

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES**

Call to Order: By **CHAIRMAN DAVE LEWIS**, on January 8, 2001 at 8:00 A.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Dave Lewis, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Edith Clark (R)
Rep. Joey Jayne (D)
Sen. Bob Keenan (R)
Sen. Mignon Waterman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robert V. Andersen, OBPP
Pat Gervais, Legislative Branch
Lois Steinbeck, Legislative Branch
Sydney Taber, Committee Secretary
Connie Welsh, OBPP

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: DPHHS Supplemental; Quality Assurance, 1/08/2001
Executive Action: None.

{Tape : 1; Side : A; Approx. Time Counter : .4 - 5.7}

CHAIRMAN LEWIS mentioned that the meetings on January 10, 11, 15, 16, and 17 will start at 8:30 am.

The major issue needing discussion is the DPHHS overspending in the current biennium.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SUPPLEMENTAL BUDGET REQUESTS

{Tape : 1; Side : A; Approx. Time Counter : 5.7-9.0}

Gail Gray, Director of Department of Public Health and Human Resources, explained that a number of things have caused

overspending, primarily due to mental health services. It has been hard to get a fixed point on the extent of the overspending.

{Tape : 1; Side : A; Approx. Time Counter : 9-12.5}

Mike Billings, Administrator of Operations and Technology, explained the supplemental cost overruns and answered Committee questions of Committee. He explained that there is an \$18 to \$20 million in supplemental overrun, and that \$4.4 million of that is in the non-mental health Medicaid program. Drug costs are running \$3.2 million higher than anticipated in FY00. There is also an additional \$1 million in the Medicaid program due to lower 9-mill levy revenue than budgeted.

{Tape : 1; Side : A; Approx. Time Counter : 12.6-15.0}

In response to a query by **SEN. COBB, Mr. Billings** said that the \$3.2 million is not net of the drug rebates and the \$3.2 million would be reduced by the drug rebates.

Of the \$18 to \$20 million overrun, about \$4.4 million is in the Medicaid program, and the balance is in the mental health program. The Montana State Hospital is responsible for \$4.6 million over the two-year period. The Mental Health Services Medicaid plan could be as much as \$8 million overexpended in the two-year period. The general fund Mental Health Services Plan would be costing \$3.3 million over what was appropriated.

{Tape : 1; Side : A; Approx. Time Counter : 15.1-23.7}

SEN. WATERMAN and **SEN. COBB** queried **Mr. Billings** and **Dan Anderson, Administrator for Addictive and Mental Disorders Division,** on CHIP eligibility and whether people were being taken off Medicaid when they became CHIP eligible, the process for determination of eligibility, and whether the figures quoted include it; and mention was made of the inadequacies of the computer system.

{Tape : 1; Side : A; Approx. Time Counter : 24.5-27.4}

Mr. Billings explained that cost reductions are being considered, but stated that there is nothing that will eliminate the total deficit. In response to **CHAIRMAN LEWIS, Mr. Billings** said that areas for cost reduction have been identified, but no cost cuts have taken place yet. Stopping out of state travel would save \$70,000 and vacancy savings and hiring freeze options are being examined.

{Tape : 1; Side : A; Approx. Time Counter : 27.5-47.2}

SEN. WATERMAN mentioned two issues of concern: whether a gatekeeper system into Warm Springs has been addressed; and whether there was a way of identifying the high cost cases. She wants the focus on less expensive alternatives in appropriate

placement, and would like some sort of cost analysis. **Mr. Anderson** agreed that a gatekeeper system at the state hospital is a good goal. At this time, the only gatekeeper is the court system. **SEN. WATERMAN** asked if it would take a legislative statute to implement a gatekeeper system to which **Mr. Anderson** replied that it would. He also stated that the mental health services have begun to track the high cost children in order to give them some alternative services. There is also a new utilization review contractor with regional care coordinators who help care providers and parents find the appropriate setting for children.

CHAIRMAN LEWIS requested county of origin information for the Warm Springs population in order to establish criteria to set up restrictions on local government use of the hospital. **SEN. WATERMAN** would like to know if the Warm Springs population level is such because: the placement is appropriate; there is no other place in the community; or it is convenient? If it is appropriate for there to be 180 people there, then the Legislature has underfunded them.

SEN. COBB asked what the Department's cost cutting measures have been since the budget will be \$4 million short. **Mr. Billings** responded that the Department has recently been certified by Medicare for patients at Warm Springs which will bring \$1 million in reimbursements to benefit the overall budget for the remainder of this year. **SEN. COBB** asked if Medicaid benefits are lost when certified for Medicare. **Mr. Billings** said that those benefits are not lost. **Mr. Anderson** explained that the Department should be able to capture more Medicaid revenue because in state hospitals for mental disease there is no Medicaid for people between 22 and 65, but there are a significant number of patients between 18 and 21. Overall there should be an increase for both Medicare and Medicaid.

In response to a question by **SEN. WATERMAN** regarding Medicaid eligibility, **Mr. Anderson** responded that previously only nursing home beds were certified for Medicaid, but since all beds are certified now, the Department can collect Medicaid on anyone Medicaid eligible or not excluded by law from Medicaid coverage.

{Tape : 1; Side : B; Approx. Time Counter : 0.1-1.0}

SEN. COBB asked questions regarding the responsibility for collection of Medicaid reimbursement funding. **Mr. Anderson** answered that there is an Institutional Reimbursement Bureau within the Department and that Pat Phillip at the state hospital is the responsible party there.

{Tape : 1; Side : B; Approx. Time Counter : 1.1-6.8}

In response to a question regarding the state hospital capacity by **REP. JOEY JAYNE, HD 73, Arlee, Mr. Anderson** said that capacity is 189 patients and approximately 130 are civil involuntary commitments. The only limitations on placing people in the state hospital is for emergency detention. In response to questions from **REP. JAYNE** regarding funding should there be unanticipated levels of involuntary commitment, **Mr. Anderson** said that is the situation the Department finds itself in at this time. There are more patients than anticipated. The Department hopes that it can create alternative solutions for those patients that do not need to be institutionalized.

Lois Steinbeck, Legislative Fiscal Division Staff, explained that the challenge of recouping Medicaid reimbursements under the new licensure is to reopen and reestablish Medicaid eligibility to recoup the additional Medicaid funds. Later on in the mental health hearings, this question should be addressed. The second issue is the appropriate average daily population on which to base the budget. In the last session, the subcommittee accepted the executive recommendation to place the Montana State Hospital budget at 135 average daily population for this biennium. The average daily population for the last fiscal year was 158, and this year it is averaging 170-175. The current Executive Budget is based on an average daily population of 165. It is recommended that the Committee examine the average daily population closely because otherwise reductions will come out of the community services portion which leaves fewer community services for individuals and may end up with more people being placed in the state hospital.

{Tape : 1; Side : B; Approx. Time Counter : 8-9.8}

SEN. COBB questioned if transitional care units are really transitional or are the people there because the Department ran out of beds? **Mr. Anderson** responded that they are transitional patients and do not require hospital level care. Most of the people require and receive a level of supervision that would not be available in a community group home.

{Tape : 1; Side : B; Approx. Time Counter : 11.5-14.6}

SEN. COBB stated that the Department needs to find \$3 or \$4 million for the supplemental or cut it out of the new budget. He requested a list of savings options that the Department is considering. **Director Gray** responded that there is a list of options and that even if DPHHS gets the supplemental funding it will not cover all of the costs. **SEN. COBB** and **CHAIRMAN LEWIS** reiterated the need for a list of the considered options.

{Tape : 1; Side : B; Approx. Time Counter : 14.7-17.2}

SEN. WATERMAN discussed two issues of concern to her. She requested a list that shows the length of stay for those individuals in transitional care units. She has concerns that some of those people may be actually long term rather than short term. She expressed concern that community services would be cut and then the Department would never get on top of the intensive cases for kids or the hospital population. She wants to know if people are in the high end services because there is no place for them or they have not been placed in community services. Cuts have exacerbated the high end costs and that is where the focus needs to be.

{Tape : 1; Side : B; Approx. Time Counter : 17.3-21.9}

CHAIRMAN LEWIS and **SEN. COBB** asked when the Committee would have the rough list. **Director Gray** said that the Department could get it to them later in the week. **SEN. COBB** requested a list again.

{Tape : 1; Side : B; Approx. Time Counter : 22.0-25.0}

SEN. WATERMAN requested guidance on what needs to be done in order to establish a gatekeeper system for admissions to Warm Springs. If it requires a statutory change, she will put in a bill draft if the Committee does not want to do it. **CHAIRMAN LEWIS** asked Ms. Steinbeck to work with the Legislative Counsel staff to determine the legal issues. **SEN. WATERMAN** asked to make a decision in the Committee as to who would put the bill in.

{Tape : 1; Side : B; Approx. Time Counter : 25.0-28.5}

Ms. Steinbeck commented to **SEN. WATERMAN** that the Department should perhaps explain what it would do if there were no gatekeeper system. Under the licensure standards, there is some question of what it can do if there are more admissions than it is licensed for. **Ms. Steinbeck** suggested that a review of the Department's contingency plan for admission overruns may help in determining whether a statutory measure is needed. The present law adjustment in the mental health services bureau does not appear to be adequate to cover the ongoing service levels. One thing the Committee may wish to do is ask the Department how expenditure patterns will change from this year to 2002 and 2003. Some of the reductions the Committee is considering may have to be long term. The Committee may then ask for two lists of options - a short-term list and a long-term programmatic change list.

{Tape : 1; Side : B; Approx. Time Counter : 28.7-33.2}

CHAIRMAN LEWIS asked **Pat Gervais, Legislative Fiscal Division Staff**, to discuss the issue of the ISD contract. **Ms. Gervais** explained that in the most recent budget status report the Department indicated that the ISD computer costs included in the budget status were included at appropriation levels and that the

actual expenditures could be \$480,000 more than the appropriation. If the DPHHS does not reimburse full cost to ISD there is a capped cost to some federal funding sources, but for other state agencies the costs have not been capped. Under federal cost allocation principles, if one federal funding source is capped, then all federal funding sources must be capped. Secondarily, it will be an issue for ISD in the proprietary fund in balancing its fund balance.

OVERVIEW OF THE DIRECTOR'S OFFICE AND BUDGET REQUESTS

{Tape : 1; Side : B; Approx. Time Counter : 33.3-44.6}

Director Gray presented an overview of the Director's Office **EXHIBIT (jhh05a01)**, its funding sources, its responsibilities, and the many functions that each office fulfills. She introduced her staff:

Russ Cater, Legal Services
Beth McLaughlin, Human Resources
Nan LeFebvre, Customer Relations
Ken Pekoc, Public Information

Director Gray discussed staffing levels, turnover rates and percentages, and went over various funding issues. She explained the Montana Telecommunications Access Program (MTAP) and specific budget issues.

QUESTIONS AND ANSWERS ON THE DIRECTOR'S OFFICE BUDGET REQUESTS

{Tape : 2; Side : A; Approx. Time Counter : 0.4-9.1}

To a question from **SEN. COBB** as to the staff turnover rates, **Director Gray** responded that 11 years is the average retention rate. At the highest management levels there has not been a lot of turnover, but at mid-management levels there has been a problem. In the past, the Department has had training opportunities for individuals that may wish to go into management. **CHAIRMAN LEWIS** asked what the vacancy rate over the last year had been. **Beth McLaughlin, Chief Human Resources Officer**, responded that the fiscal bureau had a 20%-25% vacancy rate.

{Tape : 2; Side : A; Approx. Time Counter : 9.2-18.3}

SEN. COBB requested that the interagency coordinating council ascertain how it would get to its 5-year goals in the next 2 years. He wants a list of goals on health care issues and wants to know what progress has been made. **Director Gray** responded that the Department would get that information for him. **SEN. COBB** said that if DPHHS met the goals the budget would be much less. **Director Gray** said that teenage pregnancy is one of the issues in which there has been progress.

Nan Lefebvre mentioned that in the governor's unified budget the goals, benchmarks, and programs are listed. The Department makes continual progress on the 5-year goals, but the bar keeps getting set higher.

Director Gray explained that the reduction in MTAP funds was attributed to an increase in internet use and the efficiency of the system which means that fewer minutes are needed. MTAP funding was based on \$1.50 per minute, but when negotiations with Sprint were concluded it was reduced to \$1.30. The money should be earmarked for improving services to those in need.

{Tape : 2; Side : A; Approx. Time Counter : 18.4 -35.0 }

Ms. Steinbeck handed out an updated table **EXHIBIT(jhh05a02)** and explained LFD issues, all relevant to MTAP. Depending on fee collections in the coming biennium, the year end balance could range from \$841,000 to \$1.1 million. The \$1.1 million year-end balance is based on a continuing 10% annual growth rate, the unknown factor being an increase in phone lines. The Legislature could divert some of this money to the general fund, but if it should so choose it would take an amendment to statute. Statute earmarks and sets aside all of the telecommunication access collections to this fund. A certain amount could be diverted to the general fund each year. Should the Committee choose to not fund the Executive Budget at the level requested, the ending fund balance would increase and the amount that could be diverted to the general fund could also increase.

The Executive Budget continues a 10% annual growth rate. Since there was a reduction in collection last year, due to efficiency and internet use, there is a question as to whether the Executive Budget should continue a 10% growth rate in 2002 and 2003. **Ms. Steinbeck** offered to assist the Department in analyzing what the relay minutes might drop to, given the current growth rate as opposed to the 10% compounded historic growth rate. The second issue is that the Executive Budget was based on \$1.50 per relay minute and the current signed long-term contract is \$1.30. There will be a higher ending fund balance because of the relay contract and the growth rate the Committee may choose to accept for relay minutes.

Another LFD issue which would provide a small increase for the Department would be the leasing of two vehicles. **Ms. Steinbeck** suggested that the Department could lease smaller vehicles without any additional funds in its budget or action on the part of the Committee.

Means testing in this program is another of the LFD issues. Section 53-19-306, MCA, establishes this program and directs the program to establish an appropriate means test for participation. The program has established a means test for individuals who are not part of a family. Individuals with up to 419% of the federal poverty level can participate in this program. There is no means test for individuals who are part of a family. It appears that this is a violation of statute. The Committee could direct the program to establish a means test for eligible individuals in families.

Greg Petesch, Director of Legal Services for the Legislature, believes that the statute contains an unconstitutional delegation of legislative authority because there is no cap.

Finally, the program recently added mobility impairment to the list of disabilities qualifying a person to receive telecommunications services. This appears to be in violation of the statute because the statute which defines persons with a disability does not list mobility impairment. A mobility impaired person could receive services if that individual had one of the qualifying impairments as well. Options for consideration are the amendment of Section 53-19-302, MCA, to expand the definition of persons with disability to include mobility impairment, and the Committee could instruct the program to adhere to the statutory definition of impairment. If that were done, the Committee should probably request an estimate of the cost of serving persons with mobility impairment because it will increase the ending fund balance.

{Tape : 2; Side : A; Approx. Time Counter : 35.2-37.0}

In response to queries from **SEN. COBB** and **SEN. WATERMAN** regarding HB 2, **Ms. Steinbeck** said that if the Committee believes that mobility impairment should be added to the definition of persons with a disability, thereby making it a qualification under the statute, then that could be introduced as a bill to implement the appropriations act since there would be an appropriation to serve people with a mobility impairment. The Committee has up to the 75th day to request bills to implement the appropriations and it could condition the appropriation on passage of that portion of the legislation.

{Tape : 2; Side : A; Approx. Time Counter : 37.5-39.6}

In response to a question by **CHAIRMAN LEWIS** as to whether there are other programs for the hearing impaired within the Department that could be supported by the surplus funds without statutory change, Ms. Steinbeck responded that if the money were used for anything but the MTAP program, there would need to be a statutory

change. **Pat Gervais** said that she would check into Vocation Rehab programs to see if there were some places that the funding could be used.

{Tape : 2; Side : A; Approx. Time Counter : 41-44.7}

In response to questions by **CHAIRMAN LEWIS** and **SEN. WATERMAN, Chris Kuntz, Executive Director of MTAP**, explained that there was no other program directly related with the deaf and hard of hearing. Vocational Rehab would serve the deaf in order to get a job or position, but MTAP would supply the telephones in order to carry on employment. There is no other program which provides the devices and services that MTAP does.

{Tape : 2; Side : A; Approx. Time Counter : 44.8}

EXHIBIT (jhh05a03) EXHIBIT (jhh05a04)

Director Gray explained that expenditures will exceed collection, such that in the year 2009, the ending fund balance will be gone at that point. The Department does not want to use the surplus in any way, but wants to keep it for the future. **SEN. COBB** said that if the Department is going to go broke, it doesn't matter when it does. Since expenditures exceed revenues, the Department needs to make some hard decisions now.

{Tape : 2; Side : B; Approx. Time Counter : .9-9.8}

SEN. WATERMAN asked for the total number of individuals served by the MTAP program. **Ms. Kuntz** said that to date the program has served 7,000. A 1989 Montana survey showed that there are 56,000 hearing impaired, so there are many who have not yet received the services. **Sherry Vukasin, Budget Analyst for Director's Office**, explained that in the past the growth rate and expenditures have been 10.8%. Because of saturation of phone lines in the market, the Department does not expect the growth that it has seen in the past, although there will be some growth. The Department took a conservative rate of growth and projected a 7.5% rate of increase due to saturation of the market. Many of the increases that are being requested this session are due to FCC regulation mandates that the Department has to provide increased services. In response to a question by **SEN. WATERMAN, Ms. Vukasin** responded that the tax is imposed on cell phones.

In response to questions from **CHAIRMAN LEWIS** regarding the travel budget for the Director's Office, **Director Gray** responded that 60% of travel in the Customer Relations area is for Vista volunteers who have extensive travel and advisory groups that come in also add a significant portion **EXHIBIT (jhh05a05)**.

{Tape : 2; Side : B; Approx. Time Counter : 9.9-14}

In response to questions regarding projected cost increases from **SEN. COBB** and **CHAIRMAN LEWIS, Ms. Vukasin** explained that there was a large pay-out to the former Director of the Department of Health and Human Services and that the Department provided services during the fires with telephone hot-line information. There was also a donation hot-line for people to call to offer assistance to those who were in need during the fire. A significant number of people from the agency were working on the fire effort and evacuation of those who receive services from the agency.

{Tape : 2; Side : B; Approx. Time Counter : 14.6-48}

OVERVIEW OF THE QUALITY ASSURANCE DIVISION

Denzel Davis, Administrator of the Quality Assurance Division, presented an overview of the Quality Assurance Division, its varied functions, and key responsibilities **EXHIBIT (jhh05a06)**. He introduced his bureau chiefs and went over the Division organization and gave a fairly detailed review of the functions of each individual bureau:

Barbara Conrady, Fir Hearings Bureau
Erich Merdinger, Audit and Compliance Bureau
Paul Haskell, Facilities Management
Marjorie VanderAarde, Certification Bureau
Roy Kemp, Licensure Bureau
Bert Freeman, Fiscal Analyst
Pam Sourbeer, Program Analyst

{Tape : 2; Side : B; Approx. Time Counter : 26.5-34.4}

The Division is still looking at other licensure functions in the Department that might be moved into the Quality Assurance Division. In response to questions from **SEN. COBB** regarding what those functions might be, **Mr. Davis** responded that those were licensing ambulances, restaurants, and swimming pools.

In response to queries by **SEN. COBB**, **Mr. Davis** explained that the Department is located behind the Colonial hotel and that he and the whole management team evaluate the Division's goals.

{Tape : 2; Side : B; Approx. Time Counter : 34.5}

SEN. COBB asked **Ms. Conrady** questions regarding her staff and the status of hearings as to timeliness. **Ms. Conrady** responded that except for hearings having to do with adoption subsidy cases and Medicaid provider issues the hearings are up to date. The exceptions may take 6 months to hear and decisions may take 5 days to a year. She said that they did not receive any

complaints about timeliness. People are pretty understanding and tolerant.

Mr. Davis further explained that in the area of provider recoveries, rather than engaging in lengthy hearings, when the Department finds a provider that owes the Department a refund, a detailed cost analysis versus risk or ability recovered is done prior to bringing it to fair hearings, and negotiations usually result in recovered money. Responding to **SEN. COBB, Mr. Davis** said that they do this quite a bit, but that generally it is mistakes due to the complexity of the Medicaid program.

{Tape : 2; Side : B; Approx. Time Counter : 46.2-48}

Answering questions by **SEN. COBB, Mr. Davis** explained that the fair hearings process is not complicated and that there is no obligation to have an attorney present. Fair hearings are fact findings, looking at the information provided by the individual and the Department. The determination of denial or approval is a result of statute and law. **Ms. Conrady** responded to a query regarding appeals of the fair hearing process by **SEN. COBB**, that by the time it reaches a hearing the majority of recipient applicant hearings are found in favor of the Department.

{Tape : 3; Side : A; Approx. Time Counter : 0.4-5.4}

REP. JAYNE questioned **Mr. Davis** about the percentage of all Medicaid and food stamp cases versus those audited citing the 1,650 audit figure in the presentation. **Mr. Merdinger** said that cases were reviewed for eligibility on a monthly basis and that a very small percentage were audited on a random basis. This is a national effort not just state effort. Montana has always stayed below the national error rate of 7%. **Mr. Davis** explained to **SEN. COBB** that all this information is public record.

{Tape : 3; Side : A; Approx. Time Counter : 7.5 - 15}

Mr. Davis explained the monitoring process used in the surveillance and utilization review. **SEN. COBB** asked if the Department had reviewed or audited the state hospital Medicaid records. **Mr. Davis** said that it had not been done yet. The Department has purchased the new OmniAlert fraud detection software and a data warehouse with 15 years of records, payment records, and a query tool will enhance productivity and ability to examine more providers in the Medicaid system.

{Tape : 3; Side : A; Approx. Time Counter : 17.2}

Responding to **SEN. COBB, Mr. Davis** said that the Department issues licenses to providers for up to three years increasing efficiency. **SEN. COBB** asked from whom complaints on facilities

are received to which **Mr. Davis** responded that complaints come in from providers, parents, and law enforcement.

{Tape : 3; Side : A; Approx. Time Counter : 18 - 26.4}

Mention was made of a Miles City day care facility case and whether the Department had been notified by the Justice Department. **SEN. WATERMAN** expressed concerns that low-income people are less likely to report daycare facilities that are substandard since it is so hard to find affordable daycare. **SEN. WATERMAN** would like to extend eligibility for child care continuously up to 6 months.

{Tape : 3; Side : A; Approx. Time Counter : 26.5-32}

SEN. WATERMAN had questions regarding staffing ratios in residential care facilities and the licensing issue. **Mr. Davis** said that the Department did not have staffing ratios. **Ms. Gervais** responded that the Department licensed foster care facilities and that those did have staffing ratios. To questions from **SEN. COBB**, **Mr. Davis** responded that most violations are not serious and that licenses are rarely taken away, although the Department is currently trying to take the license away from one facility.

{Tape : 3; Side : A; Approx. Time Counter : 34-44}

Mr. Davis explained that the Certification Bureau brings in a lot of federal money for the regulation of facilities. To questions from **SEN. COBB** regarding the difference between survey and resurvey, **Mr. Davis** responded that the resurvey is to make sure that deficient practices have been corrected.

Mr. Davis responded to questions from **SEN. COBB** about the clinical laboratory improvement amendments. He explained that the Department is responsible for conducting on-site surveys of 112 of the 602 labs in the state. He said that labs are tested every two years. **Mr. Davis** said that the deficiency testing is mandated by federal government and that the Department does not find too many deficiencies.

{Tape : 3; Side : A; Approx. Time Counter : 44-51.2}

Mr. Davis then went over the present law adjustments of the licensure program and radiological health programs. The Department created a decentralized system of health care consultants, and is requesting more funding because of compliance problems. **SEN. COBB** asked questions regarding closure orders on residential care facilities to which **Mr. Davis** responded that no facilities have actually been closed, but some cases are pending and that the main issue of concern is the B bed issue.

{Tape : 3; Side : B; Approx. Time Counter : .1-2.7}

B bed clients are clients who are similar to nursing home clients, but are allowed to stay in personal care facilities rather than being transferred to a skilled nursing facility.

CHAIRMAN LEWIS mentioned a personal care home closure that was taking place in Florence or Victor and constituent anger. **Mr. Davis** responded that the only criteria that would close a facility are that the client is not receiving the care and safety issues.

{Tape : 3; Side : B; Approx. Time Counter : 2.8-16.3}

SEN. WATERMAN asked why a facility could not have flexibility in allowing frail patients to stay in B beds. **Mr. Davis** responded that it is statutory regulation and that there is not a bill from the Department to change the statute. **Mr. Davis** said that he is not opposed to expanding B beds, but that the Department is seeing major problems, particularly with those B beds. **SEN. WATERMAN** agreed that the facility should be able handle the patients and that the patient should be appropriate to stay there.

Mr. Davis mentioned that 30% of clients in personal care facilities do not have the necessary physician certification. In response to questioning by **SEN. COBB** and **SEN. WATERMAN**, **Mr. Davis** said that the 30% does reflect the assessment and that the patients were certified once the assessment was made - they were appropriate to be there. In response to **REP. CLARK**, **Mr. Davis** answered that there is not a specific form to fill out and that the Department does have model forms, but does not give them to facilities unless requested. **SEN. WATERMAN** said that they should give facilities the form when they are licensed.

{Tape : 3; Side : B; Approx. Time Counter : 16.4-17.4}

CHAIRMAN LEWIS asked if the issue with physician certification had something to do with Medicaid eligibility. **Mr. Davis** explained that it is a statutory requirement having nothing to do with Medicaid eligibility.

{Tape : 3; Side : B; Approx. Time Counter : 17.7-30.2}

Mr. Davis went over the Radiological Health Program present law adjustments. There are 964 locations with radiological equipment that need to be inspected and the Department does not have the resources to do it. The Department can support one FTE. The Department needs to rewrite the rules so that facilities are required to have their inspections done themselves. Large

providers get the inspections done on their own; it is the small providers that problems will arise with. **SEN. COBB** asked how often the inspections take place. **Mr. Davis** said that it has been probably five years since all radiological facilities had been inspected. **SEN. WATERMAN** asked what would happen if the Legislature repealed the statute and what federal requirements were for small facilities. **Mr. Davis** explained that there is no real federal requirement. **Roy Kemp** commented that mammography sites are inspected by the federal government.

{Tape : 3; Side : B; Approx. Time Counter : 30.4-36.4}

SEN. WATERMAN mentioned concerns that the new FTE would come on board and would end up rewriting rules instead of inspecting radiological equipment. **SEN. WATERMAN** suggested that it would be a good idea to find out what other rural states do with the inspections. **Mr. Davis** said that the Department will get back into mammography inspections since that is paid for by the federal government.

{Tape : 3; Side : B; Approx. Time Counter : 37.5-44.0}

Ms. Steinbeck suggested that this would be a program that lends itself to collection of a fee and funding by state special revenues. There are LFD issues with the appropriateness of some state special revenues, but perhaps at the time of registration the Department could assess a fee that would support the licensure. **SEN. WATERMAN** suggested that since there are many pages of rules the Department should either get in or out of the business of inspection.

{Tape : 3; Side : B; Approx. Time Counter : 44.0-48.5}

Ms. Steinbeck explained that the remaining \$16,000 in the executive proposal after \$33,000 goes to contract services is not adequate to fund an FTE at the grade level that the Department would want.

{Tape : 4; Side : A; Approx. Time Counter : 0.9-3.3}

Mr. Davis concluded his presentation.

Ms. Steinbeck handed out the Olmstead decision **EXHIBIT(jhh05a07)** and the TAC report **EXHIBIT(jhh05a08)**.

{Tape : 4; Side : A; Approx. Time Counter : 3.4-8}

SEN. WATERMAN mentioned that the TAC report is a good road map for consideration of the mental health programs. **Ms. Steinbeck** suggested that if Committee members have any questions after reading the report they notify her so that she can relay the questions to the consultants who will be speaking before the Committee on January 18 at 8:00 am.

ADJOURNMENT

Adjournment: 11:30 A.M.

REP. DAVE LEWIS, Chairman

SYDNEY TABER, Secretary

DL/ST

EXHIBIT (jhh05aad)