



Children, Families, Health, and Human Services Interim Committee

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58th Montana Legislature

SENATE MEMBERS

JOHN ESP
JERRY O'NEIL
GERALD PEASE
TRUDI SCHMIDT

HOUSE MEMBERS

EVE FRANKLIN--Vice Chair
DON ROBERTS--Chair
EDITH CLARK
CAROL GIBSON

COMMITTEE STAFF

SUSAN FOX, Research Analyst
GREG PETESCH, Staff Attorney
DAWN FIELD, Secretary

MINUTES

April 30, 2004

Room 102, State Capitol
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

REP. EVE FRANKLIN, Vice Chair, Presiding

SEN. JOHN ESP
SEN. JERRY O'NEIL
SEN. GERALD PEASE
SEN. TRUDI SCHMIDT

REP. EDITH CLARK
REP. CAROL GIBSON

COMMITTEE MEMBERS EXCUSED

REP. DON ROBERTS

STAFF PRESENT

SUSAN FOX, Research Analyst
GREG PETESCH, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Committee approved:

- regarding representation for parents (Issue A, Option 3), a recommendation to the LJIC to consider statutory changes to require appointment of legal counsel for all parents, guardians, or those with legal custody who are involved in child abuse and neglect proceedings that may result in removal or placement of a child or termination of parental rights as a part of that Committee's consideration in the development of a public defender system in the state. The Committee also asks the Law and Justice Interim Committee to consider a family law specialist in the public defender system to assist public defenders in difficult cases and recommends the wisdom of a background or expertise in family law for those who are assigned these cases in a public defender system.
- regarding identifying the number of parents already receiving counsel and the additional number of parents who would need it in removal, placement, and termination proceedings (Issue B), a recommendation that the LJIC consider the information that either the State Court Administrator or the DPHHS child and Family Services Division, in cooperation with the other, determine the numbers of parents, guardians, or those with legal custody of children who would require legal counsel in removal, placement, and termination proceedings.
- regarding defining indigency (Issue C), a recommendation to the Law and Justice Interim Committee urging that indigency be statutorily defined;
- regarding the representation of children (Issue A), a recommendation to the LJIC to consider:
 - ▼ Option 1: "Recommend that an accurate assessment be made of the cost to provide a guardian ad litem to each child alleged to be abused or neglected across the state.";
 - ▼ Option 2: "Additional information on the number of children who may also need legal counsel is needed and should be included in any request of additional information (Issue I.B.). It is important to note that 20 states appoint counsel in all cases of child abuse and neglect, and that is an issue that warrants attention in the development of a public defender system.";
 - ▼ Option 3: "Develop standards for guardians ad litem (changes in the federal level now require training) and specify responsibilities when a public defender is also involved."; and
 - ▼ although it is outside the scope of this study, to also consider specific staff training for child abuse and neglect cases.
- regarding where child abuse and neglect cases fit in a public defense system (Issue A, Option 1) keeping the CASA/GAL program in the State Court Administrator's Office;
- regarding quality of representation and other issues, support of the concepts of "reasonable case loads" and "consistency and continuity in representation";
- approved paying Committee member's expenses to attend the Prevention Conference and the Methamphetamine Summit; and
- approved drafting legislation to allow the Mental Health Ombudsman to designate a health oversight agency and to address other related information access issues.

CALL TO ORDER AND ROLL CALL

REP. FRANKLIN reconvened the Children and Families Interim Committee at 8:35 a.m. on Friday, April 30, 2004. The secretary noted the roll (Attachment #3), REP. ROBERTS was excused.

HJR 3 STUDY: PUBLIC DEFENSE FOR INDIGENT PARENTS IN CHILD ABUSE AND NEGLECT PROCEEDINGS

Ms. Fox asked to review two documents previously mailed to Committee members: *House Joint Resolution No. 3: Representation for Parents and Children in Child Abuse and Neglect Cases* (EXHIBIT #1) and *Decision Points Worksheet* (EXHIBIT #2) and said the documents would be used to help the Committee to formulate its recommendations for the Law and Justice Interim Committee (LJIC).

Ms. Fox said the LJIC has formed a subcommittee to work on specifically on this issue. SEN. MCGEE is chairing the Subcommittee and is aware that the Children and Families Interim Committee is working on recommendations addressing child abuse and neglect cases. The Children and Families Committee will be kept abreast of any decisions made by the LJIC.

Ms. Fox led the Committee through an explanation and discussion of each issue using EXHIBIT #1 as a guide. (Committee recommendations follow after the Committee discussion.)

Representation for Parents Discussion -- Page 1, EXHIBIT #1

The Committee has received information that variability exists around the state within and between judicial districts regarding the practice of appointing legal counsel for indigent parents involved in child abuse and neglect proceedings.

Ms. Fox discussed several different sources of information on establishing standards and guidelines for court-appointed counsel for parents and guardians:

- United States Department of Health and Human Services Standards for Legal Representation of Children, Parents, and Child Welfare Agency (Page 2, EXHIBIT #1); and
- 1995 Resource Guidelines from the National Council of Juvenile and Family Court Judges (Page 3, EXHIBIT #1).

Ms. Fox reviewed statistics from the 1996 audit by the Court Assessment Program (Page 3, EXHIBIT #2) relating to representation for custodial and noncustodial parents in termination proceedings.

Ms. Fox reviewed each of the three options and asked for Committee discussion (Page 3, EXHIBIT #1):

- 1) Remain at status quo;
- 2) Recommend statutory changes to require appointment of counsel for indigent parents at an earlier stage of proceedings; or

- 3) Forward a recommendation to the Law and Justice Interim Committee to urge consideration of appointment of legal counsel for all parents, guardians, or those with legal custody who are involved in child abuse and neglect proceedings.

REP. CLARK said the LJIC will be working to establish a statutory definition of indigency, in order to provide consistency to the system. Montana laws should be consistent with the federally mandated Indian Child Welfare Act (ICWA).

Ms. Fox said options 2 and 3 could be combined. If the LJIC did not adopt the recommendation, this Committee could still pursue this on its own.

SEN. SCHMIDT wanted to know if there is a current legal definition of indigency, and if so, what it is. **Greg Petesch, Director, Legal Services**, said currently, indigency is determined by submitting a financial form to the District Court. There is no standard determination, each District Judge makes his/her own determination based on the financial disclosure form. The form itself is standard but how the judge applies the information on the form to determine indigency is strictly up to each individual judge.

SEN. O'NEIL asked when ICWA requires counsel to be appointed. Mr. Petesch said ICWA requires counsel at the point of removal of the child from the home. SEN. ESP wanted to know what the financial implications could be if counsel is mandated for parents earlier in the process. Ms. Fox said there would be a financial impact but needed additional information before she could give an exact number. She referred to Page 4 of EXHIBIT #1 and discussed the data for fiscal year 2003 received from Shirley Brown, Child and Adult Protective Services (CAPS), DPHHS. CAPS court events for fiscal year 2003 were also discussed (Page 4, EXHIBIT #1).

Ms. Fox also said the Court Assessment Program may be an appropriate entity within the Court Administrator's Office to perform much of this information gathering. The Court Assessment Program is actively gathering this information now. The Committee may want to make a recommendation contingent upon the information gathered from that survey.

SEN. SCHMIDT asked if this Committee could recommend a consistent form for application of indigency standards be developed. Ms. Fox said even though the LJIC is developing a definition, this Committee could develop its own recommendation. Mr. Petesch said the LJIC is developing a statutory definition for indigency tied to the federal poverty index so that everyone will be treated the same, in terms of what is indigent. Ms. Fox said it is not always a poverty issue and that other factors can impact a family's ability to pay for representation.

Shirley Brown, Division Administrator, Child and Adult Protective Services, DPHHS, verified that the information provided to Ms. Fox by her division was as recent and accurate as could be under the circumstances. She emphasized that the representation numbers were only "ballpark in nature" because a single hearing may have a mother, a father, and the children all being represented by different attorneys. Having to deal with two to three attorneys for every case is a possibility.

Ms. Brown said a practical approach must be taken because cost is such a big factor. Best practice is what is desired but the Committee must be cognizant of cost factors also. Ms. Brown distributed a breakdown of the specific judicial districts (EXHIBIT #3). She said the

information may have changed slightly because of State assumption of District Court and that there may be even more districts appointing counsel at initial proceedings than indicated on the breakdown.

Ms. Fox said child abuse and neglect cases are not exclusive to low income families, but low income families have more stressors in their lives that may lead to instances of abuse and neglect. Child abuse and neglect numbers may not be reduced significantly simply by defining indigency.

REP. FRANKLIN asked if there was any qualitative data on if the time of appointment of parental representation impacted the outcome of the case. Ms. Brown said she could provide anecdotal information only. Generally speaking, there is a sense that when parents are appointed counsel at the initiation of the proceedings, they are better informed and have a better understanding of the process. There is also a sense from social workers, that when parents are appointed attorneys up front, there may be a delay in the proceedings because many attorneys will request a continuance. Judges and DPHHS believes that it is better for counsel to be appointed in the beginning of proceedings.

SEN. ESP asked if the larger counties are more aggressive and proactive in appointing counsel. Ms. Brown said the most of the larger counties do appoint counsel at the initiation stage. SEN. ESP asked what percentage of cases in the data in Ms. Fox's report (EXHIBIT #1) were indigent. Ms. Brown said she could not give a specific answer but that she would estimate that many of them were indigent cases.

REP. FRANKLIN summarized the discussion by saying the Committee must respond to the needs of indigent parents who need counsel and also must consider the bigger picture of cost and safety.

SEN. O'NEIL said a bill was passed in the 2003 Legislature which allowed parents to have an advocate to help them in voluntary proceedings. He asked Ms. Brown if this option had been used yet. Ms. Brown said it was helpful to have this available to the family but could be much more effective if the advocates had training in the system and process.

Ms. Fox said that other states have established standards for determining indigency. Specifically, Washington State Office of Public Defense has a publication on the Criteria and Standards for Determining and Verifying Indigent Defense. This is available to this Committee, if needed.

Representation for Children -- Page 6, EXHIBIT #1

If an indigent parent is appointed counsel, the question arises: "does the child also need counsel"? Other issues also indicate the need for examination of this issue. In Montana, as of January 2004, there are 14 nonprofit, one District Court, and three tribal Court-Appointed Special Advocate/Guardian Ad Litem (CASA/GAL) programs, all of which are in place to advocate for children.

Ms. Fox also discussed a Washington State law enacted in 2000 requiring counsel to be appointed at a hearing for out-of-home placement and the results of a National Center for State

Courts survey on representation for children (Page 7, EXHIBIT #1). A point of interest to the Committee is that the system being considered for Montana would not be attached to the Judiciary Branch, but to the Executive Branch.

The options (Page 7, EXHIBIT #1) for consideration are:

- Recommend that an accurate assessment be made of the cost to provide a guardian ad litem to each child allege to be abused or neglected across the state.
- Additional information on the number of children who may also need legal counsel is needed and should be included in any request of additional information.
- Develop standards for guardian ad litem and specify responsibilities when a public defender is also involved.
- Fund guardian ad litem and public defender programs sufficiently so that each child has an appointed guardian ad litem and a public defender if needed.
- In developing any public defender/appointed counsel system, take into consideration the population of children who may require counsel and include a recommendation that may require attorneys to be specifically trained in child abuse and neglect issues.

Ms. Fox said training and standards for guardian ad litem may be an important issue in legal counsel. A child abuse and neglect case is a very emotional situation and a very intricate area of law. An inexperienced or untrained person may have difficulty providing the proper defense and assistance to a parent or a child. REP. FRANKLIN commented that many guardian ad litem are nonattorney volunteers with little knowledge and experience. Ms. Fox believed there are federal requirements in place now for training guardian ad litem. Montana may want to encourage this also. If it is decided that the CASA/GAL program should be the primary representation for children, perhaps funding and quality issues must be considered as well.

Where Do Child Abuse and Neglect Cases Fit In A Public Defense System -- Page 8, EXHIBIT #1

This issue centers on whether the CASA/GAL program should be included in a statewide public defender system or if it should remain under the State Court Administrator in the Judicial Branch. The LJIC is developing recommendations for establishing a new public defender office within the Executive Branch and is working to delineate between what would be a public defender/appointed counsel cost and what would be a State Court Administrator cost.

Beth McLaughlin, State Court Administrator's Office, has indicated to Ms. Fox that she thinks it would be appropriate for CASA/GAL to stay with the State Court Administrator's Office.

The LJIC has developed a definition of "public defender or appointed counsel". The definition does not include guardians, mediators, or advocates appointed by the court, unless the appointment included also acting as counsel in the court room. Under this definition, CASA/GAL would not fit into the proposed public defender system.

Ms. Fox read aloud the results of the survey done by Judith Nord (*Other States' Use of Public Defenders to Represent Parents and Children in CHIPS and TPR Cases*, Pages 9 and 10, EXHIBIT #1). Like Montana, there is a great deal of variation in the type and amount of representation provided for parents and children.

Options to be considered are:

- Maintain the administration of the state CASA/GAL program under the State Court Administrator.
- Explore the concept of funding equity between the representation for children and adults.
- Request additional information from the CASA/GAL Program regarding whether a court-appointed special advocate or a guardian ad litem is necessary if the child has been appointed counsel, and if so, what role each is responsible for.
- Request additional information from the State Court Administrator, the Court Assessment Program, and the State CASA/GAL program on current funding sources, caseloads, the number of children served county by county, and other relevant information.
- Require that any public defender/appointed counsel program make allowances for potential conflicts of interest between children and parents or legal guardians and that provisions be made for appointment of counsel for each without inherent conflicts of interest.
- Specify that any costs for a public defender who participates on a treatment team be included as "public defender costs".

Ms. Fox said it is the opinion of some that, within a treatment court setting, public defender costs should not be paid. While the role of a public defender does change somewhat within that type of a court, it is still a legitimate expense because the public defender is still obligated to diligently represent the interest of the indigent person. This Committee may or may not weigh in on that issue, but it is an active issue and will come before the District Court Council in the near future. There is a separation of powers issue here, but as policymakers, this Committee can impact this.

Quality of Representation and Other Issues -- Page 12, EXHIBIT #1

Cost data for Montana is not available but examining data from neighboring states may provide information and a model for future study.

Ms. Fox discussed the results of the Washington State analysis of parental and children's defense costs in dependency and termination cases. There was great variability in costs from county to county and county costs were disproportionate to state costs. Needs identified by the analysis were:

- case resources;
- investigation and evaluation by independent social workers;
- standards of practice for attorneys; and
- increasing the efficiency of the court system.

Ms. Fox also reviewed a survey completed by the National Center for State Courts on children's representation and discussed the results (Page 13, EXHIBIT #1). Montana will have to consider many of the same issues identified in this survey and illustrates the need for greater study.

The options for quality of representation are listed on Page 15, EXHIBIT #1.

Alternatives -- Page 15, EXHIBIT #1

These alternatives are not substitutes for representation but are items brought to the Committee's attention and may be useful in the decision-making process regarding the child abuse and neglect system proceedings:

- a lay person who would provide information and some assistance to parents involved in the process; and/or
- an ombudsman for children or parents.

SEN. O'NEIL noted that in the Washington State study (Page 7, EXHIBIT #1), in the two counties in which parents were provided public defense versus the remaining counties in which parents who were not provided public defense, the reunification of parents and children was significantly higher for the parents who received counsel. REP. FRANKLIN said that reunification is only a part of a complex policy issue and said the question of if any outcome studies were done on the safety or welfare of the children after reunification would be an important factor also. SEN. O'NEIL didn't agree with REP. FRANKLIN'S statement.

PUBLIC COMMENT ON HJR 3 STUDY

Melissa and Kelly Worthan, Missoula, submitted an affidavit into the public record detailing their long-standing difficulties and experiences with Child Protection Services in Ravalli County, and their support for establishing a statewide public defender system for indigent parents (EXHIBIT #4). Mr. and Mrs. Worthan included a signed and notarized information release, authorizing the Committee to have full access to their records.

Kandi Matthew-Jenkins, Missoula, offered her opinions and comments on several different issues:

- She supports balancing state requirements to be equal with ICWA requirements.
- She believes that DPHHS uses criminal law to advance its cases.
- The CASA/GAL Program does not constitute legal counsel and should not be used as such.
- The funds spent by the federal government on foster care could be saved by having parents appraised and representation provided to them at the time of the children being removed from the home.

Ms. Matthew-Jenkins submitted a statement on behalf of Abbe Awanee Russell of Livingston. Ms. Russell's letter outlined her situation in which her children were taken from her care and also requested assistance from the Committee in returning them to her (EXHIBIT #5).

COMMITTEE DISCUSSION/WORK SESSION

REP. FRANKLIN said the Committee would use the Decision Points Worksheet (EXHIBIT #2) prepared by Ms. Fox to guide them through the decision making process.

Representation for Parents, Issue A -- Should all parents receive legal counsel in abuse and neglect cases and if so, at what point should counsel be appointed for indigent parents -- Page 1, EXHIBIT #2

REP. CLARK said she favored Option 3: "Forward a recommendation to the Law and Justice Interim Committee to urge consideration of appointment of legal counsel for all parents,

guardians, or those with legal custody who are involved in child abuse and neglect proceedings that may result in removal or placement of a child or termination of parental rights as a part of that Committee's consideration in the development of a public defender system in the state."

SEN. O'NEIL agreed but added that he would like input from a tribal attorney to provide information on ICWA .

SEN. ESP asked to add additional language to Option 3: "That the Law and Justice Committee consider including a family law specialist within the public defender system who could assist with difficult cases."

SEN. O'NEIL would like to be able to utilize the many social workers in Montana who are not actively practicing to advocate for parents. Their knowledge and experience would be very helpful to parents. REP. FRANKLIN said those people have great value but may not fit the legal definition of who can provide representation.

SEN. PEASE will consult with the Crow Tribal Attorneys regarding ICWA and will mail his findings to Committee members before the next meeting.

Ms. Fox clarified in Option 3 that the Children and Families Committee is simply urging consideration of appointment of counsel for parents and is not recommending a statutory change to the LJIC. REP. FRANKLIN asked the Committee if it wished to recommend statutory changes. SEN. SCHMIDT said inserting "statutory change" into the language of the recommendation would strengthen it and favored that idea. REP. GIBSON agreed. SEN. ESP suggested language "urge consideration of legislation that would require appointment of..." versus simply a recommendation that appointment be made. REP. FRANKLIN suggested allowing Ms. Fox to also include language to recommend that the legal counsel have background and/or expertise in family law, but rather than making it statutory, include it as a separate sentence. **Option 3, as amended, was approved by consensus of the Committee:** "Recommend to the Law and Justice Interim Committee to consider statutory changes to require appointment of legal counsel for all parents, guardians, or those with legal custody who are involved in child abuse and neglect proceedings that may result in removal or placement of a child or termination of parental rights as a part of that Committee's consideration in the development of a public defender system in the state. The Committee also asks the Law and Justice Interim Committee to consider a family law specialist in the public defender system to assist public defenders in difficult cases and recommends the wisdom of a background or expertise in family law for those who are assigned these cases in a public defender system."

Issue B -- Identifying the number of parents already receiving counsel and the additional number of parents who would need it in removal, placement, and termination proceedings -- Page 1, EXHIBIT #2

Ms. Fox said this was already being done by the Court Assessment Program. REP. FRANKLIN thought this was a critical issue and that the information was badly needed. SEN. ESP recommended that the Law and Justice simply consider this information and not have this Committee officially request it. SEN. O'NEIL asked to have reunification data included. REP.

FRANKLIN agreed that a holistic picture would be helpful. Ms. Fox said language could be added asking that the LJIC at least consider the prospective savings this Committee believes will occur and that some type of evaluation could be built in at some point. SEN. O'NEIL said ICWA and Washington data could be used. REP. FRANKLIN cautioned that the Committee must be careful when using data because other variables may exist and recommended that it be kept spare and simple.

REP. FRANKLIN asked for a motion, since there was not consensus of Issue B. SEN. ESP **moved** that the Committee recommend that the LJIC consider the information outlined in the Option: "Recommend that either the State Court Administrator or the DPHHS child and Family Services Division, in cooperation with the other, determine the numbers of parents, guardians, or those with legal custody of children who would require legal counsel in removal, placement, and termination proceedings.". SEN. O'NEIL **made a substitute motion** to consider the items in the option, along with benefits that the Committee reasonably expects to be derived. REP. FRANKLIN spoke against SEN. O'NEIL'S motion, saying there are too many variables and it was important to keep this request simple. SEN. O'NEIL'S **substitute motion failed** on a 6 - 2 vote, with SEN. ESP and SEN. O'NEIL voting yes, and SEN. SCHMIDT, REP. ROBERTS (by proxy through REP. CLARK), SEN. PEASE, REP. GIBSON, REP. FRANKLIN, and REP. CLARK voting no. SEN. ESP'S **original motion passed** on a 7 - 1 vote, with SEN. O'NEIL voting no.

Issue C -- Defining Indigency -- Page 1, EXHIBIT #2

REP. CLARK wanted the full text of the Option included in the Committee's recommendation to the LJIC: "Include, as a part of any recommendation, a requirement that a definition of indigency and a standard for a determination of indigency be developed. Indigency may not be the only qualification for appointment of counsel and other areas may require appointment. The issue of a sliding fee scale may also need to be considered.". **By consensus of the Committee, the option was adopted, as written.**

Representation for Children -- If an indigent parent is appointed counsel, does the child also need legal counsel, and if so, what type of representation should be appointed for the child -- Page 2, EXHIBIT #2

Ms. Fox read all five options aloud to Committee members. REP. CLARK **moved** to adopt Options 1, 2, and 3. REP. GIBSON asked wondered if Option 5 should be included. REP. CLARK said she did not include Option 5 in her motion because she felt this option would be cost prohibitive at this point in time. REP. GIBSON said it was important to remember that many of the public defenders are young and inexperienced and an experienced person to assist would be very valuable.

SEN. ESP **made a substitute motion** saying that this Committee would like the LJIC to consider Options 1, 2, and 3, and although it is outside the scope of this study, to also consider specific staff training for child abuse and neglect cases.

SEN. SCHMIDT asked to discuss Option 4 (Fund guardian an litem and public defender programs sufficiently that each child has an appointed guardian ad litem and a public defender.) before voting and asked if this option was an unreasonable request. Ms. Fox said Montana is

statutorily required to have a guardian ad litem appointed for each child and there is some indication in the old statistics that this is being done. The funding for the CASA/GAL program is only in 40 counties and is \$400 per case. That program, if funded by the national CASA program, does receive some local support, some in-kind services, and is a volunteer program beyond that. More information is needed before the cost of funding could be determined. SEN. SCHMIDT said the rural areas struggle to find people to perform these functions and ideally, this should be a funded program.

SEN. ESP'S **substitute motion to ask the LJIC to consider Options 1, 2, and 3 passed:**

- Option 1: "Recommend that an accurate assessment be made of the cost to provide a guardian ad litem to each child alleged to be abused or neglected across the state.";
- Option 2: "Additional information on the number of children who may also need legal counsel is needed and should be included in any request of additional information (Issue I.B.). It is important to note that 20 states appoint counsel in all cases of child abuse and neglect, and that is an issue that warrants attention in the development of a public defender system.";
- Option 3: "Develop standards for guardians ad litem (changes in the federal level now require training) and specify responsibilities when a public defender is also involved.";
- and
- reiterated that, although it is outside the scope of this study, to also consider specific staff training for child abuse and neglect cases.

Where Do Child Abuse and Neglect Cases Fit in a Public Defense System -- Pages 2 and 3, EXHIBIT #2

Ms. Fox briefly reviewed the seven options. She clarified that in Option 1: "Maintain the CASA/GAL program and its specific role in the child abuse and neglect proceedings separately from the appointment of legal counsel, regardless of who administers the program. Each provides different services and the guardian ad litem in some states are also appointed counsel." , the CASA/GAL program would remain in the State Court Administrator's Office. SEN. ESP **moved** to adopt Option 1, as clarified by Ms. Fox. **Option 1 was approved by consensus of the Committee members.**

SEN. ESP **moved** to adopt Option 6: "Specify that any costs for a public defender who participates on a treatment team be included as 'public defender costs', if the public defender performs diligent representation and fulfills standards of professional responsibility toward the client (which may need to be defined), the costs for participation in that treatment team are legitimate costs that may save additional costs later and should be reimbursed by a public defender/appointed counsel model. If they require an alternative method, it is suggested what whatever is instituted include the development of an alternate reimbursement scheme to support to goals of diligent representation and treatment court.". SEN. SCHMIDT asked Ms. Fox to explain Option 6 again. Ms. Fox explained there has been some question of whether or not public defender costs should be included treatment courts because of the non adversarial role of the public defender within that court. REP. CLARK said she has attended a treatment court proceeding and agreed this needs to be included. SEN. O'NEIL commented that this type of treatment is costly and perhaps that is why there has been discussion of not including it. The **motion passed unanimously** on a voice vote.

Quality of Representation and Other Issues -- Page 3, EXHIBIT #2

Ms. Fox said Options 2 and 3 have already been addressed in previous action. SEN. ESP said the LJIC is considering all of these options so there is no need for this Committee to take action. REP. GIBSON asked to make a recommendation that the Children and Families Committee supports the LJIC efforts in addressing these issues. REP. FRANKLIN said "reasonable caseloads" and "consistency and continuity" are significant factors in the quality of representation. She moved that this Committee supports the concepts of reasonable caseloads and consistency and continuity in representation and assume, by consensus, that this will be the Committee recommendation.

Alternatives -- Pages 3 and 4, EXHIBIT #2

The Committee took no action on these options and completed its work on the HJR 3 Study agenda item.

Report to Committee

Janet Bush, Director, Montana Childcare Resource Center & Referral Network, Missoula, spoke to the Committee regarding afterschool programs. The Montana Out-of-School Time Project is administered by the Childcare Referral Network and is in the fourth year of a five-year federally funded grant. It initially focused on licensed childcare centers and homes that provided care to school-aged children. The mission is to improve the availability and quality of childcare and to measure the supply and demand. Ms. Bush distributed a map of Montana counties showing the percentage of Montana school-age children being served by licensed or unlicensed programs (EXHIBIT #6).

In licensed childcare, there is incredible diversity in afterschool programming across the state. The Montana Childcare Resource Center has worked to bring all types of communities and programs together: rural and urban, private and public, profit and nonprofit, and church and school programs. The Montana Childcare Resource Center offers assistance to these communities and programs to build and strengthen their resources and programs. The Center has assisted in drafting suggested regulations for school-based programs and has worked with DPHHS in making changes to its afterschool childcare criteria. In 2002, the Center began to work with the Office of Public Instruction (OPI) in the 21st Century Grant Program which funds afterschool programs in schools. This program targets low income, high academic-need students.

The Center worked diligently in the last year to bring in new partners and will continue to build the list in order to continue to coordinate services. Ms. Bush provided a brochure which listed all of the Montana Afterschool Network providers (EXHIBIT #7) and expressed her gratitude to DPHHS and OPI for the willingness of the two departments to work together to coordinate programs.

The National Governor's Association Center for Best Practices noticed and approved of the collaboration between the departments and between the public-private sector partnerships that were developed through this work. Montana applied for and received a grant through the National Governor's Association to sponsor a Montana Extra Learning Opportunity Summit (EXHIBIT #8). The Summit was hosted by the Governor's Office in March and a diverse group of

85 participants from across the state attended. The outcomes and directives that resulted from the Summit were:

- There is a need to develop a group to coordinate at the state-level to oversee services and groups.
- There is a need to have this state-level group create a unified message for all programs and groups to use that will promote the benefits of afterschool care and the need for afterschool programs.
- The state-level group will help identify local networks that can coordinate and work more efficiently together and will also identify local leadership in order to pull in local businesses, schools, and governments.

A steering committee will meet on Thursday, May 6, at the Capitol to begin work on establishing the state-level working group and will work to carry out the mandates requested by the participants. Ms. Bush said she would keep this Committee informed.

SEN. SCHMIDT asked who was on the steering committee. Ms. Bush said representatives from all of the groups listed in the Montana Afterschool Network brochure (EXHIBIT #7) and the Boys and Girls Club of Montana. SEN. SCHMIDT asked Ms. Bush to explain the terms "regulated" and "unregulated", as they applied on the map of school-aged care programs (EXHIBIT #6). Ms. Bush said licensed child care centers and most of the 21st Century Programs are all regulated programs. Only programs who offer 5-day a week services were counted in this survey. The goal was to identify every program in Montana that offered consistent afterschool services. A group that met only weekly, for example, could not be included on the list.

MONITORING DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (DPHHS).

Gail Gray, Director, Department of Health and Human Services, (DPHHS), said the DPHHS wanted to be on the public record as thanking/recognizing Ms. Bush and the Montana Child Care Resource and Referral Network for the fine work being done.

Director Gray distributed a Medicaid Eligibles report for March 2004 (EXHIBIT #9) and discussed each category:

- Children and Adults;
- TANF Eligibles;
- Pregnant Women and Infants;
- Disabled;
- Aged and Disabled Residing in an Institution; and
- Eligibles Aged 65 and Older.

Medicaid serves over 80,000 eligible Montana citizens each month and has annual expenditures of \$650 million.

Director Gray said the Governor's Health Summit was held recently and there were many creative ideas presented and that she was pleased with the focus on children.

Director Gray invited the Committee to the Methamphetamine Summit on June 1 - 3, in Billings, at the Mansfield Center. Prevention, treatment, controlling the supply, and law enforcement

issues will all be discussed. Breakout sessions will identify barriers and solutions, in order to begin formulation of recommendations.

Director Gray also discussed Montana's early childhood initiative. Governor Martz was one of several Governors who participated in a National Governor's Policy Academy to talk about the need for early childhood or school readiness opportunities. Governor Martz met with the Montana stakeholders afterwards and asked them to make recommendations about what Montana can do, particularly considering the limited resources available.

Joe Matthews, Division Administrator, Disabilities Services Division, DPHHS, updated the Committee on the Travis D. Case. Mr. Matthews reported that the case was settled, as of that morning. A final court hearing to decide the final settlement has been scheduled for mid-May and the details are fairly-well settled. Mr. Matthews gave a brief overview of case:

- The case began as a class action lawsuit involving a group of institutionalized people whom the Montana Advocacy Program believed were in segregated settings and should be placed in integrated settings.
- After closing Eastmont, work began on a settlement proposal with the Montana Advocacy Program, the Governor's Office, and DPHHS. Those groups were able to agree on what needed to be done to settle the suit. The settlement requires moving about 45 residents out of the Montana Development Center by December 31, 2007. These are individuals classified as needing "near total care", meaning they have serious physical disabilities but can be served by community programs.
- Two other groups will remain at MDC: patients who are severely behaviorally challenged and sexual predators.
- The Olmstead Plan, as mandated by the United States Supreme Court, requires the states to take responsibility for moving patients in segregated settings to the most integrated setting possible, given available resources and availability of facilities.

Director Gray addressed the issue of the Interagency Coordinating Council (ICC) and said:

- She wanted to emphasize that having the ICC for prevention is a very good idea but that it has never been funded. DPHHS tried to carry the entire burden this year but cannot continue this.
- In the last session, one of the bills recommended by the 2002 Drug Control Task Force was to eliminate the ICC. At a minimum, the Department would like to eliminate the requirement for a Unified Budget. It takes a tremendous amount of time, work, and does nothing of value.
- ICC will continue holding its scheduled meetings.
- Local communities are the most vocal proponents of the ICC.

Hank Hudson, Temporary Assistance for Needy Families (TANF), DPHHS, reviewed the background events leading up to the TANF benefit reductions:

- During the 2003 Legislature, the TANF caseload benefit level became unsustainable within the block grant.
- In addition to that, a lack of childcare funding was requiring that people wanting to work be placed on a waiting list for childcare.
- The Executive Branch decided to reduce the benefit level by approximately 26% and to move \$3 million of the savings into the childcare program. It was hoped that the

availability of childcare would discourage some of the growth in the TANF caseload and that the caseload would eventually balance out at a sustainable level.

A chart of TANF caseload (EXHIBIT #10) through February of 2004 shows that the caseload did drop and has stabilized. From a public policy perspective, the legislation was successful: the program has enough money to provide childcare without a waiting list and the caseload has stabilized at a sustainable level. The Department does recognize that the reduction did create hardships for people, which is what prompted the TANF survey conducted by MSU-Billings.

Mr. Hudson then discussed the results of the study (*Effects of the TANF Benefits Reduction on Current and Past TANF Recipients: The Results of Two Telephone Surveys*, EXHIBIT #11). Mr. Hudson said:

- It appeared to him that those who left the TANF program were better off than those who stayed on. These individuals worked more hours, had a greater increase in earnings, and reported fewer difficulties as a result of the reductions in benefits.
- The people with fewer options, with more difficulties and barriers, stayed in the program and continue to report difficulties paying utility bills and affording food and rent, etc.
- Two groups were contacted: 175 people who were on TANF when the benefit was reduced and who were still on TANF a month after the reductions and another group of 176 people who, when their benefits were reduced, dropped out of the TANF program. The survey questions and results are in survey as well.

Mr. Hudson also discussed:

- respondent characteristics;
- employment and wages;
- non-TANF benefits being received by respondents;
- reasons for initial application for TANF benefits;
- services accessed by those who lost the TANF benefit.

Mr. Hudson distributed a Billings Gazette article on the survey and the results (EXHIBIT #12).

Director Gray said the final issue she would discuss relates to the *Unregulated Youth Residential Care Programs In Montana* (EXHIBIT #13) and said:

- Many of her colleagues, including those in the Judicial Branch, the Executive Branch, and the Legislative Branch, have concerns about the tremendous increase in these homes and the State's inability to ask questions about these programs.
- Over the past several years, DPHHS and other agencies have been solicited for information on the status and licensure requirements for these programs in Montana. It is difficult to provide any information because these programs do not receive state funding and are difficult to track.
- There are about 30-35 of these programs currently operating in the state.
- There have been allegations of child abuse occurring in some of the programs.
- Montana does not have licensure for these types of programs and they have moved in from Colorado, Utah, Washington, Idaho, and Wyoming. Sometimes it is because they have been closed down in other states and reopen in Montana because there are no regulations.

- These programs are very different from each other but all deal with youth that have special needs and very challenging behavior. Parents who place these children are often at the end of their rope and are willing to do almost anything to change their kid's behavior.
- Many of these programs have a series of challenges as part of their curriculum and may include a wilderness component.

These issues have prompted the Department to come to this Committee to initiate a dialog regarding issues such as safety, consideration of quality assurance for accreditation, licensing, and issues of honesty in advertising. Director Gray asked the Committee members to read a white paper study containing additional information (*Unregulated Youth Residential Care Programs In Montana EXHIBIT #13*) and to formulate questions and concerns to be addressed at a future meeting. She reported that the Department also decided to send a letter to all of the directors of programs operating in Montana that the Department was aware of, and was both surprised and pleased by the positive response the Department received from most of the programs. One of their fears is that because they work with high-risk kids, and often times in high-risk situations, something will happen and they will find themselves either over-regulated or closed down. The people who responded said they wanted to be part of the discussion and solution.

SEN. ESP said the Medicaid Eligibles Charts (EXHIBIT #9) are contradictory regarding children's numbers. He said more complete information and documentation of the numbers would help this Committee make decisions. He also suggested providing the report in advance to the Committee in order to give them to prepare discussion questions. Director Gray said SEN. ESP'S points were well taken. The Medicaid charts provided to the Committee are just a few of the total report generated. That is why the numbers don't always jive. Director Gray said the entire report could be sent out to Committee members on a monthly basis and not just for meetings. A number of the members were interested in having the report and Director Gray said she would make sure they received monthly reports.

SEN. SCHMIDT was shocked to learn that the youth treatment programs have not been licensed and said she would like to see what other states are doing about this issue. She asked if the Committee would be kept updated on this and what departments this issue falls under. Director Gray said it falls under many DPHHS divisions, as well as the Judicial Branch, the court system, the Office of Public Instruction, and others. SEN. SCHMIDT asked if Director Gray intended to request legislation for the 2005 session regarding licensure and/or regulations. Director Gray said the Department is seeking direction from this Committee on what it thinks is necessary but that in her opinion, the very minimum that needs to be done is a legislative study.

SEN. SCHMIDT commented on the TANF report (EXHIBIT #11) and asked who funded the TANF survey. Mr. Hudson said the Department funded the survey and that the cost was approximately \$4,000. SEN. SCHMIDT asked Mr. Hudson if anything new was learned as a result of the survey. Mr. Hudson said much of the information just confirmed what was already known. He said disconnected phones prevented many from being contacted but that he was still impressed by the number that was contacted. Mr. Hudson said he had concerns about whether the TANF clients would continue to use other services when taken off TANF, but was pleased to see that they were staying with programs. SEN. SCHMIDT asked what plans were being made, now that the study was done. Mr. Hudson said:

- the Department is preparing for the next legislative session and is working on a number of ways to use TANF money more effectively;
- childcare remains a very important part of welfare reform and a large part of TANF money will continue to be committed to childcare;
- the survey reiterated that people who remain on the caseload have serious issues and are going to require a long term commitment by the state and the Department will be taking at how best to serve this population;
- food banks are being stressed and are in need of support; and
- the LEIAP appropriation was increased, but there needs to be a continued commitment to assisting people with utility bills.

SEN. SCHMIDT suggested having an all-encompassing summit on this issue to identify and prioritize what must be done. She asked if Mr. Hudson was intending to present legislation to the Committee regarding this issue. Mr. Hudson said it was his goal to set the system up to accommodate each person's unique needs in order to treat them as the individuals and address their needs with flexible, individualized programs.

REP. FRANKLIN found it very disturbing that in the TANF survey (EXHIBIT #11), there were 113 disconnected telephones. She expressed her concerns of creating a second-generation underclass because of these problems. She asked Mr. Hudson to prepare ideas for addressing this and to include them in the Executive Planning Process (EPP).

SEN. ESP asked Mr. Hudson to explain what the left column of numbers represented on Page 20 of EXHIBIT #11. Mr. Hudson said it was a coding system used to identify respondents so names didn't have to be used.

PUBLIC COMMENT

Judy Smith, Women's Opportunity and Resource Development (WORD), Missoula,

responded to the TANF survey by saying:

- The reduction affected 2,000 children.
- Families are breaking up because they can't afford to stay together, particularly single mothers.
- Domestic violence cases make up at least 30% of the TANF caseload. There is something fundamentally flawed in this survey when it says that none of the people went on TANF due to domestic violence.
- WORD has asked the Committee to ask the Department if there are other resources that can be used and our request has not yet been responded to. WORD would like to see the so-called surplus, the performance bonus, and the fiscal stimulus money to be considered as possible funding sources to restore the benefit.
- WORD had also requested that the Department use advocates to conduct the TANF survey and was disappointed by the survey results because the use of advocates would have given a very different picture.
- The methodology of the survey is questionable. WORD feels that a 22% response rate is not acceptable.
- The people able to be reached by telephone are the more employable people, so no one should be surprised by the results.

- The employment and wages information on Page 4 does not indicate a significant change.
- The wording of the actual survey would prevent most respondents from being truthful regarding any questionable activity. Advocates would have been able to draw out more accurate information.

Ms. Smith said she found it interesting that the Department is not proposing any solutions and that WORD was hoping to see some proposal for helping those who had lost shelter. She asked the Committee to request that DPHHS formulate a proposal.

Mary Caferro, Working for Equality and Economic Liberation (WEEL), made the following comments:

- We know that when the TANF benefit was cut, it increased the level of child poverty in the state. The goal of the program should be to create sustainability in children's lives.
- WEEL believes it is good public policy to invest in children. A lower TANF caseload reflects people, mainly children. This chart doesn't just show a line, the line represents real people. This has not reduced poverty and this is no solution.

Ms. Caferro then discussed several studies, all of which indicated that children who live in poverty are at a much greater risk of mental and physical disease. She also said she serves on the Advisory Council for Public Assistance, which urged that the TANF ending fund balance of \$17.5 million, as indicated in the Block Grant Analysis from DPHHS, be used to alleviate the problems.

Inga Nelson, Montana Coalition Against Domestic and Sexual Violence, said she agreed with WORD's assessment on the domestic violence/TANF benefit connection and that the MSU-Billings data is faulty. It is very unlikely that individuals would be willing to share this type of information with a stranger on the phone. She also said that when benefits are reduced, options are reduced as well.

Bonnie Adee, Mental Health Ombudsman, Governor's Office, spoke in support of Director Gray's comments regarding the unlicensed youth facilities. These types of children have serious mental and sometime physical problems as well, and it is more of what is not known about these facilities that is of concern. Assessments, safety plans, staff training, and qualifications must all be investigated.

SEN. SCHMIDT asked Mr. Hudson to respond to the questions and concerns expressed in the Public Comments. Mr. Hudson said there were four things he would respond to:

- The block grant funding stays the same regardless of the caseload so funding must be managed for the long term.
- The standards used in the survey were the standards requested by Dr. Floyd of MSU-Billings and DPHHS was assured that they were considered sound and accurate standards.
- In 2000, the federal government spent \$1 million in Montana to do face-to-face surveys with people who left the TANF program. This is a great avenue for a study but very expensive.
- The domestic violence statistics were not accurate but he wasn't surprised because it is not a topic most people discuss willingly. DPHHS estimates that somewhere between 1/3 to 1/2 of the people served by TANF at some point have been victims of domestic violence.

SEN. ESP asked if it was possible to get additional information regarding the children going off and on Medicaid and said he suspected that some of them were the same children.

REP. FRANKLIN said she understood Mr. Hudson's point about making the money work, but that it was equally important to think in terms of sustainability for kids. She had assumed that there would be efforts made to address this situation and it troubled her that restoration of the TANF benefit was not being considered. Mr. Hudson there has been discussion of using funds for employment training and for diversion services for people who don't want to jump right into the program, but who need car repairs, short term training, or emergency assistance.

Director Gray said the DPHHS legislative packet is growing and requested a half-day of the Committee's next meeting time to present the Department's proposed legislation.

REP. FRANKLIN proposed that the Committee change its next meeting date from June 10 and 11, to June 29 and 30. It was agreed.

Ms. Fox said the Committee budget had adequate funding to pay for Committee members expenses to attend the Governor's Methamphetamine Summit and the Holistic Adolescent Health Prevention Conference but a motion by the Committee would be necessary to do that. SEN. ESP **moved** to approve paying expenses for the Committee members who wish to attend the Holistic Adolescent Health Prevention Conference and/or the Governor's Methamphetamine Summit. The **motion passed unanimously** on a voice vote.

Managed Care Definition and Reporting Requirement -- Lois Steinbeck, Fiscal Analyst, Legislative Fiscal Division (LFD)

Ms. Steinbeck discussed the Medicaid Managed Care Programs memo which was sent to Children and Families Committee members on April 16, 2004 (EXHIBIT #15). Ms. Steinbeck said the Legislative Finance Committee (LFC) is required to review all proposed Medicaid managed care programs. This memo pertains to a disease management program proposed by DPHHS. DPHHS does not believe this program falls under the definition of managed care. Ms. Steinbeck:

- gave a brief introduction and background of this issue;
- discussed the importance of LFC review;
- discussed the applicability of managed care review to the disease management program;
- provided the list of options the LFC considered; and
- provided a copy of an October 28, 2003, e-mail message from Legislative Division Code Commissioner Greg Petesch to Dawn Sliva, DPHHS, affirming that the proposed disease management program is a managed care program, and a copy of the relevant MCA sections substantiating this affirmation.

Ms. Steinbeck said the LFC chose Option 2, (Page 3, EXHIBIT #15), which requested that the Children and Families Committee look at the current definition, and recommend a definition of "managed care" for the LFC's consideration. She urged the Committee to accept the request made by the LFC and that the definition be prepared for the June meeting. REP. FRANKLIN said the Committee would take this under advisement and would decide at the next meeting if

changes were necessary. Ms. Steinbeck said there has been some unintended consequences. If these could be addressed through Administrative Rule, the Children and Families Committee could made the changes.

MS. Fox said the Committee has two options: defer it back to the Legislative Finance Committee or ask staff to work with Ms. Steinbeck. REP. FRANKLIN directed Ms. Fox to work with Ms. Steinbeck, specifically on the "fiscal trigger" issue and to present their findings at the June meeting.

Mental Health Ombudsman Report -- Bonnie Adee

Ms. Adee distributed copies of her report to the Committee and discussed both adult and children's mental health system issues (EXHIBIT #16).

SEN. ESP asked how CHIP mental health coverage compares to Medicaid mental health coverage. Ms Adee said they are very different programs. Medicaid is an entitlement program and has an adequate array of services to meet the needs of an emotionally disturbed child. The CHIP program is similar to a state insurance plan and is fine for most of the children being served, but is not adequate for an emotionally disturbed child.

Ms. Adee provided an update of the HIPAA/DPHHS/MHO access to information issue. Ms. Adee distributed a copy of a March 12, 2004, letter from Russ Cater, Chief Legal Counsel, DPHHS, to REP. ROBERTS regarding Mental Health Ombudsman (MHO) access to confidential information (EXHIBIT #17). Also provided was a timeline and summary of efforts made to date by the MHO to gain access to information (EXHIBIT#18).

Ms. Adee requested the Children and Families Committee draft legislation to clarify the legislative intent regarding the Mental Health Ombudsman's ability to access confidential information. There are two areas in particular that are unclear and in need of clarification: recognition of the Ombudsman office as a health oversight entity and allowing access to other confidential information that is not included under the protected information.

REP. FRANKLIN asked if a bill designating the MHO as a healthcare oversight entity would be helpful. Ms. Adee said that would be of help, but there is still the matter of access to other kinds of confidential information that occasionally the MHO needs access to.

SEN. ESP asked if the subpoena power available to the MHO through the Attorney General's Office has ever been used. Ms. Adee said to date, she has not requested a subpoena.

SEN. O'NEIL **moved** to have Ms. Fox and Mr. Petesch draft legislation, as discussed by the Committee. Mr. Petesch asked if this legislation was only intended to address the HIPAA issues or the Medicaid issue as well. Ms. Fox said there were four areas that could be included in this proposed legislation:

- HIPAA issues;
- Medicaid issues;
- access to multiple state agencies; and
- clarifying the confidentiality statute.

SEN. O'NEIL asked to include all of the issues in his motion. REP. FRANKLIN said this Committee would like to see that, short of subpoena power, the MHO have access to Medicaid records, that the HIPAA issue be finally covered, and that the MHO be designated as a health oversight entity, and the other access issues.

The **motion passed unanimously** on a voice vote.

Travis D. Settlement Agreement -- Pat Gervais, Fiscal Analyst, Legislative Fiscal Division, LFD, provided copies of her report as presented to the Legislative Finance Committee at its March 2004 meeting (*Developmental Disabilities Program: Emerging Issues and Eastmont Status*, EXHIBIT #19). Ms. Gervais said there were a number of significant system events which are occurring simultaneously and when combined, will result in a very different service delivery system, as compared to the current system. These changes will also pose a number of complex budgetary and public policy issues. Ms. Gervais went on to identify and discuss:

- several of the catalysts for the changes (Pages 3 - 5);
- the evolving needs and desires of consumers (Pages 5 - 7);
- the specifics of the Travis D. settlement (Pages 7 - 9);
- historical expenditures and funding pressures (Page 9);
- options for consideration - LFC chose to pursue Options 1 and 4 - (Pages 9 - 10); and
- other issues such as Medicaid redesign and the potential impact on the DD system, Eastmont update, and Medicaid reimbursements for the Montana Developmental Center (Pages 10 - 13).

Joe Matthews, Administrator of Disability Services, DPHHS, and Jeff Sturm, Developmentally Disabilities (DD) Program Director and Superintendent, Montana Developmental Center (MDC) Response

Mr. Matthews thanked Ms. Gervais for her very comprehensive and complete report and made the following comments:

- Much of the restructuring has been to allow reasonable choices and portability within the system.
- Providers have had to become more competitive in order to attract clients and this has been difficult.
- There has been a tendency for clients to migrate from the eastern part of the state to the western part of the state, and from rural to urban because of the availability of more medical and support services. Rural providers must be taken care of because they are still needed.
- The needs assessment is an excellent tool to clearly identify what it costs to serve an individual in a community. As people are moved from institutions to a community setting, the big concern is always to make sure there are services available in that community.
- The CMS review said not only did there have to be more choices for the DD, but the choices had to be implemented more quickly.
- The issue of decertification is of huge concern. The MDC is considered an Intermediate Care Facility for Persons with Mental Retardation and must abide by very strict standards. The standards didn't change, but the interpretation of the standards changed, and now some of these long-time patients are no longer eligible to receive Medicaid reimbursement.

- This ruling will be appealed as soon as it is received in writing. This will create havoc with our Olmstead Plan if the challenge is lost.

REP. FRANKLIN asked Mr. Matthews to clarify that CMS is decertifying people not just for institutional care, but decertifying them for Medicaid services also. Mr. Matthews said that appeared to be the case but that he wasn't aware that any community-based services in any states have been decertified yet. We are watching very closely and will be meeting with CMS to try to resolve the issue.

SEN. SCHMIDT asked if there was a timeline that this would happen. Mr. Matthews said there was no timeline. The decertification was issued about a year ago when CMS came to do the annual review and there has been no further word since.

SEN. ESP asked if the meeting with CMS regarding decertification would be a private meeting. Mr. Sturm said the meeting would be with a number of other states and would not be private. SEN. ESP suggested inviting Sen. Burns and Sen. Baucus to attend these meetings since they both serve on the Finance Committee.

SEN. ESP asked if the use of electronic medical records had been considered when the computer system was updated. Mr. Sturm said the new system was a payment system only. SEN. ESP asked if MDC has ever considered the use of electronic medical records. Mr. Sturm said to date, it has not.

SEN. ESP asked Mr. Petesch to present his concerns regarding the settlement language in the Travis D. settlement, as discussed by Ms. Gervais. Mr. Petesch said most of the concerns were responded to through a series of questions from REP. CLARK. One concern that has not been addressed is where the Department is "going to draft support and try to achieve passage for legislation that will remove the near total care language from the definition of seriously developmentally disabled". His question for the Department was (and this is the criterion for commitment) : "I understand the termination once the person is committed by the medical professionals that the person no longer needs that level of care and that is the people being transitioned to the communities. But when that initial commitment takes place, there is a second part of a statute that has to be met. And that is that if the person's behavior is such that he is a danger to himself or others such that he cannot adequately be served in a community setting. If you take out the language 'near total care' from the definition, where will those people who are currently being committed under that standard be placed, because you have a statutory finding that they can't be served in a community setting and we won't have language in the statute that allows them to be initially placed in an institution" and never got that question answered from the Department." Mr. Sturm responded that "near total care" is a nonissue at the MDC because there has not been a commitment using that statute in the last five years, at least. All of the patients are committed either under "total care" or under "behavior dangerous to self or others". We don't anticipate ever having to use it again and it has no practical value. Mr. Petesch said that was a better answer than he had previously received. The statute isn't either-or, its both. It's not disjunctive, it's conjunctive and that is his concern.

SEN. SCHMIDT asked Mr. Sturm to respond to Mr. Petesch's last statement. Mr. Sturm said MDC has treated it as three separate pieces: near total care, total care, or danger to self or others; and the intent of the draft legislation is to remove the piece of the statute that says "near

total care". In order to be committed to MDC, a patient would have to be classified as needing either total care or classified as a danger to self or others. Mr. Petesch said that is different language than what is in the Travis D. settlement contains. REP. FRANKLIN suggested that Mr. Sturm take this discussion back to MDC and review this issue with staff attorneys.

SEN. SCHMIDT referred to Page 7 of EXHIBIT #19, and asked if the three recommendations were included in the settlement agreement. Ms. Gervais said those three items are included in the settlement agreement and said it was her interpretation that if the Department does not bring those pieces of legislation forward, that it will be in violation of the settlement agreement.

MS. Fox explained that in order to be in compliance with the settlement agreement, the Department has to bring forth the legislation, but that the Legislature is under no obligation to pass the proposed language.

REP. CLARK requested that her letter to Mr. Petesch be copied and distributed to the other Committee members (EXHIBIT #20).

REP. GIBSON said she attended the Billings meeting referred to by Ms. Gervais. Clients, families of clients, and care givers were in attendance, and all expressed concern that services would be cut. Mr. Sturm said resource allocations are made by determining how much paid staff is needed and placing a dollar value on that. The person then has flexibility to use those funds in different ways. The Departments will also establish a crisis pool (1 -2% of these funds) which will be used to deal with unanticipated or emergency situations, such as a broken bone or a needed change in services. Additionally, the patient can request a change in services at any time. The goal is to provide services that are needed, not to take services away.

Medicaid Redesign -- Lois Steinbeck, LFD, pointed out that SEN. SCHMIDT and REP. CLARK are serving on the Medicaid Redesign Committee. She asked to clarify a question she asked of Dr. Ernst in the previous day's meeting, regarding how Texas had integrated state mental health institutions into its combined mental health and substance abuse treatment system. Ms. Steinbeck said she might have said that the Montana State Hospital does not want to serve the chemically dependent population and that was too broad a statement. The mission of the State Hospital is to serve people who are mentally ill, including those with a dual diagnosis. She said she still thought the "no wrong door" question was pertinent and asked, if there is no wrong door and there are people who are admitted for evaluation whose primary diagnosis is addiction without mental health complications, then how does this system work.

Ms. Steinbeck then turned the discussion to her report (*Update on Medicaid and Medicaid Redesign*, EXHIBIT #21). This report was prepared for the Legislative Finance Committee's March 2004 meeting. Ms. Steinbeck:

- reviewed the Medicaid estimates and three options for consideration by the LFC and reported that the LFC chose to amend the statute (Page 8 and 9 -Option 1);
- she will be working with DPHHS on changing the statutory language so there is a reporting requirement that will likely contain a specific date and said she would provide the Committee with a review of this;
- reviewed the summary of the memorandum on Page 2;
- discussed the potential intergovernmental transfer changes which could have a drastic impact on nursing homes, county hospitals, and mental health centers (Page 2);

- discussed the lack of articulation of overarching policy on provision of publicly funded services, the 4 options considered by the LFC, and reported that Option 3 was selected by the LFC (Page 4 and 5);
- discussed the HIFA waiver and comprehensiveness of redesign (Page 6);
- discussed the HIFA waiver growth caps (Page 7); and
- discussed the HIFA waiver/renewal of one-time appropriation.

Dr. Peter Blouke, responded to a question from REP. FRANKLIN regarding the interpretation of Inter-Governmental Transfers (IGTs) and explained that, at the federal level, several states have been very greedy and have abused the statutes. The federal government has clamped down as a result of this abuse. The specific criteria has not changed but that the federal government is taking a much closer look at the individual state's use of the monies. The Department is very comfortable with its documentation of the use of the IGTs and Montana is well within the guidelines.

Ms. Steinbeck agreed, but said it may complicate HIFA waiver requirements. Other states which have gone with routine Medicaid State Plan amendments have had the condition imposed that the only way the routine plan amendment would be approved was if it gave up the IGTs. Ms. Steinbeck said the NCSL has contacted both Ms. Fox and herself about the potential loss of legitimate IGTs and that she is concerned about how this issue may relate to the Medicaid redesign proposals.

REP. FRANKLIN asked Dr. Blouke to report back to the Committee in June with an update of this issue.

SEN. SCHMIDT asked Dr. Blouke to explain what barriers will be eliminated by the Medicaid redesign. Dr. Blouke said the redesign was precipitated by the experience the Department went through in the last two legislative sessions. The Department was operating in the crisis-management mode, having no well-thought through set of fundamental principles guiding how reductions would be made. Because of that, the Department wanted to take the time to work through conceptually how best to structure the program. The thought is, by going through this process, there will be a better understanding of where reductions can be made and what the consequences of those reductions may be.

SEN. SCHMIDT asked how Medicaid redesign would affect Native American health programs. Dr. Blouke said Native American health issues are unique and separate from the general population and that he has met with Tribes to formulate suggestions. SEN. SCHMIDT agreed there is a need for a more values-based process in determining eligibility.

REP. CLARK said watching the redesign group come to consensus has been very interesting because of the controversial nature of the project. The Department has taken the lead and has brought forth great suggestions for the 2005 Legislature's consideration. The HIFA waiver issue is complicated but since this will all be presented to the 2005 Legislature, there will be ample time to review it.

SEN. SCHMIDT said the process has been facilitated by the Montana Consensus Council and that it has done a good job.

Dr. Blouke commended both Governor Martz and Director Gray for making the redesign effort a public process. These decisions affect the lives of so many people, the amount of money involved is very significant, and is deserving of the Legislature's scrutiny.

SEN. SCHMIDT asked Ms. DeCunzo to comment on Ms. Adee's comments on what resources are needed to develop a peer support recovery model. **Joyce DeCunzo, Addictive and Mental Disorders Division (AMDD)**, responded the AMDD has devoted a great deal of time considering what services need to be delivered in the public mental health system and concluded that the services should be:

- evidence-based;
- rehabilitative in nature; and
- recovery-based.

Ms. DeCunzo said services should focus not only on the diagnosis, but also on how to manage that diagnosis while allowing the patient to continue to remain a member of the community. AMDD will identify what truly is effective and implement and pay for those services and will discard those services that cannot be proven to be effective. AMDD will move to evidence-based rehabilitative services that will allow clients to recover in their own community and this is something that people have frequently requested over and over again. There is a need for local communities to have local crisis stabilization and intervention services and the communities should have the responsibility to develop these services. AMDD does not have the money to pay for these individuals and cannot provide services in every community. It is not only poor people who require crisis intervention.

AMDD has met with Native American governments regarding the development of a Native American SAA, at the request of Rep. Windy Boy. It will have to be initiated by the Tribes, not the Department.

When the Legislature split adult and children's services into two divisions, it created a certain amount of disconnection, particularly for youth who are transitioning from youth to adult services. Both divisions have collaborated on a written agreement on how to best deal with this issue.

SEN. SCHMIDT asked for information on whether community mental health centers will be retained in statutes. Ms. DeCunzo said the AMDD is on the Children and Families Committee June agenda and will give the final report to the Committee at that time. A group of stakeholders will be meeting soon to discuss that and there are also ideas from within the Division on how best to accomplish that. All of the community mental health centers have a huge stake in this and other providers who are eligible but who are not community mental health centers certainly could have a say, and consumers as well.

Ms. Fox confirmed she would be working with DPHHS on the information access bill draft requested by Ms. Adee. Ms. Fox said the Department feels bound by CMS' rules and that the impact may be minimal, regardless of what is done legislatively.

Ms. Fox presented a preliminary outline of the June meeting agenda and said:

- that no decisions must be made immediately but urged the Committee members to read Director Gray's white paper study on the unlicensed youth facilities;

- she is aware of at least three groups who wish to present proposed legislation at the June meeting: the National Association of Social Workers, the Montana Chapter of Massage therapists, and the dental hygienists;
- the State Planning Grant is actively working on the uninsured issues and has sent some recommendations to the Medicaid redesign working group, has another set of recommendation that are not covered in Medicaid redesign, and will have both sets of proposals presented in conjunction with the Medicaid redesign proposals;
- Bill Mercer of the Montana Board of Crime Control will speak;
- the treatment court coalition is applying for a statewide enhancement grant and will update the Committee on the status of the grant;
- Larry Mitchell of EQC will give a presentation of meth lab cleanup issues; and
- there are at least 31 DPHHS legislative proposals for that will have to be considered.

ADMINISTRATIVE RULE

Mr. Petesch said he was alarmed about the proposed TANF rule and didn't think the statutes were looked at when drafting that rule. The proposed changes are going back to the drawing board and the comment period will be extended accordingly.

ADJOURNMENT

With no further business before the Committee, REP. FRANKLIN adjourned the meeting at 4 p.m..

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