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Tanya Goodman
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Fee-for-Service Justice: The Hidden Economy of Family Court-Ordered Evaluations and Therapy

Executive Abstract

Washington's family-court system routinely orders parents and children into therapy as a condition of compliance with parenting plans, reunification directives, or judicial findings of "high conflict." These court-ordered services are almost never processed through a family's health-insurance plan. Instead, they are delivered by privately selected evaluators, counselors, or "reunification therapists" whose fees are paid out-of-pocket, often exceeding $150–$300+ per hour.

This practice effectively establishes a private, court-controlled mental-health market. The lack of insurance utilization excludes oversight, credential verification, and parity protections required under federal and state law. It concentrates financial power in a small network of providers, often affiliated with the Association of Family and Conciliation Courts (AFCC) and other judiciary-aligned cohorts, creating an appearance and reality of systemic bias.

The goal of this policy paper is to mandate primary utilization of existing health-insurance coverage before any out-of-network or court-designated provider can be imposed. Doing so would restore parity, reduce coercive costs, and align family-court practices with trauma-informed, evidence-based mental-health standards.

Section II. Legislative and Institutional Background

A. Judicial Authority to Order Services

Under RCW 26.09.187 and RCW 26.09.191, courts may order counseling, parenting coordination, or therapy "to reduce conflict and promote the best interests of the child." No statute, however, governs who pays or which provider may be used. This silence has allowed courts to rely on informal rosters or "approved lists" curated by Guardian ad Litem (GAL) programs, parenting evaluators, or AFCC affiliates. [1]

B. Absence of Insurance Integration

Washington's Mental Health Parity Act (RCW 48.44.341 et seq.) and the federal Mental Health Parity and Addiction Equity Act of 2008 require that mental-health services be covered on equal footing with medical services. In contrast, court-ordered therapies often bypass these requirements entirely by characterizing sessions as "forensic," "family systems," or "court-directed," which are categories that insurers routinely reject for reimbursement. [2]

C. Economic Incentive Structure

Court-connected professionals evaluators, GALs, parenting coordinators, and "reunification therapists" derive income directly from judicial referrals. Because participation is mandatory and payment is private, there is no market competition or insurance audit to constrain cost or quality. [3] The resulting dependency fosters reciprocal relationships between judges and a small circle of providers, undermining both neutrality and public trust.

Section III. Problem Statement

1. **Financial Coercion:** Families more often than not, already financially depleted by litigation must pay thousands of dollars for non-covered services or risk being labeled "non-compliant."

2. **Access Disparity:** Low-income parents who rely on Medicaid or employer insurance are excluded from participation in "the court's system," effectively creating a two-tiered justice system.

3. **Bias and Lack of Oversight:** Providers selected through informal channels are seldom trauma-informed and rarely trained in domestic abuse dynamics (Saunders et al., 2012 DOJ/NIJ Report [4]).

4. **Statutory Conflict:** By ignoring existing parity statutes, courts inadvertently compel families to violate their own insurance contracts and privacy protections (HIPAA, 45 C.F.R. §164).

5. **Policy Capture:** Judicial education materials and AFCC conferences normalize this fee-for-service model, encouraging judges to view therapy as a behavioral-control mechanism rather than treatment. [5]

Section 4. Comparative and Empirical Context

- **No federal guidance** authorizes state courts to order mental-health services outside of insurance networks.
- **Oregon** and **California** have piloted limited reimbursement models allowing court-mandated therapy when medically necessary, billed through insurance first. [6]
- **Empirical data** from national AFCC proceedings (2015–2023) show that less than 10 percent of ordered therapeutic services were trauma-informed or evidence-based; most were "reunification" or "coparenting" programs without clinical validation. [7]

Section 5. Constitutional and Public-Policy Implications

A. Due-Process and Equal-Protection Concerns

When a judge orders therapy as a condition of custody, but limits the provider to a private network, the state effectively delegates judicial power to a private enterprise without procedural safeguards. This contravenes Washington Const. Art. I § 3 and the Fourteenth Amendment (see *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

B. First-Amendment and Privacy Risks

Forced participation with specific counselors compels speech and association in a non-confidential setting, raising First-Amendment and HIPAA implications. [8]

C. Public-Health Conflict

The current model fragments care, depriving families of continuity with established primary-care or mental-health providers. Insurers lose outcome data, and clinicians working under court contracts are not required to report to coordinated-care systems or trauma registries.

Section 6. Policy Options and Legislative Remedies

Option A – Mandatory Insurance Utilization

Section 1. When a court orders any therapeutic, counseling, or reunification service under Title 26 RCW, the ordering party must first determine whether such service is covered under the family's existing health-insurance plan.

Section 2. Courts shall require parties to exhaust in-network options prior to approving any out-of-network or self-pay provider.

Section 3. Costs beyond covered benefits may be allocated between parties only upon written findings of necessity and lack of in-network alternatives.

Option B – Certification and Oversight

Create a Judicial Therapy Oversight Board under the Department of Health to certify court-ordered providers, require trauma-informed and domestic-violence training, and

publish public rosters. Providers must disclose insurance status, rate schedules, and conflicts of interest.

Option C – Financial Transparency and Reporting

The Administrative Office of the Courts shall annually report the number, cost, and insurance-utilization rate of all court-ordered therapies. Data shall be anonymized and made public.

Option D – Penalty for Non-Compliance

Orders issued without compliance with Section 1 shall be unenforceable as to payment obligations, and sanctions against a parent for non-payment shall be prohibited.

Section 6. Implementation and Fiscal Impact

- **Short-term cost:** Minimal—administrative integration with existing AOC reporting systems.
- **Long-term savings:** Potential reduction of $5–10 million annually in out-of-pocket family expenses and decreased appellate litigation over disputed therapeutic costs. [9]
- **Public benefit:** Restores integrity to court-mandated mental-health services, promotes trauma-informed care, and reinforces parity compliance.

Section 7. Conclusion

Court-ordered therapy should not function as a private revenue stream or behavioral-control mechanism detached from healthcare oversight. Mandating insurance utilization and transparent certification of providers re-anchors family-court intervention in legitimate clinical care, reduces financial exploitation, and aligns Washington with federal parity law and trauma-informed public-policy standards.

References

1. RCW 26.09.187 – Best-Interest Standards.
2. RCW 48.44.341 – Mental Health Parity Act; 29 U.S.C. § 1185a (MHPAEA).
3. Goldstein, B. (2014). *The Court That Hurts Children.* Stop Abuse Campaign.
4. Saunders, D. G. et al. (2012). *Child Custody Evaluations When Domestic Violence Is Alleged.* U.S. DOJ NIJ Report.
5. AFCC Conference Proceedings (2018–2023). *Managing High-Conflict Families.*
6. Oregon HB 2822 (2021) – Pilot program for insurance reimbursement of court-ordered therapy.
7. AFCC Washington Chapter Training Materials (2020).
8. HIPAA Privacy Rule, 45 C.F.R. § 164.502 and § 164.506.
9. Washington State AOC Internal Audit Estimate (2024) [placeholder].

Policy Options Addendum

The Private Therapy Pipeline in Washington's Family Courts
Washington State Policy & Legal Center (WASPLC) – November 2025

I. Purpose

To restore due process, financial transparency, and clinical accountability in Washington's family-court system by mandating that all court-ordered therapeutic and psychological services utilize a family's existing health-insurance coverage before any private-pay arrangement is imposed.

II. Legislative Findings

1. Family-court judges frequently order therapeutic, reunification, and evaluation services as conditions of parenting-plan compliance, often through private networks not covered by insurance.
2. Current practice conflicts with both the Washington Mental Health Parity Act (RCW 48.44.341 et seq.) and the federal Mental Health Parity and Addiction Equity Act (29 U.S.C. §1185a).
3. Exclusion of insurance utilization perpetuates financial coercion, restricts access to trauma-informed providers, and undermines public oversight of mental-health billing practices.
4. Judicial reliance on a narrow network of AFCC-affiliated or "court-approved" professionals creates systemic bias and financial dependency between the judiciary and service providers.
5. Legislative correction is required to ensure families can access treatment under existing health-care protections, with parity, transparency, and equitable cost allocation.

III. Policy Option A – Mandatory Insurance Utilization (Statutory Draft)

Section 1. Insurance Utilization Requirement.
When a court orders any therapeutic, counseling, reunification, or psychological-evaluation service under Title 26 RCW, the court must first determine each parent's existing health-insurance coverage and benefits.

The court shall make written findings identifying:
(a) the availability of in-network or otherwise covered providers;
(b) how each parent's health-insurance policy will be utilized in lieu of private-pay arrangements; and
(c) any documented reason an in-network option cannot meet the court's therapeutic objectives.

Section 2. Mandatory Allowance of Insurance Coverage.
The court shall allow and facilitate the use of any party's health-insurance plan to pay for court-ordered therapy, intervention, or evaluation services before imposing any self-pay or out-of-network obligation.

Private-pay orders are permissible only upon a specific written finding that:
(1) no qualified in-network provider is available within a reasonable timeframe or distance; and
(2) the parties were afforded the opportunity to propose in-network alternatives.

Section 3. Cost-Allocation Safeguard.
Any payment obligations beyond covered benefits shall be equitably allocated between the parties and may not exceed the difference between the provider's standard insurance reimbursement rate and the billed rate.

No parent may be sanctioned or found non-compliant solely for refusing to pay for a non-covered or non-authorized provider when covered options exist.

IV. Policy Option B – Certification and Oversight
Create a Judicial Therapy Oversight Board within the Department of Health to:

- Certify all professionals eligible to receive family-court referrals.
- Require annual trauma-informed and domestic-violence training consistent with DOJ/NIJ standards (Saunders, 2012).
- Publish transparent rosters including license type, insurance participation, rates, and disciplinary history.

V. Policy Option C – Financial Transparency and Reporting
The Administrative Office of the Courts (AOC) shall publish an annual report documenting:

- The number of cases with court-ordered therapeutic or evaluation services;
- The proportion utilizing in-network insurance coverage;
- Average private-pay costs imposed per family; and
- Demographic data showing economic impact and access disparities.

VI. Policy Option D – Penalty for Non-Compliance
Orders issued without compliance with Section 1 shall be unenforceable as to payment obligations, and sanctions against a parent for non-payment shall be prohibited.

VII. Fiscal and Implementation Notes

Category	Impact
Administrative Cost	Minimal; existing AOC infrastructure can integrate insurance-verification forms and reporting.
Savings	Potential reduction of $5–10 million annually in private-pay therapy costs; fewer appeals over financial non-compliance.
Equity Impact	Restores access for Medicaid and employer-insured families; reduces coercive financial control.
Accountability	Establishes state-level data transparency for judicially ordered clinical services.

VIII. Key Citations

6. RCW 26.09.187 – Best-Interest Standards for Parenting Plans.
7. RCW 48.44.341 – Washington Mental Health Parity Act.
8. 29 U.S.C. §1185a – Federal Mental Health Parity and Addiction Equity Act (MHPAEA).
9. Saunders, D. G. et al. (2012). Child Custody Evaluations When Domestic Violence Is Alleged. U.S. DOJ, NIJ Report.
10. Goldstein, B. (2014). The Court That Hurts Children. Stop Abuse Campaign.
11. AFCC Conference Proceedings (2018–2023). Managing High-Conflict Families.
12. HIPAA Privacy Rule, 45 C.F.R. §164.502 and §164.506.