

**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 17, 2003 at 8:04 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 testimony below it.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: Refinance Issues  
Disability Determination  
Developmental Disability  
Planning and Advisory Council  
MTAP  
Executive Action: Committee Bills

**SEN. STONINGTON** voted yes on DP 135 and DP 140 in accordance with the 24-hour rule established by the chairman.

**Provider Tax on Intermediate Care Facilities for the Mentally Retarded**

*{Tape: 1; Side: A; Approx. Time Counter: 0.5 - 10.2}*

**Chuck Hunter, Administrator of the Refinancing Unit**, reviewed the rules for a federal Medicaid provider tax. An assessment must be: broad-based, uniformly applied, redistributive, and can not exceed six percent of the gross revenue. The division believes that it could generate \$600,000 in new general fund money if it could create a provider assessment for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) which would pass federal muster.

**EXHIBIT (jhh10a01)**

**Mr. Hunter** reviewed the narrative which describes how this would work. If the two State ICF/MRs were taxed at five and a half percent, \$1 million would flow into the Department of Revenue. The first step in implementation of this assessment, and the cleanest way to do this from the federal audit perspective would be to take \$1 million in general fund from the accounts of the two institutions and move it over as the tax. In step two, when the \$1 million is paid, the Department will submit a request to Medicaid for their portion of the money. The Medicaid reimbursement rate in Montana is 72 percent of each dollar so the State would receive \$720,000. The money would then come back to the ICF/MR and at that point they would still be down \$280,000. In the third step of the process, the State would reimburse the ICF/MR the \$280,000 to make them whole. At this point the ICF/MR have not gained anything by the tax, but the State has kept the \$720,000 of general fund.

**EXHIBIT (jhh10a02)**

**Mr. Hunter** continued that another way to do this would be to transfer the same \$1 million over. It would be State tax money, and they would receive the \$720,000 federal reimbursement. They could then take the \$1 million and match it up with Medicaid. They could put it in an account for the express purpose of using it for Medicaid. They could then draw down \$2.7 million which is the federal matching rate for Medicaid, which would be \$3.7 million for spending in Medicaid. A portion of this could still come back to make the distribution for the ICF/MR to make them whole. Through this double transaction, they would net \$2.6 million.

*{Tape: 1; Side: A; Approx. Time Counter: 10.2 - 17.5}*

**SEN. STONINGTON** said that it sounds like a great idea, and, if they were to do this, it would need to be a statutory appropriation to ensure that the money remains in DPHHS. **Mr. Hunter** said that in order to get the full benefit for the matching, they must spend the money on Medicaid, so it would have to come back to DPHHS. Other states have set up special revenue accounts for medical assistance which have a statutory appropriation allowing any money that flows in to flow back and be matched with Medicaid and spent for Medicaid purposes.

**SEN. STONINGTON** agreed that a somewhat open-ended account like that is an excellent idea. She then asked why they chose five and one-half percent rather than the six percent limit. **Mr. Hunter** explained that in making the calculation, if the economy were to change, they may run the risk of exceeding the six percent level. It is safer to stay under that threshold since the federal government will scrutinize this carefully. It would depend on whether the rate were based on gross revenue or some other factor such as bed days. There is a great deal of fluctuation in some factors which would have an impact on the amount of revenue that comes in. If they assess the tax on gross revenue, they could tax at six percent and be safe, but if they go with bed day or some other type of tax, they would need to be cautious to not exceed what turns out to be six percent.

**SEN. STONINGTON** said that statutorily the Subcommittee would have to set up the tax and account, and asked **Mr. Hunter** what he expects. **Mr. Hunter** suggested that the Department could help the Subcommittee set up the right kind of tax with the appropriate accounts.

*{Tape: 1; Side: A; Approx. Time Counter: 17.5 - 21.7}*

**Lois Steinbeck, Legislative Fiscal Division (LFD)**, suggested that this same strategy could be applied to the State hospital and nursing care center. They would not make any money on the State hospital, but they would make a lot of money on the nursing care center. **Mr. Hunter** said that it is worth looking into, but there is not enough Medicaid volume to make it work at the State hospital. He added that he is unfamiliar with the nursing care center, so could not address that. **Ms. Steinbeck** said that the nursing care center would be predominantly Medicaid under the Executive Budget. **John Chappuis, Deputy Director of the Department of Public Health and Human Services (DPHHS)**, said that the nursing care center falls into the same class as regular nursing homes and they are now statutorily exempt. If they are brought into this, it would need to be done the same way as regular nursing homes.

*{Tape: 1; Side: A; Approx. Time Counter: 21.7 - 26}*

**REP. HAINES** asked if they had talked to the federal government on this, and **Mr. Hunter** said that he had not talked to them about this particular proposal, yet. They have been talking to the Centers for Medicare and Medicaid Services (CMS) about the hospital provider bed tax for about six months. He has not talked to the Internal Revenue Service (IRS) about this, and he has talked to Kurt Alme about the hospital provider tax, but not the ICF/MR tax. **REP. HAINES** said that he would want to hear from all of those entities before they went much further with this.

**Gail Gray, Director of DPHHS**, said that if they did this now, they would be able to get money from this year for this which would help relieve some of the significant problems that they are having right now.

**Mr. Chappuis** assured the Subcommittee that what they are planning is patterned on what other states have done; and it is in the regulations. They have done nursing home bed taxes before, and Montana has always put the money back into healthcare, unlike other states which have diverted money to unrelated areas.

*{Tape: 1; Side: A; Approx. Time Counter: 26 - 32.9}*

Referring to **Director Gray's** statement about the potential to have some revenue this year, **Mr. Hunter** cautioned that if they were to raise significant money this year, they would need to tax or assess for a full year's worth of revenue. To do this, they would need to look at retroactive time periods, and this would need to be discussed with the CMS. If they could not do this retroactively, they would need to look at a tax so that they could capture one-quarter's worth of revenue. He will also need to find out whether CMS will allow an ICF/MR assessment on State facilities if they are the only such facilities in Montana. In order to do this, they must also be able to guarantee that the ICF/MRs would be held harmless.

Responding to a question from **SEN. STONINGTON** regarding private providers who would be involved in such an assessment, **Mr. Hunter** said that there are no private ICF/MRs in Montana.

**Ms. Steinbeck** suggested that the new group homes developed for the nursing care centers could be considered ICF/MR. They will be moving individuals in the nursing care facility into a group home which will be a private facility, and 20 percent of those individuals are dually diagnosed as developmentally disabled and seriously mentally ill. She also asked if any of the current Developmentally Disabled (DD) group home providers within the community reach this level. **Mr. Hunter** said that federal regulation says that ICF/MR or facilities that were ICF/MR in or

before 1985 can be included. **Mr. Hunter** concluded that they tried to bring in those facilities converted prior to the 1985 date, but CMS has said that none of those facilities will pass muster on this.

**Jeff Sturm, Administrator of DD**, provided some insight into this saying that Montana had passed a statute several years ago which does not allow the building of any more ICF/MR in Montana. At this time, ICF/MR and group homes are licensed separately.

**{Tape: 1; Side: A; Approx. Time Counter: 32.9 - 34}**

**SEN. COBB** said that when they did the nursing home provider rate they had not expanded services. **Mr. Chappuis** said that when they implemented the nursing home tax, they had included a provider rate increase. They did not expand services, but enhanced rates.

#### **Potential Medicaid Waiver to Offset Reductions in MHSP or MIAMI Elimination**

**{Tape: 1; Side: A; Approx. Time Counter: 34 - 45.5}**

**Ms. Steinbeck** said that there is a potential for a Medicaid-services waiver to offset reductions in the Mental Health Services Plan (MHSP) and the Montana Initiative for the Abatement of the Mortality of Infants (MIAMI). The two key issues in DPHHS plan are: 1) the expansion and cap of Medicaid eligibility for low-income pregnant women and infants up to a year old and 2) MHSP recipients. The concept that DPHHS studied last year would have served the same number of people, but at a reduced general fund cost. Those who are seriously mentally ill die of the same diseases and causes as those without mental illness, but their life spans are on-average twenty years shorter. The federal government informed the State that there would be a maintenance of effort(MOE) which is nowhere discussed in federal Medicaid regulations. It has always been an entitlement and a match. There is one rule which says "and other conditions for waiver that the Secretary of Health and Human Services may impose." That small piece of authority is now being broadly interpreted to require MOE. This is not following historical practice where Montana has been allowed to expand the waiver. Other states have been allowed to do exactly what Montana is not being allowed to do.

**{Tape: 1; Side: B; Approx. Time Counter: 0.3 - 1.9}**

**Ms. Steinbeck** continued that there are ways to offset and mitigate some of the reductions included in the Executive Budget if the Subcommittee wishes to go that way. The Subcommittee may wish to pass a bill and direct the Department to pursue this sort of plan. There is a question with how assertively the State should pursue requesting CMS to follow historical practice or

allow Montana the equal right to do what has been approved in other states.

**{Tape: 1; Side: B; Approx. Time Counter: 1.9 - 6.5}**

**Mr. Chappuis** explained that the Department has made the decision to separate the FAIM waiver from a refinance of MHSP and the MIAMI program. They recently had a conference call with the new regional CMS administrator in Denver, who was as astounded as they were to hear about the new MOE issue that is coming from the central office. They are planning to discuss this with the FEDERAL Health and Human Services Secretary, Tommy Thompson. CMS in Denver said to go ahead and submit the waiver request for MHSP, which they will do. They will also submit the FAIM replacement.

**Ms. Steinbeck** added that one of the major cost-saving initiatives in the Executive Budget is a limit of ten physician visits per year. That was the piece that would make the expanded MHSP cost-neutral. Medicaid waivers must always be cost-neutral to the federal government. If the State is waiving something, and in retrospective review, it ends up costing the federal government more, the State has to pay or forego the federal matching funds in excess of what it would have cost. The Subcommittee will need to look at the cost saving should this go through. **Mr. Chappuis** said that it is an issue, but they may address it as a gatekeeper level of care issue.

**Ms. Steinbeck** asked if Behavioral Health Inpatient Facilities (BHIF) would need to be implemented in order to meet waiver criteria. **Mr. Chappuis** replied that it would be State hospital level of care that would be needed.

**{Tape: 1; Side: B; Approx. Time Counter: 6.5 - 10.8}**

Responding to a question from **SEN. STONINGTON** as to the need for State legislation on this, **Ms. Steinbeck** said that she is not convinced that it is. In discussion with legal counsel, she found that the Department may not have the broad authority in designing service levels that a lay-reading of statute may indicate. Also, if this is something that the legislature wants DPHHS to do, it needs to put it in statute, which makes it a legally-binding, enforceable duty.

**SEN. STONINGTON** said that there should be a fine balance between what is stipulated and how much is left to discretion so that there is flexibility to manage money. **Mr. Chappuis** said that the Department would like authority to allow, but would not want it to be a requirement that they do this since it depends on the federal government. **Mr. Chappuis** said that this change would be

an expansion of eligibility, and the Department would like the legislature to weigh in on this.

### **Disabilities Determination**

#### **Joe Mathews, Administrator of the Disability Services Division**

**(DSD)**, continued his overview of the previous day and referred to Exhibit 3 and the Disability Determination Services Program, which is 100 percent federally funded. This unit is an arm of the Social Security Administration (SSA); however, they are State employees and their primary function is medical adjudication for individuals applying for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI). He reviewed the process by which an individual would receive SSDI or SSI. In Social Security, there is a specific listing for disabilities, and individuals must meet the medical criteria to be eligible. If the disability examiners determine that work is possible for an individual, the individual is likely to be denied SSDI or SSI. If an individual is eligible for SSI, that individual is eligible for Medicaid. If an individual is eligible for SSDI, there is a waiting period, but the individual is then eligible for Medicare.

#### **EXHIBIT (jhh10a03)**

CMS reviews carefully the accuracy of claims, time limitations, and caseload. The division is running a 95.6 percent accuracy rate for claims process and claims are processed within 66 days, which is shorter than the national average. The caseload has gone up, possibly due to the baby boom generation, and may increase even more. The Disabilities Determination unit does a good job and has received citations and national awards.

### **Developmental Disabilities Planning and Advisory Council**

*{Tape: 1; Side: B; Approx. Time Counter: 24.8 - 35.1}*

**Mr. Mathews** reviewed the purpose and funding of the Developmental Disabilities Planning and Advisory Council (DDPAC). DDPAC does funding for People First, transportation coordination, the donated dental project, and employment for transition age youth.

**Mr. Mathews** mentioned that the \$25,000 dental program has been eliminated, and **SEN. COBB** asked how they know the donated dental program worked. **Mr. Mathews** said that he will provide the information they have on this to the Subcommittee. Responding to a question from **SEN. STONINGTON** as to whether DDPAC is a separate line item, **Mr. Mathews** said that it is all federal funds and is not a separate line item. **Ms. Gervais** directed the Subcommittee to the appropriate page in the Budget Analysis.

**{Tape: 1; Side: B; Approx. Time Counter: 35.1 - 43.3}**

In response to questions from **SEN. STONINGTON** about the application for the federal grant and how that grant money is used, **Deb Swingley, Director of DDPAC**, said that DDPAC must release 70 percent or \$312,000 of the annual federal award into Montana communities. She provided examples of projects to which DDPAC has provided grants. DDPAC is funded through the Federal Developmental Disabilities Bill of Rights Act, under which there are three programs: State Councils on Developmental Disabilities, University Centers on Excellence, and the Montana Advocacy Program (MAP). DDPAC does not apply for the federal funds; federal law directs them as to how they can operate. DDPAC's mandate is advocacy, capacity building, and systems change activities.

### **Montana Telecommunications Access Program**

**{Tape: 1; Side: B; Approx. Time Counter: 43.3 - 48.9}**

Referring to Exhibit 4, **Mr. Mathews** touched briefly on the Montana Telecommunications Access Program (MTAP) and introduced **Kryss Kuntz**, Administrator of MTAP. Referring to Exhibit 4, **Ms. Kuntz** reviewed the history of the program and explained the services it offers and how they impact the hearing impaired.

**{Tape: 2; Side: A; Approx. Time Counter: 0.3 - 5.3}**

**Ms. Kuntz** explained how the relay service works for the hearing impaired and touched on the outreach services provided. The funding is an SSR account which comes from a ten cent per month assessment on every telephone line, including cellular, in the State. The decision packages involved in this program are for increased relay growth, outreach, rent, and anticipated equipment cost; video relay service; and an eligibility technician. Increased relay growth would account for an increase of \$45,938 in FY04 and \$96,469 in FY05.

**{Tape: 2; Side: A; Approx. Time Counter: 5.3 - 7.8}**

**SEN. STONINGTON** asked if the growth each year is growth in the number of calls placed or telephone lines. **Ms. Kuntz** replied that the growth rate comes from the additional number of people using the service. The additional revenue would come from the SSR. **SEN. STONINGTON** asked if they are assuming that there will be that much growth in the number of telephone lines to cover that cost. **Ms. Kuntz** replied that the cost is built into the fund balance, and she is requesting the authority to spend money within the balance.

**{Tape: 2; Side: A; Approx. Time Counter: 7.8 - 13.2}**

**Ms. Steinbeck** added that the number of phone lines has increased enough to feed the SSR to cover the costs. **SEN. STONINGTON** said that she questions whether the growth in phone lines is not more than enough to cover this, and whether the program really needs a ten cent tax. **Ms. Steinbeck** said that she would address these issues later.

**REP. HAINES** asked for clarification on what constitutes a telephone line, and **Ms. Kuntz** replied that it has do to with any phone line coming into your house: standard phone line, computer, and although cell phones to not have a line, they are part of the telecommunications industry. **Ms. Steinbeck** read statute 53-19-311 to the Subcommittee. It is not necessarily a physical line, but an access point or account. **Ms. Kuntz** clarified that the assessment is done through the local provider, not long distance companies.

**{Tape: 2; Side: A; Approx. Time Counter: 13.2 - 19.2}**

**Ms. Kuntz** continued her overview and explained the outreach program and its anticipated increased costs of \$40,010 in FY04 and \$44,610 in FY05. Hearing impaired individuals can find out about the services through physicians, speech therapist, audiologists, and word-of-mouth.

**Ms. Steinbeck** said that this program is in the Director's Office budget and referred the Subcommittee to B-161 of the Budget Analysis.

**{Tape: 2; Side: A; Approx. Time Counter: 19.2 - 30.8}**

**Ms. Kuntz** reviewed the rent increase in MTAP for a total cost increase over the biennium of \$18,430. She then reviewed the increase in anticipated equipment costs. The cost increase will be \$104,540 over the biennium. She explained how the Captioned Telephone(CapTel)works and the need for it to the Subcommittee. **Ms. Kuntz** said that the total cost of increases in DP 31 over FY04 would be \$172,297 and for FY05 it would be \$177,700. Responding to a question from **REP. HAINES** about the total amount in the fund balance, and **Ms. Kuntz** replied that at the end of FY02 the fund balance was at \$754,675.

**{Tape: 2; Side: A; Approx. Time Counter: 30.8 - 39}**

**Ms. Kuntz** then reviewed DP 29, the MTAP video relay services explaining that the Federal Communications Commission(FCC)will stipulate that all states provide the services. She explained how the video relay services work. It is in its testing phase, and the costs for it are as high as \$17 per minute. She said that these costs may come down as the FCC and National Exchange

Carriers Association (NECA) find ways to make it more cost-effective for all states to implement. DP 30 provides for an eligibility technician for MTAP. In order to receive MTAP equipment, there is an income eligibility requirement. The total biennial cost for this eligibility technician is \$69,750.

***{Tape: 2; Side: A; Approx. Time Counter: 39 - 49.2}***

**REP. HAINES** asked if the eligibility technician would need any specialized training, and **Ms. Kuntz** replied that she does not have a staff person who can do this, and the position will require some technical skill in accounting specialties. **Director Gray** said that there would be someone within the Department with those skills, but they would need to take someone away from another position. **REP. HAINES** said that he is not opposed to this function taking place, but is opposed to putting unnecessary bodies in the organization.

***{Tape: 2; Side: B; Approx. Time Counter: 0.3 - 4.1}***

**SEN. STONINGTON** requested clarification on the eligibility requirements, and **Ms. Kuntz** said that the requirement is only to be eligible for equipment. **SEN. STONINGTON** said that if they decided to not fund equipment, the eligibility specialist would not be necessary. **Ms. Steinbeck** concurred and added that the legislature included people with mobility impairments in the program. Referring to the federal regulations, she said that staff will review them and may come up with some suggestions about the absolute minimum which the State is required to fund and provide versus what is funded and provided.

**CHAIRMAN CLARK** mentioned that there is a bill to take money from MTAP that was diverted to purchase testing equipment for infant, and **Ms. Kuntz** said that the original intent of the 2001 legislation was one-time-only so it would not restore any money.

***{Tape: 2; Side: B; Approx. Time Counter: 4.1 - 4.9}***

There was discussion about a bill that may not have been passed or may have been withdrawn which would have taken money from this program and given it to the Montana School for the Deaf and Blind (MSDB). **Ms. Kuntz** clarified that in the 2001 session there was discussion of diverting MTAP funds to the dental hygienist program and the HIV AIDS funding, but this did not occur.

***{Tape: 2; Side: B; Approx. Time Counter: 4.9 - 5.6}***

Referring to Page 5 of Exhibit 4, **Ms. Kuntz** said that it shows the beginning fund balance, the expenditures and revenues. It includes the biennial appropriation of \$113,000 to MSDB and shows an ending fund balance in FY05 of \$71,231. **Ms. Kuntz** then reviewed the ways to mitigate the projected MTAP deficit as

listed on Page 5 of Exhibit 4. If HB 266 were to pass, it would revise eligibility guidelines which would require changes in brochures, applications, the website, and increases in equipment distribution and related expenses.

***{Tape: 2; Side: B; Approx. Time Counter: 16.4 - 21.6}***

**Ms. Kuntz** provided an explanation of the eligibility guidelines for receipt of equipment. With implementation of the 250 percent up to 400 percent cap, the program would gain only \$7,000 over the biennium. **Ms. Kuntz** added that without the distribution portion of the program, there is little use for the relay services. Since most consumers would not be able to afford the expense of the specialized telephones without assistance, the State would be providing a service that few would be able to use. Since the MTAP program buys in bulk, it can get the specialized equipment for a greatly reduced price which would not be the case for consumers that are ineligible. The intent of the law was to provide functional equivalent telecommunication services to all Montanans with hearing or speech disabilities. She concluded by asking that the Subcommittee keep the MTAP program intact and maintain an optimal service level to work toward the true intent of the law.

#### **LFD Issues Involved in MTAP**

***{Tape: 2; Side: B; Approx. Time Counter: 21.6 - 36.4}***

**Ms. Steinbeck** referred the Subcommittee to B-61 of the Budget Analysis. She said that if this is the program that the legislature would like to maintain and the Executive Budget is representative of the policies and actions the Subcommittee would like to take, there is a structural imbalance in the program. The projected annual revenues are not sufficient to provide the annual budget as estimated by DPHHS. If this how the legislature wants to maintain the program, the Subcommittee will face a decision on how to fund it in the next biennium. There is recommended language that the Subcommittee could consider for an amendment to direct the program to plan its expenditures and manage its current year budget, whether it adjusts financial eligibility or services provided, so that the projected ending fund balance together with projected revenues would equal the upcoming annual budget. Conversely, there is an ending fund balance. Even if they fund the Executive Budget as requested, they could divert up to \$71,000 in FY04 or FY05 for other purposes to potentially offset general fund.

Referring to Page B-63 of the Budget Analysis, **Ms. Steinbeck** said that to support text-telephone usage(TDD) based on historic rates of growth without introducing better or more easily used equipment, the Executive Budget request is \$105,000 too low. She

said that she is uncertain about limiting access on relay services based on ability to pay, but it can be done with equipment. The Subcommittee can change financial eligibility for equipment, whether the program provides equipment, and copays. She referred the Subcommittee to Page B-26 and the table with the federal poverty level information. At 200 percent of the poverty level, 40 percent of the families and individuals in the State would have been eligible.

***{Tape: 2; Side: B; Approx. Time Counter: 36.4 - 41.5}***

The Subcommittee has opted to provide services up to 400 percent of poverty, and this is an issue that it can address. If the Subcommittee decides to maintain equipment as part of the program, there may be a way to maintain the CapTel purchasing option for people even if the State did not install the equipment or train people to use it. **Ms. Steinbeck** said that a potential alternative to elimination of equipment is allowing people to purchase equipment through a State contract. It would reduce the cost of phones and equipment by nearly 50 percent.

***{Tape: 2; Side: B; Approx. Time Counter: 41.5 - 48.5}***

Referring to DP 29, **Ms. Steinbeck** said that this may be an area where hearing impaired and speech services are beyond those available to regular consumers. At this point, the per minute cost for the service is unknown, and the estimates are all very pricey. DPHHS proposal anticipates that the FCC will make its decision July 1, but the decision will not be made until the middle of 2004. If the Subcommittee approves this proposal, it should make it a biennial appropriation or reduce the first year by half.

Referring DP 30, **Ms. Steinbeck** concluded that the eligibility proposal hinges significantly on the collection of copayments. There are some economies or efficiencies of scale within this program, if financial eligibility for this program were combined with the Children's Health Insurance Program(CHIP).

***{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 5.5}***

**Ms. Steinbeck** reviewed the official attorney ruling on whether appropriation subcommittees can request bills or not. There is nothing in the rules which specifically provides or prohibits appropriations subcommittees from requesting committee bills; however, it has been a long-standing historical practice that bills affecting the appropriations act should come out of this Subcommittee. **Ms. Steinbeck** gave some examples of bills that had come out of the Subcommittee.

**EXHIBIT (jhh10a04)**

**REP. JAYNE** requested a written verification from **REP. LEWIS** on his agreement that all subcommittees have authority to request a committee bill by majority vote. **Ms. Steinbeck** offered to get a signature from him on this.

### **Ideas for Separate Legislation**

*{Tape: 3; Side: A; Approx. Time Counter: 5.5 - 21.4}*

**Ms. Steinbeck** presented a list of ideas and issues for separate legislation which the Subcommittee had discussed to this point. Referring to Exhibit 5, **Ms. Steinbeck** reviewed the ideas for use of tobacco tax settlement revenue explaining that this may require a statute. She touched on reciprocity for chemical dependency counselors, and then discussed the refinancing initiatives efforts with respect to the need to potentially change statute since the general fund which is freed up may not necessarily go to the general fund, but to offset deficits. She also addressed the issue of how much authority the Subcommittee may wish to give the Department in determining the use to which it may put any recaptured funds or whether it would prefer to designate the uses itself. She reviewed the means by which it could achieve its ends.

### **EXHIBIT (jhh10a05)**

*{Tape: 3; Side: A; Approx. Time Counter: 21.4 - 30.3}*

**Bob Andersen, Office of Budget and Program Planning (OBPP)**, commented that should the Subcommittee wish to specify how the money should be used, it would potentially remove Department flexibility to deal with issues similar to those of the last two years. He cautioned that expansion of programs on uncertain funding results in hurt down the road. In the past, the Department has used the flexibility to move funds from one program to another, and it is important to not limit flexibility. **SEN. COBB** said that if there is a shortfall maybe that should be addressed in the specific division instead of taking funding from the programs that are working. **Mr. Andersen** gave an example of problems caused by limitations on flexibility, and **SEN. COBB** said that this discussion is about legislative priorities for the funding.

**Mr. Chappuis** added that the Department would like the Subcommittee to direct them to take any savings to cover shortfalls and after that there should be a prioritized list. This would allow them the flexibility that they need. He explained the decision-making process with regard to excess funds, if there were excess funds in one program, they would ask for a program transfer through the OBPP. OBPP would either agree or disagree, at that point it would then be reviewed by the

Legislative Fiscal Committee (LFC), and then it would be returned to the Department, and it would be able to do what it requested. If the Subcommittee were to provide the Department guidance on the use of the money, the OBPP looks carefully at the guidance and would go along with the legislative priority.

**{Tape: 3; Side: A; Approx. Time Counter: 30.3 - 38.8}**

Discussion on the establishment of a 'rainy day' account led **Ms. Steinbeck** to explain that if money were appropriated out of the general fund, it would be difficult to make such an account. There is a statute on the books which says that the Department shall spend nongeneral fund first, and OBPP is supposed to increase the federal appropriation and reduce the general fund appropriation in order to accomplish the statute. Because the Subcommittee has given certain divisions excess "hollow" federal authority, the statute has been negated. If the Subcommittee wants the Department to have different priorities in deciding spending reductions or funding reductions, it will need to put that in statute.

**Director Gray** said that it is not that they want a separate account, but they do want the flexibility and the legislative priorities to guide them. The Department is concerned about being too constrained with what they can do. The legislature will be gone until the next biennium, and they want the legislative intent so that they can comply with the Subcommittee wishes to the best of their ability and intention.

**REP. HAINES** and **SEN. STONINGTON** both expressed sympathy with the need for flexibility, but added that legislators want to know that their priorities are fulfilled. **SEN. STONINGTON** suggested that she would like the means to stipulate legislative intent for programs and provision for a 'rainy day' fund should the refinancing mechanisms be successful.

**Ms. Steinbeck** reiterated that there would still be a high probability of amending substantive law to accomplish this. She added that the Department and OBPP do have ample opportunity for legislative feedback. The Finance Committee, Interim Children and Families, and HJR 1 all meet quarterly. In absence of a partnership with these legislative bodies, the risk of a statute change becomes more significant. She continued that the management of single divisions is almost like stand-alone agencies. The Department has made significant cuts in some divisions, while others have remained virtually untouched. These may have been decisions which the Subcommittee may approve of or they may not have, but while they are here, they have the opportunity to indicate their priorities and to do something about this.

*{Tape: 3; Side: B; Approx. Time Counter: 0.3 - 7.0}*

**Ms. Steinbeck** reviewed the revenue measures and related policy decisions. Responding to a question from **REP. JAYNE** regarding the provider tax issue, **Ms. Steinbeck** explained that there is a provider tax of \$2.80 per bed day in place paid by the provider.

There was discussion of the potential for a committee bill and the process by which it would be done. **CHAIRMAN CLARK** said that subcommittees may hear and make recommendations on bills in order to expedite the process. **SEN. STONINGTON** expressed concerns that the full committee would not have the information background to make a sound decision.

*{Tape: 3; Side: B; Approx. Time Counter: 7 - 12}*

**Ms. Steinbeck** observed that she assumes that the potential bills on Exhibit 5 would be necessary to implement the action of the Subcommittee. As the Subcommittee moves through the budget, if there particular executive proposals for which the Subcommittee may have a funding mechanism, that it would make appropriation contingent on approval of the measures. There would be a link between Subcommittee action and the bill separate from bills that are already out there. Bills that are out there could also be written or amended to support the decisions embodied on their appropriations actions.

There was discussion on the possibility of delaying implementation of I-146 and possible committee bills introduced to do this. **SEN. STONINGTON** said that if this has not been done yet, it may BE a place for this Subcommittee to start in order to get some of that money. **REP. HAINES** questioned whether the Subcommittee had the authority to override the wishes of the voters, and **CHAIRMAN CLARK** said that they could delay the implementation. **SEN. STONINGTON** stressed that they should be aggressive in taking the money and determining their own priorities for it since other subcommittees are doing the same. There was more discussion on this possibility.

**Ms. Steinbeck** said that the Subcommittee may not need to delay I-146. There may be a means of legally spending the tobacco prevention money as Medicaid match now freeing up general fund in the Executive Budget. **SEN. STONINGTON** said that she would recommend movement of this discussion to the floor. There was discussion on what should be included in the motion and how it could crafted to make it more difficult to break.

*{Tape: 3; Side: B; Approx. Time Counter: 21 - 31.7}*

**Motion:** SEN. STONINGTON moved that A COMMITTEE BILL TO AMEND I-146 TO USE TOBACCO SETTLEMENT DOLLARS FOR HUMAN SERVICES BE ADOPTED.

**Discussion:**

REP. JAYNE said that the motion is too broad and vague, and SEN. STONINGTON said that her intent was that it should be broad to use the funds from I-146 in a way not specifically designated.

REP. JAYNE said that there are too many strings attached to the motion; for instance, there are other uses contemplated for the funds. She said that she objected to voting on broad and vague motions.

REP. HAINES suggested that they have a vote to approve a decision package and a second vote to apply costs of the decision package against the funds in I-146. SEN. STONINGTON said that it could be an approach, but she wanted to make the motion today because others are planning to do the same. If it were tied to a particular decision package, it would limit the ability to be creative in leveraging the money in the best possible way. They will need more discussion and exploration on how they would accomplish that, but her intent was to make a broad enough motion which would indicate their interest in amending I-146 to apply portions of that money to Health and Human Services without tying their hands to which portion and allowing further investigation of the possibilities.

*{Tape: 3; Side: B; Approx. Time Counter: 31.7 - 32.3}*

**Vote:** Motion carried 4-1 with JAYNE voting no on a voice vote. CHAIRMAN CLARK said that she would accept SEN. KEENAN's vote in accordance with the 24-hour rule.

*{Tape: 3; Side: B; Approx. Time Counter: 32.3 - 47.3}*

**Motion:** SEN. COBB moved A SUBCOMMITTEE BILL TO IMPOSE A PROVIDER TAX ON THE INTERMEDIATE INTENSIVE CARE FACILITIES FOR THE MENTALLY RETARDED (ICF/MR), EASTMONT AND BOULDER.

**Discussion:**

Director Gray added that the Department has received clarification that they would be able to tax back two quarters. There is also no problem with governmental entities being the ICF/MR.

REP. JAYNE expressed her objections to the entire process of taking action without more information. She said that they are

not acting prudently to make motions on these issues today. She said that she requires some time and notice that the Subcommittee is going to vote on an issue so that she will have had the time to consider her actions and know what she is voting for. She said that she will be compelled to vote no again because she will not vote without the proper facts before. **SEN. STONINGTON** urged her to consider that they are making recommendations to prepare a subcommittee bill and the discussion about the actual details of the bill will come in time. She said that they need to get the process initiated.

*{Tape: 4; Side: A; Approx. Time Counter: 0.3 - 1.7}*

**CHAIRMAN CLARK** added that they need to get the process going in order to get their committee bill marker in. **Ms. Steinbeck** said that the earlier they get a bill in the better. If an individual on the Subcommittee wants to sponsor a bill, today is the last day.

*{Tape: 4; Side: A; Approx. Time Counter: 2.8 - 3.2}*

**Vote: Motion carried 3-2 with REP. HAINES and REP. JAYNE voting no on a voice vote.** **CHAIRMAN CLARK** said that she would accept **SEN. KEENAN's** vote in accordance with the 24-hour rule.

*{Tape: 4; Side: A; Approx. Time Counter: 3.2 - 10}*

**SEN. STONINGTON** said that she would like to discuss inclusion of the nursing home center in the nursing home bed tax. If that is a statutory exemption, she would like them to consider removing that exemption and using the revenue generated to leverage Medicaid funds. **CHAIRMAN CLARK** expressed interest in such a motion, and it was agreed that they should get some more information on such a move. **Director Gray** commented that one of the issues involved in the Montana Mental Health Nursing Care Facility is that most of the people are not Medicaid-eligible unless they are over 65. **Ms. Steinbeck** said that the only residents in the nursing care center who are not Medicaid-eligible would be moved out. If DPHHS follows the path indicated in the budget, it would cap the nursing care center population at 75 and move the Medicaid-eligible individuals into the community.

**SEN. COBB** said that he is considering a 15 cent increase to the cigarette tax to fund part of the \$29 million shortfall. It would be a 30 cent increase for the \$44 million shortfall. **SEN. STONINGTON** suggested that staff bring a list of the various tax proposals that have already been made, and they could consider making some their budgetary needs contingent on passage of those bills that are already in process.

**Ms. Steinbeck** said that she would add the requests to the list of legislation that would be needed if the draft executive proposal were adopted by the legislature.

**ADJOURNMENT**

Adjournment: 11:35 A.M.

---

REP. EDITH CLARK, Chairman

---

SYDNEY TABER, Secretary

EC/ST

**EXHIBIT** (jhh10aad)