FBT attorneys granted stay in West Virginia, ensuring continued care for over 300 children in need

Last year, state agencies in West Virginia sought to impose new reimbursement and program requirements on residential childcare facilities. Under the proposed contracts, child service providers could maintain bundled rates for room/board/supervision but would have to submit itemized bills for medical treatment. There would also be a 180-day limit to a child's stay, even if he or she needed additional counseling. If implemented, the new requirements stood to benefit the state budget. But, for providers, they represented a virtual sea-change to the status quo, making the closure of several facilities likely, if not imminent, and threatening the care of hundreds of children with emotional and behavioral issues.

Seven child service providers, including three clients of Frost Brown Todd (FBT), filed a petition for injunctive relief, arguing for a halt to the proposed changes until the state could establish that they had complied with clear rule-making standards. FBT attorneys Kara Eaton from the Pittsburgh office and Jared Tully and Charles Johnson from Charleston worked with co-counsel on drafting the petition, which the Circuit Court later denied on the grounds that negotiating contracts was the province of the state's executive branch, not its courts; and if providers weren't satisfied with the state's contractual terms, they could exercise their right to rescind services.

That Friday, when the denial was issued, it looked as though the child service providers would have to capitulate to these drastic changes or risk closure of their facilities. Though undaunted, the FBT team was faced with a difficult decision. They could appeal the Circuit Court's ruling on the preliminary injunction or concede the fight and hope their clients could find a way to keep the lights on. Surprisingly, they did neither and instead opted for a third course of action. They worked through the weekend to draft a second petition, outlining a different and somewhat novel argument for a stay. On the following Monday, they filed the new petition with the West Virginia Supreme Court of Appeals.

Indeed, what made the second petition so extraordinary was that its argument was structured around the seldom invoked Writ of Mandamus, the precedent for which was a 1981 case involving sub-standard conditions in mental health facilities. Back then, the West Virginia Supreme Court of Appeals ruled that the “Dickensian squalor,” as one stakeholder put it, violated the patients' rights. But, in the present context, our attorneys argued that legislative rule-making should presuppose any changes to existing childcare facilities. More importantly, they expressed concern that the proposed changes might undermine the court's discretion in determining the placement and treatment of children in the state's custody. Because state agencies could not furnish evidence to the contrary, the West Virginia Supreme Court of Appeals granted a temporary stay, pending a second hearing in the lower court.

This novel tactic—using a Writ of Mandamus to challenge state action as a violation of legislative rule-making requirements—proved critical in convincing the Court to grant a quick stay, thereby protecting FBT's clients and the 300-plus children in their care. Yet, this case is likewise notable for its interoffice collaboration. With little time, high stakes, and some 200 miles of highway between them, Kara, Jared, and Charles worked together to take prompt action and secured a favorable outcome for our clients and an important achievement for the firm.