statute, at 2-3. (emphasis supplied)

37. The Reporter's comments on that definition are also instructive. They include the following:

"(c) The definition is specifically designed to encompass the budget process in administrative agencies, including the proceedings by which budget recommendations are formulated, and agency action in which budget items are allocated after appropriation (such as action by the Board of Regents to divide a lump-sum appropriation among all state universities and colleges).

\* \* \*

(e) The exclusion for allocating trust funds provides needed flexibility for the assignment of regulatory fees and industrial assessments by any agency whose sole income is from those sources - i.e., so-called governmental trade association such as the Citrus Commission."

3 England and Levinson, supra, Appendix C at 13-14.

38. The definition ultimately enacted by the Legislature is greatly at odds with the definition and commentary on the term "rule" in the text of the Reporter's Final Draft Statute. The Legislature rejected the Reporter's view, and insulated the acts of agencies in formulating and allocating budgeted appropriations from review in Chapter 120 proceedings by providing that such allocations are neither rules nor orders. These legislative history materials are not discussed in the decision of the Court of Appeals in Palm Beach County Classroom Teachers Association v. School Board of Palm Beach County, 406 So.2d 1208 (Fla. 1st DCA 1981), but the Court's decision is consistent with them. That court held that a disappointed competitor for appropriated funds, the Classroom Teachers Association, could not use a Section 120.57(1) substantial interest proceeding to increase the School Board's intended allocation of funds for salary increases for instructional personnel. Similarly, South County may not challenge the allocations of CSU deficiency funds here. The issue South County has raised falls outside the range of disputes which may be resolved under Chapter 120. Out of an abundance of caution, however, a ruling on the merits of the claim will be made below. South County's argument that its position here is similar to that advanced by Medicaid providers seeking distribution of Medicaid funds under Section 40.226, Florida Statutes, is unpersuasive. Medicaid providers are entitled to reimbursement under their provider agreements, which are basically contracts with the state. Disputes over reimbursement are substantial interest proceedings which are governed by the terms of the contract, or under applicable statutes, rules or provider reimbursement manuals. They are not disputes over the appropriate allocation of legislative appropriations by the Department and its districts.

#### Specific Appropriation 895

39. Specific appropriation 895 of the 1989-90 General Appropriations Act states:

##### Special Categories

##### Grants and Aids - Baker Act Services

\* \* \*

From the general revenue funds provided in Specific Appropriation 895, \$2,000,000 is provided for a special price level increase for Crisis Stabilization Unit (CSU) beds.

This special price level shall be allocated prior to and separate from other price level increases provided with other funds. Of the \$2,000,000, \$717,590 shall be allocated as follows to be used as price level increases for specifically appropriated CSU beds:

\* \* \*

The remaining \$1,282,410 shall be allocated to districts to use as price level increases for other CSU bed contracts as follows:

\* \* \*

\$349,179 to HRS District 9;

\* \* \*

All of the \$2,000,000 shall be used for price level increases directly relating to the operation of CSU beds, and not to other Baker Act support services. The Department of Health and Rehabilitative Services shall ensure that contracts with providers identify

the contract amounts associated with operation of CSU beds as opposed to crisis screening and other Baker Act services. Chapter 89-253, Laws of Florida.

The Department's interpretation of the language of the appropriations act is to be accorded deference, as would its interpretation of substantive law under the decisions in *Pan American World Airways, Inc. v. Florida Public Service Commission*, 427 So.2d 716, 719 (Fla. 1983); *State Department of Health and Rehabilitative Services v. Framat Realty, Inc.*, 407 So.2d 238, 242 (Fla. 1st DCA 1981); *Natelson v. Department of Insurance*, 454 So.2d 31 (Fla. 1st DCA 1984), rev. den., 461 So.2d 115 (Fla. 1985); *Florida Department of Corrections v. Provin*, 515 So.2d 302, 305 (Fla. 1st DCA 1987); and *Gulf Coast Home Health Services of Florida, Inc. v. Department of Health and Rehabilitative Services*, 527 So.2d 262 (Fla. 1st DCA 1988). The starting point for interpreting a legislative enactment is the language of that enactment itself. The agency has taken a functional approach to the legislative use of the term "CSU beds", which appears to be wholly consistent with the legislative purpose. The question is not whether the beds at 45th Street are licensed to a short-term psychiatric hospital, so that they may be used for longer-term care than is provided by crisis stabilization units. The question is whether they actually function as crisis stabilization unit beds. Nothing in the language of the Appropriation Act indicates a concern with licensure status of facilities actually providing CSU services. South County places entirely too much reliance on the language "and not to other Baker Act services" because the evidence established that the money is not being provided to 45th Street for emergency screening, mobile crisis intervention, short-term residential treatment or for psychiatric hospitalization, which would be "other Baker Act services." 45th Street is being reimbursed for its CSU services.

40. A definition of a crisis stabilization unit appears in Chapter 394, Florida Statutes. The Legislature had already required licensure of psychiatric hospital beds under Chapter 395, Florida Statutes when Chapter 394 was enacted. Under Section 394.875(1)(a), Florida Statutes, CSU units are described in the following way:

The purpose of a crisis stabilization unit is to stabilize and redirect the client to the most appropriate and least restrictive community setting available, consistent with the client's needs. Crisis stabilization units may screen, assess, and admit for stabilization persons who present themselves to the unit and persons who are brought to the unit under Section 394.463. Clients may be provided 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services. Crisis stabilization units shall provide services regardless of the client's ability to pay and shall be limited in size to a maximum of 30 beds.

Crisis stabilization units provide services which any psychiatric hospital must also provide to patients they admit (although they might condition admission on proof of ability to pay for hospital services). Crisis stabilization units are not, however, required to provide all the ancillary services ordinarily

associated with a hospital, which accounts, in part, for their ability to provide crisis stabilization at a lower cost per patient day than is charged by general or psychiatric hospitals. It is improper, however, to assume that only a crisis stabilization unit licensed under Chapter 394 can do those things described in Section 394.875(1)(a). The statute itself shows this, when it states:

The department may issue a license for a crisis stabilization unit or short-term residential treatment facility, certifying the number of authorized beds for such facility as indicated by existing need and available appropriations. The department may disapprove an application for such a license if it determines that a facility should not be licensed pursuant to the provisions of this chapter. Any facility operating beds in excess of those authorized by the department shall, upon demand of the Department, reduce the number of beds to the authorized number, forfeit its license, or provide evidence of a license issued pursuant to Chapter 395 for the excess beds. (emphasis added) Section 394.875(8), Florida Statutes.

This final clause of Section 394.875(8) reflects a legislative understanding that those things done in a crisis stabilization unit are a subset of the things done in a psychiatric hospital licensed under Chapter 395, Florida Statutes.

41. This case illustrates, in the Florida context, the observation made by Professor Jeremy Rabkin of Cornell University at the program of the Section of Administrative Law of the American Bar Association in October, 1987, *The Contribution of the D.C. Circuit to Administrative Law*, 40 *Administrative Law Review* 507 (1988). There, Professor Rabkin reflected on the caseload of the federal appellate court which deals most often and most comprehensively with federal administrative law. After reviewing decisions of that court, he believed that the decisions disclose a division among those

who are most concerned to see that particular interests groups get what they "deserve" (meaning whatever they may have wrung out of legislative or administrative bargaining in the past), and those on the other side who are more sympathetic to executive power. 40 *Administrative Law Review* at 541-42.

42. Here, South County believes that it had "wrung" from the legislative process through the Florida Council certain benefits, and it has attempted to use the administrative process to wrest from the administrators at the Department the authority to make an interpretation of the Appropriations Act which South County believes despoils it of a legislative victory. The Department's administrators have made a persuasive case that their interpretation is consistent with the Legislature's intention to provide crisis stabilization services to persons who need them. The Department's interpretation provides additional funding to a low-cost provider, which otherwise would find it difficult to remain in the market, and therefore maintains the availability of crisis stabilization services within the district.

43. South County's argument that the funding calculation used by District IX artificially deflates the reimbursement per bed per day which 45th Street obtains by ignoring third party reimbursements, which are not available to ordinary, licensed CSU providers, is unpersuasive. The vast majority of the services rendered by 45th Street are CSU services. It provided 10,845 days of CSU services in the last fiscal year, which would fill 30 beds over the course of a year. While it can admit psychiatric patients, South County failed to advance any evidence that third party reimbursement to 45th Street exceeded a negligible amount. There is no evidence that the Department's calculation of reimbursement per patient day at 45th Street is wrong and that some other specific figure should have been used.

#### RECOMMENDATION

It is RECOMMENDED that the Department of Health and Rehabilitative Services enter a Final Order dismissing the Petitioner's challenge to the disbursement of monies in District IX under Specific Appropriation 895 of the 1989-90 General Appropriations Act for lack of jurisdiction.

DONE AND ENTERED in Tallahassee, Leon County, Florida, this 28th day of March, 1990.

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WILLIAM R. DORSEY, JR.  
Hearing Officer  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of March, 1990.

#### ENDNOTES

1/ All references to the Florida Statutes shall be to the 1989 edition, unless otherwise specified.

2/ The response recounted for individual legislators has no persuasive value here.

#### APPENDIX TO RECOMMENDED ORDER DOAH CASE NO. 89-6088

Rulings on proposals made by South County Mental Health Center:

1. Adopted in finding of fact 1.
2. Adopted in finding of fact 2.
3. Adopted in finding of fact 3.
4. Adopted in finding of fact 4.
5. Adopted in finding of fact 5.
6. Adopted in findings of fact 5 and 6.

7. Adopted in finding of fact 7, but the second sentence is rejected as unnecessary.
8. Incorporated in finding of fact 9.
9. Adopted in finding of fact 9.
10. Incorporated in finding of fact 8.
11. Incorporated in finding of fact 11, but the third sentence is rejected as unnecessary.
12. Adopted in finding of fact 12.
13. Adopted in finding of fact 13.
14. Incorporated in finding of fact 14.
15. Incorporated in finding of fact 15.
16. Incorporated in finding of fact 16.
17. Incorporated in finding of fact 17.
18. Rejected because while the memo does use the term "licensed beds" no distinction between licensed and unlicensed beds was significant for the purposes for which that memorandum was prepared.
19. Generally adopted in finding of fact 18.
20. Adopted in finding of fact 20.
21. Rejected as unnecessary.
22. Generally adopted in finding of fact 22.
23. Generally adopted in finding of fact 23.
24. Adopted in finding of fact 27. It was appropriate to consider all services at 45th Street to be CSU services, because those are the services it provided to HRS for the money received.
25. Rejected because the licensure distinction, for purposes at hand, is not significant. The services provided for the money made available by the Department controls.
26. Discussed in finding of fact 28.
27. Rejected; the hospital has very little in the way of private pay patients (Tr. 167), so there is little likelihood that "profits" from psychiatric hospitalization services was being hidden from the Department.
28. Incorporated in finding of fact 28.
29. Discussed in finding 26.
30. To the extent necessary, discussed in finding of fact 29. The funding of Indian River is not at issue in this matter.
31. Discussed in finding of fact 30. There is very little in-patient psychiatric service provided at 45th Street. Practically all of its services are CSU services.
32. Implicit in finding of fact 30.
33. Discussed in finding of fact 25. The comparison for Lake Sumter and Circles of Care are misleading. (See Tr. 219-210)
34. Rejected, see finding of fact 31.
35. Rejected as irrelevant. The question was the number of beds in 1989, not whether 45th Street could now be said to have 50 beds. What the Department may have done in its 1990-1991 budget is irrelevant to the issue presented here.
36. Adopted in finding of fact 32.
37. Rejected as a matter of law. See conclusions of law.
38. Rejected. See finding of fact 33.

Rulings of findings proposed by the Department of Health and Rehabilitative Services:

The proposed order is rather general. All of the findings have, in essence, been adopted in the recommended order.

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