

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Call to Order: By **CHAIRMAN EDITH CLARK**, on January 16, 2003 at 8:00 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edith Clark, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Dick Haines (R)
Rep. Joey Jayne (D)
Sen. Emily Stonington (D)

Members Excused: Sen. Bob Keenan (R)

Members Absent: None.

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

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp refers to material below it.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Disability Services Division
Developmental Disabilities
Services
Montana Developmental Center
Eastmont Health Center
Vocational Rehabilitation
Services
Director's Office
Executive Action: Chemical Dependency Program

CHAIRMAN CLARK called an executive session.

EXECUTIVE ACTION ON CHEMICAL DEPENDENCY

{Tape: 1; Side: A; Approx. Time Counter: 2.6 - 4.5}

Bob Andersen, Office of Budget and Program Planning (OBPP), said that since it is a \$1 million decrease in general fund, if they take no action, they are essentially putting that \$1 million back into the general fund.

Pat Gervais, Legislative Fiscal Division (LFD), told the Subcommittee that it could take action on this and defeat it. If they later decide that they would want to do something with this, they could reconsider. If the Subcommittee takes no action, it can be brought up later for vote. If they take action and defeat it, they would first have to move to reconsider the motion that defeated it.

{Tape: 1; Side: A; Approx. Time Counter: 4.5 - 5.3}

Motion/Vote: SEN. COBB moved that DP 350, **ALCOHOL TAX GENERAL FUND REPLACEMENT BE ADOPTED**. Motion failed 0-6 by voice vote. REP. HAINES voted SEN. KEENAN's proxy. SEN. STONINGTON was not present, but later voted in accordance with the 24-hour rule.

{Tape: 1; Side: A; Approx. Time Counter: 5.3 - 6.2}

Motion/Vote: SEN. COBB moved that DP 355, **CHEMICAL DEPENDENCY ACCESS PAYMENT BE ADOPTED**. Motion failed 0-6, by voice vote. REP. HAINES voted SEN. KEENAN's proxy. SEN. STONINGTON was not present, but later voted in accordance with the 24-hour rule.

{Tape: 1; Side: A; Approx. Time Counter: 6.2 - 8.1}

Ms. Gervais distributed a memo from Director Gray to Budget Director Swysgood regarding the supplemental appropriation for the Child Support Enforcement Division (CSED), which indicates that they intend to request an additional \$1.2 million in HB 3, the supplemental appropriation bill, as well as a loan of \$2.1 million.

EXHIBIT (jhh09a01)

Ms. Gervais then distributed a letter from Governor Martz to Tommy Thompson, Secretary of the Federal Department of Health and Human Services, requesting assistance with the repayment of the incentive funds that the Department overdrew for CSED.

EXHIBIT (jhh09a02)

{Tape: 1; Side: A; Approx. Time Counter: 8.1 - 10.7}

Responding to a question from **SEN. COBB** regarding the DPHHS proposal to take out a loan, **Gail Gray, Director of the Department of Public Health and Human Services (DPHHS)**, said that they intend to pay the loan back using some of the fees. At her meeting with the federal Child Support Enforcement director on February 3, she will request that the federal government forgive some of this debt. If they will not do this, then DPHHS will request a payment plan rather than having to go the general fund for a loan. If all of this fails, they will have to look to the rest of the Department for a period of three to five years. **SEN. COBB** said that if he were a bank he would not give them a loan. This is a plan to pay off a loan with money they do not have from fees in a bill that may not pass. To do it right, he suggested that he may offer a supplemental bill on this. He added that this may be the best the Department can do since there are not many options at this point. **Director Gray** observed that if they had any other options they would push them. This approach was suggested by the budget office. **SEN. COBB** said that he is not calling the Department irresponsible, but he is calling the budget office irresponsible. **Director Gray** said that it has been a difficult decision to make the payments out of the program, and they appreciate the assistance they have had from the budget office. She added that if there is no child support enforcement program, there is no Temporary Assistance to Needy Families (TANF) program.

{Tape: 1; Side: A; Approx. Time Counter: 10.7 - 11.2}

CHAIRMAN CLARK asked whether they can borrow money to pay a debt, and **Director Gray** replied that they can. **Ms. Gervais** said that staff had requested a legal opinion as to whether or not borrowing to cover the deficit situation is legal.

HEARING ON DISABILITY SERVICES DIVISION

{Tape: 1; Side: A; Approx. Time Counter: 11.2 - 33.2}

Joe Mathews, Administrator of Disability Services Division (DSD), distributed a handout (Exhibit 3). He introduced key staff and reviewed the organization, mission, programs, institutions, funding, distribution of services, and staffing of the division. He then reviewed the proposed reductions in the program. He concluded his overview saying that the intent behind the programs is to provide a continuum of services to integrate adults and children with disabilities into society and provide supports to help those individuals be successful.

EXHIBIT (jhh09a03)

Developmental Disabilities Program

{Tape: 1; Side: A; Approx. Time Counter: 33.3 - 42.5}

Jeff Sturm, Director of the Developmental Disabilities Program (DDP) and Superintendent of Montana Developmental Center (MDC), referred the Subcommittee to Page 8 of the DD program section (Exhibit 3) and reviewed the federal, state, and waiver definitions of "disability." If an individual is disabled prior to age 18, and the person has the other disabilities listed and is in need of services similar to someone who is mentally retarded, that individual fits the definition of "disability" within the service programs offered.

Mr. Sturm said that services are broken down into work services, residential services, and other services. Intensive services are provided to those with increased medical, behavioral, or skill-training needs, which generally results in higher staffing ratios. He reviewed the programs offered in intensive work services, facility-based services, combination services, supported employment services, and senior programs and went over the numbers of individuals receiving those services.

Mr. Sturm next briefed the Subcommittee on the community living and residential services and the numbers of facilities and individuals receiving services.

{Tape: 1; Side: B; Approx. Time Counter: 0.4 - 2.4}

Continuing with his explanation of programs, **Mr. Sturm** said that they provide three basic children's services: Early Intervention/Part C, family support, and intensive needs. In the Part C program, they serve children from birth to three years of age. **SEN. STONINGTON** asked why this program was chosen as one that could be eliminated, and **Mr. Sturm** responded that in making program cuts, he looked for individuals who were not at high risk without services. The services that have been discussed for elimination are the supported living and community supports services. Those in the most intensive group homes have never been on the list. As they make cuts, there are few services to choose from without moving into the services of people who would ultimately die if the services were not provided. He added that he is not downplaying the necessity of the Part C services, but he does not have a lot of options.

Responding to a question from **SEN. STONINGTON** about programs offered in Early Intervention/Part C, **Mr. Sturm** said that family support specialists work with families in development of programs for infants. **Ms. Gervais** commented that Part C is a large general fund program with less federal match than other programs. The Department is looking at a waiver potential as a refinancing

measure, and staff believes that there is an opportunity for refinancing with CHIP.

Mr. Sturm next reviewed the family education support (FES) services and the numbers of individuals involved and said that FES services are for those children who are age three and above and do not meet the intensive definition. The intensive family education support service is an all-Medicaid service and is in the waiver. The FES is funded solely by general fund.

{Tape: 1; Side: B; Approx. Time Counter: 5.3 - 9.9}

Referring to the case management section of Exhibit 3, **Mr. Sturm** reviewed that information, noting that caseloads are growing and the number of cases per manager has grown to over 45. He observed that as the waiting list grows, the intensity of those cases is also growing. Case managers become the primary link to individuals waiting to get on the waiver. He continued with explanations of other services they provide such as transportation service and adaptive services.

{Tape: 1; Side: B; Approx. Time Counter: 9.9 - 14.2}

Referring to Page 6 of Exhibit 3, **Mr. Sturm** reviewed the numbers of those served in the community and those on the waiting lists. Of the 299 people waiting for services or with no services, 129 are children and 170 are adults.

{Tape: 1; Side: B; Approx. Time Counter: 14.2 - 23.7}

Mr. Sturm then went over the CENTER FOR Medicare and Medicaid Services (CMS) review in 2000, in which CMS expressed concerns about health, safety, and quality assurance issues. He said that they have worked to address those concerns, and he submitted a report to CMS last summer on which he has received verbal feedback that it looked good.

As a result of the review, **Mr. Sturm** continued, they have received assistance through the Human Services Research Institute (HSRI) grant to improve the quality assurance process. In order to address the concerns expressed about quality assurance and freedom of choice by CMS, they have set up a quality council. They are now setting up a system that will allow clients to control their money. Individuals will still need qualified providers, so it does not mean that there will be an absolute ability to take the money and go where they want, but it will open up opportunity. They have developed qualified provider processes for every service, but the DD contract will be with the individual. Another change that is coming is individual cost plans, which will be a struggle, because the computer system has not been set up for this.

Mr. Sturm continued that CMS did a follow-up review in September 2002, but he has yet to receive an official report on that. CMS did express continued concerns about health and safety, partial service, and waiting lists.

{Tape: 1; Side: B; Approx. Time Counter: 23.7 - 26.9}

Responding to a question from **SEN. COBB** about how Montana compares with other states with respect to the waiting list issue and providing services, **Mr. Sturm** said that the national trend is waiting lists. Some states were able to reduce their waiting lists, but have now come back to them. The states that have eliminated waiting lists provided services for all the clients on waiting lists and made the commitment to provide services to anyone needing services.

{Tape: 1; Side: B; Approx. Time Counter: 26.9 - 39.1}

Mr. Sturm reviewed the waiver refinancing efforts which should allow them to replace general fund with Medicaid fund for services. As they move more and more people into the waiver system, they must ensure the individuals involved are waiver-eligible. They have already placed those about whom there can be no question in the waiver, but now, they are getting to the gray areas. Individuals placed under waiver must: 1) meet the state definition of developmental disability; 2) need specific services based on the handicap; 3) be eligible for Medicaid; 4) be institutionalized if waiver service were not provided; and 5) not earn more than 50 percent of an average salary. Of those in supported living, they have found that about 10 to 20 percent of clients easily meet the five criteria.

{Tape: 1; Side: B; Approx. Time Counter: 39.1 - 47}

Ms. Gervais pointed out that if these individuals are not meeting the criteria for services under Medicaid, they receive services funded by the general fund. In looking at controlling costs and growth, the Subcommittee may wish to determine what kind of program they will want for those who are not eligible for Medicaid. In other areas of the Department, the Subcommittee has made choices by using diagnosis and income levels to determine those eligible for general fund services. Such criteria are currently not applied in this program to determine eligibility for general fund services.

Ms. Steinbeck reviewed actions that the Subcommittee had taken in other programs to limit eligibility which they could choose or not choose to apply in this program as well.

{Tape: 2; Side: A; Approx. Time Counter: 0.3 - 1.7}

Mr. Mathews added that DD services are not entitled, so when someone is eligible, it does not mean that they receive services.

They may go on a waiting list, and the Subcommittee decides the parameters by the amount of general fund it provides for services.

{Tape: 2; Side: A; Approx. Time Counter: 1.7 - 4.2}

SEN. STONINGTON asked if there is enough information to draw criteria boundaries to meet a general fund figure. Referring to Page B-140 of budget analysis, **Ms. Gervais** said that of those who were non-Medicaid-eligible about 65 percent are above 100 percent of the federal poverty level, 22 percent of adults surveyed had incomes at or below 100 percent of the poverty level, and 16 percent of children and families surveyed had income under 100 percent of the poverty level.

{Tape: 2; Side: A; Approx. Time Counter: 4.2 - 9.1}

SEN. COBB asked if the concern with respect to the lawsuit is that, if they have not determined eligibility now, they would be unable to do so later, and **Ms. Gervais** replied that it was.

Director Gray said that the class has been certified as those who are at Eastmont or MDC, who have been there, or are in danger of being placed, and the lawsuit estimates run from \$20 to \$65 million. The class has nothing to do with income, but is a small class of very disabled individuals. **Mr. Sturm** added that should they lose the lawsuit the total cost to place everyone in the community is now estimated at \$21 million.

Ms. Gervais said that it is her understanding that this is the estimated cost only for the Travis D Lawsuit. She reminded them that the Montana Association for Independent Disability Services (MAIDS) has filed a lawsuit on the wage parity issue between institutional and community staff. She has heard of one estimate of about \$20 million for this.

{Tape: 2; Side: A; Approx. Time Counter: 9.1 - 10.7}

Ms. Steinbeck continued that if this lawsuit were facing other disability systems within DPHHS, one of the options would be the net increase if they serve only those individuals meeting the class. This has been a defensible position in terms of the Olmstead Decision wherein the courts determined that state resources were one of the conditions that could be considered. It held that states do not have to create an entitlement for services, but that state resources could be considered in response to the lawsuit. This is where the waiting list and effectively, efficiently moving plan for placing individuals came into play. When mandated to provide services to a certain class of individuals, the issue is the implication of services to individuals not within that class.

{Tape: 2; Side: A; Approx. Time Counter: 10.7 - 12}

Director Gray said that they have turned in a loss contingency of \$25 million to the courts. When discussing how money is allocated on a department-wide basis, this litigation is something that needs to be considered. **Mr. Sturm** said that the Travis D Lawsuit covers anyone else coming into MDC or Eastmont, too. Until the case is settled, the class is not defined. He added that when looking at reducing services, they must consider that the class will grow and there will be an impact on MDC.

{Tape: 2; Side: A; Approx. Time Counter: 12 - 18}

SEN. STONINGTON suggested that they ask the Department to prepare an eligibility list defining the class of people that they will serve in order to limit eligibility. **Ms. Gervais** suggested that statutory changes be undertaken in the event that they should implement such criteria. **SEN. STONINGTON** added that it would be a good idea to get that rolling now so that when they look at decision packages they can look at budget implications and endorse a subcommittee bill.

Mr. Mathews requested clarification as to whether they were only considering financial eligibility criteria, and **Ms. Steinbeck** said that it may impact the developmental disability criteria as well. Supplying an example of such application in another program, **Ms. Steinbeck** said that in the mental health system, only those diagnosed with a serious and disabling mental illness or children with a serious emotional disturbance can receive services.

{Tape: 2; Side: A; Approx. Time Counter: 18 - 21.8}

SEN. KEENAN requested information on the forensic DD placement at MDC and **Mr. Sturm** responded that they did receive an admission last year that was a criminal sentence. There is an attempt, through SB 35, to clarify the language on such commitments, although division attorneys have determined that the current law allows such commitments. **Ms. Gervais** said she will provide the Subcommittee with a copy of the legal opinion requested by LFD staff with regard to this commitment. **Ms. Steinbeck** said that statute does address criminal commitment for mental illness, but in the DD system, there is only a civil commitment procedure. Legislative counsel and LFD staff were concerned when the Department concluded that a criminal commitment was legal since legislative staff does not believe that this is supported in statute.

{Tape: 2; Side: A; Approx. Time Counter: 21.8 - 23.3}

REP. JAYNE asked what SB 35 will do, and **Mr. Sturm** replied that it adds additional language to include developmental disabilities

and clarifies other language in the evaluation of sentence and unfit to proceed statutes. **SEN. KEENAN** said that the bottom line is a solution to the problem and if the Subcommittee can help out, he would appreciate some communication while there is an opportunity to fix this.

{Tape: 2; Side: A; Approx. Time Counter: 23.3 - 36}

Continuing his overview, **Mr. Sturm** said that they have made a commitment to refinance everything that can be feasibly refinanced by July 1, 2003. They would appreciate committee direction on how far they should go with this because they will get into the gray areas. With the children's services, they are looking at adding an amendment to the waiver, and there is a possibility of changing the class slightly so that there will be a nonintensive class that they can add to the waiver. They are optimistic that by July they will have the waiver amendment in to CMS in Denver, but approval is up for question. Responding to questions regarding movement of individuals into the waivers, **Mr. Sturm** said that application of the disability criteria to determine whether some individuals can be placed on the waiver involves some risk. CMS has given a definition which they expect states to apply, and states must be able to justify application of the standard in each case.

Referring to the DD survey on the feasibility of charging a copayment for provision of services, **Mr. Sturm** said that they expected a return of 25 percent, but only 15 percent, or 90 of the surveys, were returned. Based on the information that they received, they would receive about \$117,000 per year in copay. At present their billing system is not capable of doing a copay and if directed to do this, there would be an additional cost to implement a system to collect the copay.

{Tape: 2; Side: A; Approx. Time Counter: 36 - 44}

Mr. Sturm then reviewed the spend-down Medicaid plan wherein individuals who are on and off the system throughout the year would receive a Medicaid card to keep them in Medicaid year-round. When individuals are on and off the system, it creates a problem in the billing system since they are switching from Medicaid to general fund and back.

Referring to Page B-126 of the analysis, **Ms. Gervais** brought up the issue that the Department has \$1.8 million in refinancing implemented in 2002 which indicates that they did not bill Medicaid for Medicaid-eligible individuals. This appears to violate Section 17-2-108, which requires the use of nongeneral fund first. There was a waiver definition change in 1997 which the Department has been slow to implement, and she suggested that

the division look into the potential of retroactive billing to see if there are additional savings that can be generated.

{Tape: 2; Side: A; Approx. Time Counter: 44 - 48.4}

Mr. Sturm explained that they have been looking into this, but the difficulty is how far back they can go, and they may be able to go back only to July of 2002. He added that he has no idea how much money this would be. **Ms. Gervais** indicated that the Subcommittee may wish to ask what the risk would be if they went back even farther if the Department is now billing without having received authority for additional slots. **Mr. Sturm** explained that these are two very different issues. They can not go back and reopen a report that is already closed, but they can ask for more slots this year. **Ms. Gervais** indicated that the Subcommittee may wish to inquire if the Department has asked CMS if they can reopen a prior year and request additional slots retroactively; **Mr. Sturm** replied that he believes it was asked by the waiver coordinator, but he will check on it.

{Tape: 2; Side: B; Approx. Time Counter: 1.4 - 3.4}

SEN. STONINGTON asked how much money has been recovered in previous years with this retrospective. **Mr. Sturm** replied that they have not done this before. **SEN. STONINGTON** said that it is an effort worth making in these hard times.

Montana Developmental Center

Ms. Gervais explained that with regard to MDC and Eastmont, the revenue generated from Medicaid first goes to bond repayment and the balance goes into general fund. The institutions are funded from the general fund.

{Tape: 2; Side: B; Approx. Time Counter: 3.4 - 14.2}

Mr. Sturm continued that individuals are committed under the seriously developmentally disabled statute and must: 1) have impaired cognitive function, 2) be at imminent risk of harm to self or others, 3) require near total care, and 4) be unable to be integrated into the community. AT MDC, there is a client mix of individuals between the ages of 18 and 72, and they must exhibit severe behavioral challenges, medical fragility, or predatory behavior. The admissions are dropping at the facility, and the most significant drop has been in the medically fragile category. About three-quarters of admissions are those with behavioral needs or in some offender status. MDC is licensed for 112 beds, and currently serves 91 individuals. **Mr. Sturm** reviewed the units that specialize in different kinds of care. As a result of problems with licensure in which they had mixed predatory and nonpredatory clientele, CMS required them to open a unit devoted to clients with high cognitive function, but very dangerous

behaviors. Licensing in this type of facility requires very specific things, and when they get into locked doors and privileges being taken away, they run into licensure problems.

{Tape: 2; Side: B; Approx. Time Counter: 14.2 - 19.3}

Responding to a question from **SEN. COBB** regarding the resurvey and whether they can charge Medicaid now, **Mr. Sturm** said that the survey will be in March. They will then discuss approval of backbilling with CMS.

Mr. Sturm then went over the MDC census, and said that the estimated census for the end of 2003 is 79 as a result of three new group homes that should be up and running by then. This move will mean closure of a unit and layoff of staff around April 1.

{Tape: 2; Side: B; Approx. Time Counter: 19.3 - 20.6}

Ms. Gervais pointed out that in 2001 the legislature appropriated \$1.4 million per year from the funding of MDC as a one-time only appropriation and included language directing the Department to downsize the two institutions to a population of 88 by the end of the 2003 biennium or to certify that community placements were not available. By June, she would expect that the Department would certify in accordance with HB 2 language that community placements were not available since they have not reduced institutional populations to 88. Included in the Executive Budget is a division request for replacement of that \$1.2 million appropriation as well as some other base adjustments for the two institutions.

{Tape: 2; Side: B; Approx. Time Counter: 20.6 - 41.2}

Mr. Mathews reviewed the Olmstead Decision and said that the Supreme Court recognized its fiscal impact on states. It determined that a state should try to have a comprehensive effectively working plan which demonstrates that it is making the effort to move individuals from segregated situations to integrated situations. As a result of this decision, the division has been working on plans to move people from residential facilities into community services. They did not receive any budget expansion last time to do this, so they are trying to refinance dollars to get referred individuals into communities.

Mr. Mathews explained that children who graduate from the special education system are moved into adult services, often ending up on a waiting list. Decisions about who comes off the waiting list when a service opportunity is opened up are often crisis driven. Since the Olmstead Decision, they have tended to try to move individuals from the institution into the community. There

are already many in the community on the waiting lists who may need the slots, so it has become a balancing act.

Mr. Mathews touched on the census history of the state institutions and community efforts to ensure that there are services for the developmentally disabled within the community. These efforts have resulted in development of Intensive Care Facilities for the Mentally Retarded (ICF/MR) where community providers do a great job of serving people. There are individuals who will have difficulty in the community and may require a more structured environment such as is found at MDC, but many individuals who once would have lived in institutions are now living and thriving in communities. The result of this at MDC is an increase of patients with significant behavioral issues.

Eastmont Human Services Center

{Tape: 2; Side: B; Approx. Time Counter: 41.2 - 49.6}

Mr. Mathews referred the Subcommittee to Exhibit 3 and reviewed the census and type of population. He explained the institutional funding and licensing. Once the community group homes are built, the population at Eastmont will be down to 29 individuals. Eastmont does not have the certification problems that MDC does because the patients are all the same type.

{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 7.2}

Mr. Mathews observed that many of the patients at Eastmont are similar to those served in the community and addressed the issue of whether they could be served in the community and what types of services they would need. As they move these individuals into the community, they are considering development of some medical group homes since many are medically fragile. He then addressed the commitment process and potential development of services in the community for those with behavior problems. He referred to the Olmstead process again and said that Montana makes no distinction between the types of institutions. Many in the DD service delivery area believe that all patients can be served in the community, but sometimes there are significant costs to serving people at the community level as well as they are served in an intermediate-care facility. He commended the staff at both of the facilities.

{Tape: 3; Side: A; Approx. Time Counter: 7.2 - 10.2}

Mr. Mathews said that they are now at the point where they could close Eastmont and move those individuals into the community. They could also move people from Eastmont to MDC, but that would create the issue of a full facility in terms of licensing and beds. They have concern with this because of the criminal

commitment issue, and also if community services diminish, it would put individuals at risk. **SEN. COBB** asked if they could accomplish what they want to do with the budget that they have proposed. **Mr. Mathews** replied that the community supports waiver is cut in the Executive Budget, and while those in community supports are generally a little higher functioning, the cuts may cause some individuals to end up in the institutions. They are trying to keep enough slots open in the residential facilities while moving forward with the community program.

{Tape: 3; Side: A; Approx. Time Counter: 10.2 - 19.1}

In discussion of the court case, **Mr. Mathews** said that, if instructed to move all the individuals into the community, they would have to scramble to do this. **SEN. COBB** commented that if they are closing or capping communities and moving people into one institution, it is hard to show that they are making the progress required under Olmstead. **Mr. Mathews** said that institutions should not be kept open just to keep them open, but moving individuals into the community requires money to develop plans and services for them.

Responding to questions from **SEN. STONINGTON** and **SEN. COBB** regarding the costs of litigation and the potential for a provider tax, **Mr. Mathews** said that up front it is more expensive to move people from institutions into the community. Over the long term, however, it is probably a little cheaper, although providers feel that they are being forced to bear the burden of cuts. The two lawsuits will have an impact on the division budget since they deal with moving individuals into the community and wage parity. He said that a provider tax may not work in this program; however, they could potentially tax ICF/MRs. The Refinancing Unit is looking into these possibilities.

{Tape: 3; Side: A; Approx. Time Counter: 19.1 - 21.5}

Director Gray added that they are considering a provider rate assessment on the Department for its two ICF/MRs. If they were to do it this year, they would collect an assessment of 5.5 percent or \$600,000, but they would need a subcommittee bill to allow this. It would pay for refinancing and put money into Mental Health Services (MHS) for the next biennium and this year.

Vocational Rehabilitation

{Tape: 3; Side: A; Approx. Time Counter: 21.5 - 34}

Referring to Exhibit 3, **Mr. Mathews** explained that Vocational Rehabilitation (VR) is a state/federal program and reviewed its funding sources, purpose, staffing, caseload management, and history. It is an eligibility-based program with a capped federal grant which helps disabled individuals get to work. The

program is reviewed annually by the United States Department of Education Office of Rehabilitation Services to ensure that the division remains compliant with federal laws and regulations, has an advisory council, provides customer satisfaction surveys, and reports to the Governor. This has always been a good program, and Montana has done a good job of working with disabled people. Most of the staff work in the field as rehabilitation counselors. **Mr. Mathews** reviewed the services offered in the Blind and Low-Vision program and observed that mobility and orientation specialists are now in short supply nationwide.

{Tape: 3; Side: A; Approx. Time Counter: 34 - 50.5}

Mr. Mathews explained that each state receives a capped federal grant based on population, and Montana is near the minimum allotment. If they match the federal grant, they can use it all the way to the cap. The law requires that they serve the most significantly disabled first, and the eligibility criteria specify that: 1)an individual must have a physical or mental disability; 2)that disability must constitute an impediment to employment; and 3)there must be a reasonable expectation that the individual will be able to work. He touched on the statewide distribution of rehabilitation counselors and caseloads for these individuals. **Mr. Mathews** reviewed the population served by the VR program and stated that they are seeing individuals with more severe problems than in the past.

{Tape: 3; Side: B; Approx. Time Counter: 0.3 - 12}

Responding to questions from **SEN. COBB**, **Mr. Mathews** said that the cuts in the Mental Health Services Plan (MHSP) program worry VR since mentally ill individuals are referred to the program. If pharmacy or mental health therapy is cut, it could impact the ability of VR to help an individual get a job since those services help the mentally ill maintain stability. By law, they can not pay for services where there is a comparable benefit. If, however, MHSP is not able to provide the services, then VR could, which is where there is a cost shift. The number of individuals in the VR program is growing nationwide. Because there is a financial needs test within the VR program in Montana, the individual client must provide some of the costs of the rehabilitation plan. Individuals receiving Social Security Insurance (SSI) or Social Security Disability (SSD) automatically meet the definition of significant disability and are immediately referred to VR. The VR program works with community providers and employers to get the disabled working.

{Tape: 3; Side: B; Approx. Time Counter: 12 - 18.8}

Mr. Mathews went over the types of technological equipment that the VR program pays for in assisting those with disabilities to live and work in the community. Responding to questions from

SEN. STONINGTON, Mr. Mathews said that there are some parallel services offered in the private sector. If an injury occurs on the job, workers' compensation would pay for it. Other than that, it would be paid by insurance or private-pay. Anyone can apply to this program, but not all are eligible. Those who can not go back to their old jobs and do not have skills for a new job would be eligible for this program. Because the program has resource criteria, individuals help pay some of the costs depending on their financial situations.

In response to questions from **SEN. COBB, Mr. Mathews** said that at one time the workers' comp and VR system worked together, but now workers' comp works with private rehabilitation with the goal to get the individual back to work immediately. If this does not work or the problems are significant, and the Workers' Comp runs out, the individual could come to the VR program.

{Tape: 3; Side: B; Approx. Time Counter: 18.8 - 30.5}

He reviewed the equipment and services that individuals with specific disabilities would receive through the program. He said that the disabled need reasonable accommodation when going to work or to school in order to be able to succeed, and the VR program tries to split the cost with the university system and employers. Employers like the program since the program will help pay some of the costs of on-the-job training.

{Tape: 3; Side: B; Approx. Time Counter: 30.5 - 51.5}

VR is part of the Workforce Development System (WDS), and it works closely with Job Services and welfare training programs toward a seamless system. **Mr. Mathews** reviewed the statistics on those who have been and will be placed in the workplace, their wage levels, and total annual earnings. The VR program met all of its federal standards last year, and they anticipate reauthorization this year with emphasis on transition from special ed students in high school to work. Montana tries to do outreach in the schools in order to identify such children early, serve as a consultant, and ensure that a plan is in place when these children graduate. He then reviewed the Extended Employment program saying that individuals with significant brain trauma, serious mental illness, and developmental disability require ongoing support.

{Tape: 4; Side: A; Approx. Time Counter: 2.3 - 9.7}

Mr. Mathews concluded his overview of the VR program with information about the funding and services provided through the Extended Employment program. He then reviewed the funding and services for the Independent Living Centers(IL) and the issues affecting those with disabilities. The biggest single issue in

IL is transportation, especially considering the rural nature of the state.

{Tape: 4; Side: A; Approx. Time Counter: 9.7 - 12.4}

Responding to a question from **REP. JAYNE** regarding the decision package which would eliminate visual services medical in VR, **Mr. Mathews** said that it is 100 percent general fund and pays for services not covered by Medicaid.

{Tape: 4; Side: A; Approx. Time Counter: 12.4 - 32.4}

Referring to B-123 of the LFD Budget Analysis, **Ms. Gervais** said that the general fund support increases 8.9 percent from \$86.3 million to \$94 million. The total funds increase 8.6 percent above the 2003 biennium level. General fund support is reduced or eliminated for Visual Services Medical, Extended Employment, Independent Living Services, Donated Dental Services, Community Supports, Provider Rates, and nine full-time equivalents (FTE). **Ms. Gervais** then reviewed the present law adjustments, costs at MDC, annualized costs at Eastmont, cost annualization of base adjustments, and cost annualization of Disability Determination services and provider rate increases.

LFD Issues with DSD

Ms. Gervais reviewed some of the LFD issues with respect to this division. Referring frequently to the Budget Analysis, she touched on refinancing and the potential Subcommittee determination of use of any general fund savings, stressing the need to consider the impact that excess federal spending and authority can have on the efficacy of appropriations statutes. The Department has allowed the division to reinvest general fund savings in ongoing costs within the division, but the Subcommittee has the option to make determination of general fund savings. She reviewed the inconsistency of the provider rate increase in this division compared to reductions in other divisions and the division request to refinance two decision packages so that it will not have to reduce or eliminate services and provider rates. With reference to the refinance of children's services, **Ms. Gervais** said that this may possibly be a way to mitigate the reduction in Medicaid waivers.

Ms. Gervais reviewed the issue identified during the CMS review which was a violation of Medicaid law regarding the payment of respite care to providers. Interim Children and Families Health and Human Services Committee requested bill LC 442, which would exempt providers of companionship services or respite care for the aging and infirm from the wage and hour law, unemployment insurance, and workers' compensation. It does not specifically address the issue identified by CMS, but the division remedied

the problem by requiring respite care workers to be employees of corporations receiving reimbursement.

{Tape: 4; Side: A; Approx. Time Counter: 32.4 - 40.7}

Ms. Gervais then touched on the issue involving the institutional population, and **REP. JAYNE** asked for clarification on the specific plans for dealing with the population mix at the institutions. **Mr. Sturm** said that this problem had been addressed by the creation of the 104-R unit in which they are placing the more dangerous individuals. There are units specialized in definite areas, and all of the units are relatively full so they are concerned about long-term impact. **REP. JAYNE** asked who makes the determination of predatory behavior, and **Mr. Sturm** replied that this is determined on observed behavior while at MDC.

Ms. Gervais concluded her presentation with highlights of the Budget Analysis.

{Tape: 4; Side: A; Approx. Time Counter: 40.7 - 51}

{Tape: 4; Side: B; Approx. Time Counter: 0.3 - 4.7}

Director Gray presented her overview of the Director's Office. She reviewed organizational changes, program financing, interagency coordination, legal affairs, and human resource information. She went over the issues of significant importance within the division program.

EXHIBIT (jhh09a04)

A letter from Clayton Schenck to Senator Keenan, information on Independent Living, and a request for rejection of DP 292 were presented for the record.

EXHIBIT (jhh09a05)

EXHIBIT (jhh09a06)

EXHIBIT (jhh09a07)

ADJOURNMENT

Adjournment: 12 P.M.

REP. EDITH CLARK, Chairman

SYDNEY TABER, Secretary

EC/ST

EXHIBIT (jhh09aad)