

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 23, 2003 at 8:10 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. Time stamp refers to material below it.

Video-Taped Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. A video-taped recording of the meeting is available from the Montana Historical Society.

Committee Business Summary:

Hearing & Date Posted: Veterans' Services
Child Support Enforcement
Executive Action: None.

HEARING ON SENIOR AND LONG TERM CARE DIVISION

Veterans Services

{Tape: 1; Side: A; Approx. Time Counter: 2 - 28}

Kelly Williams, Administrator of Senior and Long Term Care(SLTC) Division, distributed and reviewed a handout on Veterans Services. She went over the demographics involved in Montana's veterans population, ownership, operation, staffing, and population of the Eastern Montana Veterans Home(EMVH)and the Montana Veterans Home(MVH), and their costs of operation.

EXHIBIT (jhh14a01)

Of the 107,000 veterans in Montana, thirty-three percent are in the 65 and older age group. Most veterans served are over 80, and they are more medically complex than in the past.

Opened in 1994, EMVH is a state-owned and maintained 80-bed facility with a 10-bed unit for dementia residents. It is operated by contract with Glendive Medical Center(GMC). The State has one FTE who serves as the mandatory state liaison. The contract with GMC was recently renewed for three years with the possibility of extension to seven years. The private pay rate of \$125 per day was established through negotiation with GMC.

Built in 1897 for Civil War veterans, MVH is state-owned and operated. It is a 105-bed skilled nursing facility with a 15-bed special-care unit(SCU) for Alzheimer's and dementia patients, and a 28-bed Veterans Administration(VA)approved Domiciliary for those needing less medical intervention. It employs 113.7 SLTC full-time equivalents(FTE). The rate per day is \$128.21.

Ms. Williams then reviewed the admissions criteria and the funding for the facilities. The VA pays the State \$53.17 for each eligible veteran. This rate is projected to be approved retroactively to October 2002 at \$56.24 per day. MVH receives 11.11 percent of the total amount derived from the two-cent per pack cigarette tax. The remaining sources of funding are private-pay, Medicare, and Medicaid.

Ms. Williams next went over the construction and funding details for the SCU at MVH and the dining facility, courtyard, and resealing of the parking lot at EMVH. Both nursing homes also benefit from donations provided through the Fort Harrison Thrift Shop. She then reviewed the VA Physician Sharing Agreement between GMC and the VA and the funding request to cover the share of the cost not covered by third parties. **Ms. Williams** went over

the long-range building plans and request for nonfederal spending for MVH.

LFD Issue Associated with Veterans Services

{Tape: 1; Side: A; Approx. Time Counter: 28 - 32}

Reviewing the graph on page 5 of Exhibit 1, **Ms. Williams** said that the fund balance in the cigarette tax fund is eroding so they will need more revenue to come in to offset the cost of expenditures to maintain a fund balance.

Lois Steinbeck, Legislative Fiscal Division(LFD), referred the Subcommittee to B-146 of the Budget Analysis. The table on this page shows the original executive proposal along with the data included in the budgeting system. The information entered in the budget system was not accurate and the cigarette tax revenue request has been revised from \$1.7 million each year of the biennium down to \$1.4 million. The \$600,000 difference in the ending fund balance is due to this revision. There is a structural imbalance in that the expenditures out of the state special revenue(SSR)account exceed the annual projected revenues. The Subcommittee could choose to divert some of the ending fund balance to offset general fund in other areas or Medicaid match for veterans who are served in other nursing homes. If they divert the ending fund balance, the problems will escalate to the next biennium.

SEN. COBB said that if there are cigarette tax increases their budget will be affected because the revenue always keeps changing the ratio. Depending on how high the tax goes, there could eventually be less money coming in as people no longer buy cigarettes. He suggested that they ensure that the percentage of the tobacco tax is such that they will receive a certain amount of money from it.

Ms. Steinbeck referred to B-147 of the Budget Analysis and said that the ending fund balance is also pertinent to an Executive Budget request of proposed language and a potential increase in the appropriation above the level seen in the decision packages. With the opening of the SCU in the last biennium, there were increased operating costs that needed to be paid before there was adequate facility occupancy to receive sufficient federal revenue. The costs were funded with cigarette tax revenues above the level appropriated by the legislature. The Office of Budget and Program Planning(OBPP)is requesting flexibility included in language in HB 2, such that if federal revenues do not come in at anticipated levels or if costs are greater, it can increase the veterans' homes SSR appropriations. **Ms. Williams** explained that they have had to rent staff or stop admissions because they did

not have adequate staff in the facility. When they stop admissions, they do not receive the money from the VA so there is an imbalance in the other fund sources.

Ms. Steinbeck continued that originally the Executive Budget had requested more than was projected to be in the ending fund balance. The ending fund balance and the dynamics of the healthcare industry are very much a part of the discussion of the veterans' homes.

Ms. Williams added that EMVH is a small portion of the cigarette tax draw because it funds personal services, maintenance, equipment requests, and projects there. They have been more aggressive in looking at the ability of individuals to pay and have made concerted efforts at MVH to maximize the Medicare and Medicaid reimbursements.

{Tape: 1; Side: A; Approx. Time Counter: 43.8 - 49.8}

CHAIRMAN CLARK asked if veterans are subject to lien and estate recovery; **Ms. Williams** said that they are subject to this to the extent that they are Medicaid-eligible.

Ms. Steinbeck reviewed Medicaid recovery history for recouping Medicaid costs and said that the Subcommittee may wish to look at this with regard to veterans who are not Medicaid-eligible, but using services. If a veteran has assets and if the ability to pay has been reduced because of asset transfers, the Subcommittee may want the VA Committee to look at this. It would mean two large policy shifts in the approach that the State takes to provide long-term care for veterans and would impose an unfunded administrative burden on the Department of Public Health and Human Services (DPHHS). She continued that there is a structural imbalance and, if cigarette revenues decline, the Subcommittee may wish to consider such a mechanism.

{Tape: 1; Side: B; Approx. Time Counter: 0.4 - 2.7}

In response to a query from **Ms. Steinbeck** regarding the possibility of exempting the veterans' facilities from the bed tax, **Ms. Williams** stated that they do pay the bed-tax and participate in intergovernmental transfers (IGT) as do all other nursing homes. Exempting them from the tax could cause them to jeopardize significant funding for a small gain.

In response to a question from **SEN. COBB**, **Ms. Williams** said that the IGT money comes back as a Medicaid payment into the facility. **Gail Gray, Director of DPHHS**, added that if they received the \$2 million back from the nursing home IGT, it would go up substantially when matched. **Ms. Williams** said that it is paid back out on Medicaid days and the homes have so few Medicaid-

eligible residents that it would probably be a small amount of increased revenue.

{Tape: 1; Side: B; Approx. Time Counter: 3.7 - 7}

In discussion of the funding imbalance, **SEN. STONINGTON** said that the Subcommittee may wish to review the different cigarette tax proposals in committees because they may wish to lobby to help with the ending fund balance. They may wish to make changes to the percentage to ensure that there is adequate money. **SEN. COBB** added that in the past they have used the ratio, but if the money does not come in there are problems. They may need to raise the ratio or some other contingency. **Ms. Williams** stated that the division carefully scrutinizes all cigarette tax fiscal notes, and so far, to the extent that the bills increase the tax, they lower the percentage, while trying to keep the two-cent per pack ratio. While they would certainly welcome any increase in the percentage, it would be basically the same amount of funding.

{Tape: 1; Side: B; Approx. Time Counter: 7 - 16.1}

REP. HAINES asked whether "population" referred to on B-5 of the Budget Analysis is the capacity or the actual occupancy, and **Ms. Williams** said that it would be the actual occupancy at that point in time. MVH operates at 98 percent occupancy, and EMVH operates at 70 percent occupancy. EMVH does more concerted marketing to increase occupancy.

Referring to the map in Exhibit 1, **Ms. Williams** said that the EMVH population is pulled predominantly from the eastern part of Montana. **REP. HAINES** said that as the population shifts towards the west, one could assume that it would be harder to maintain the population at EMVH with which **Ms. Williams** concurred. She added that at MVH there is a significant waiting list for those wanting to get into the facility. **REP. HAINES** asked if they had ever considered taking patients from Eastmont and moving them into this facility. **Ms. Williams** replied that individuals at Eastmont require Intensive Care Facilities for Mentally Retarded(ICF/MR) care and, unless they are veterans would not be eligible. **REP. HAINES** commented that he was looking at this from the standpoint of the physical plant and its capability to provide care. He asked if it was possible for veterans funding to go this way and state funding for the mentally ill could still come into the facility. **Deputy Director John Chappuis, DPHHS**, explained that the active treatment issue is involved, and they can not get Medicaid funding without the active treatment involved in the ICF/MR. **REP. HAINES** suggested that he and Mr. Chappuis would need to have further discussion on this issue. **Ms. Williams** added that ICF/MR meet different certification and licensing criteria.

EMVH Decision Packages

{Tape: 1; Side: B; Approx. Time Counter: 16.1 - 24.3}

Ms. Williams then reviewed the decision packages involved in the Veterans Services. DP 116 adds \$18,000 per year for equipment purchases. DP 115 adjusts the EMVH base budget to add additional federal spending authority of \$473,930. DP 115 adds \$114,000 in SSR over the biennium to cover increased repairs and maintenance and the cost of the physicians-sharing agreement with the VA.

MVH Decision Packages

In her review of the MVH decision packages, **Ms. Williams** said that DP 122 adds \$52,172 in SSR over the biennium for equipment. DP 117 provides \$110,000 in SSR for 1.4 FTE additional staff over the biennium. DP 119 adds \$560,000 each year of the biennium of SSR to adjust the base budget.

Flexibility Language Request

Ms. Williams said that they are requesting flexibility in funding and that OBPP be given authority to increase the SSR to allow for expenditures of increased cigarette tax revenue to maintain the funding level at MVH.

{Tape: 1; Side: B; Approx. Time Counter: 24.3 - 26}

Director Gray commented that one of the increasing costs that they have is for workers' compensation. They have found that the new "liftless" equipment has helped reduce claims in this area. The Department believes that in the institutional programs this type of equipment is a big benefit.

{Tape: 1; Side: B; Approx. Time Counter: 26 - 35.5}

Responding to questions from **REP. JAYNE**, **Ms. Williams** said that the decision packages are requests of funds out of the SSR designated for veterans' services operation. The homes are appropriated to the amount requested in the past, and the requests are for additional expenditures due to increased costs and expenditures above the base from that fund. Equipment is a line item in the budget so it must be requested every year. She explained how she had split DP 115 apart to fund EMVH.

Director Gray and **CHAIRMAN CLARK** commended Rich Oje for his contributions to the veterans in Montana.

{Tape: 1; Side: B; Approx. Time Counter: 35.5 - 43.1}

Ms. Steinbeck commented that any time the legislature authorizes a language appropriation as is requested for flexibility, it must include an amount. If an amount is not included, it is not a

legal appropriation. It would not be legal in HB 2 to allow OBPP to increase SSR and reduce federal; it would be an implied amendment to statute. If the Subcommittee should accept the executive proposal, it would need to determine how much additional funding it would allow DPHHS to draw down in the event that federal or private revenue was deficient. **CHAIRMAN CLARK** asked if designating the amount of money for each year would prevent DPHHS from transferring it from one year to another of the biennium. **Ms. Steinbeck** replied that, under statute, they can transfer money from the second year of the biennium to the first year of the biennium. At which point, the supplemental statutes would kick in, and the OBPP would be required to produce a plan to reduce expenditures to the amount remaining in the second year of the biennium.

{Tape: 1; Side: B; Approx. Time Counter: 43.1 - 49.8}

Norm Rostocki reviewed how he had crafted the requested language. He explained that MVH was unable to hire staff so could not take new admissions, which resulted in a loss of federal revenue. They did not have the spending authority for the cigarette tax, but they were keeping the facility open and incurring the costs of temporary staff. After discussing this with OBPP, he was told that it was not an emergency, so OBPP could not give them the spending authority. Rather than be in that sort of problem, he would like legislative language that would allow OBPP to move the authority from federal spending to SSR. Another suggestion **Mr. Rostocki** offered would be to work through the budget amendment criteria with language that says it has been considered by the legislature for approval. There needs to be a means to keep the facility open in the event that they do not receive federal revenue.

Mr. Rostocki went over the spending philosophy within the Veterans' Services. The spending progression is: 1) spend down federal special revenue to zero and 2) spend down private revenue to zero. They treat the cigarette tax as though it is general fund, and the faster they use it, the sooner they end up with the ending fund balance problem.

{Tape: 2; Side: A; Approx. Time Counter: 0.3 - 3.7}

Continuing this discussion, **Mr. Rostocki** said that if they received more special revenue than needed, it would help them. There is another place in the budget where they have asked for the federal spending authority. In the event that they receive more federal authority, they would give their word that they would spend it or the Subcommittee could put language in the bill to say that they would need to spend it first. They are trying to come up with a workable alternative to keep the facility open.

Ms. Steinbeck offered that the most straightforward solution would be to put it in a language appropriation. She reviewed the history of the legislature putting language in HB 2. She said that some of the language is implied amendment to statute and some of it is substantive. It is illegal and unconstitutional to put implied amendments to statute in HB 2 or substantive law. If it were taken to court, it could invalidate the entire appropriations act and is practically unenforceable. If the Subcommittee really wants something to happen, she suggested that it should be put in statute. It is an implied amendment to statute to allow OBPP to adjust fund types because statute already speaks to when OBPP must adjust fund types. It is also an implied amendment to statute to say that the Department can make a budget amendment and bypass the emergency criteria. State special budget amendments have emergency criteria laid out in statute and also have exemptions for certain funds. Anything changing the statutory meaning included in HB 2 is an implied amendment to statute. If the Subcommittee wants to exempt the veterans' SSR from the emergency criteria in the budget amendment statute, it is an exception, and the Subcommittee could request a committee bill. The two best ways to accommodate flexibility are a language appropriation or defining the OBPP criteria to approve the budget amendment.

{Tape: 2; Side: A; Approx. Time Counter: 3.7 - 8.8}

Bob Andersen, OBPP, reviewed other precedents for the movement of SSR and federal revenue. For example, the Department of Transportation has had an ongoing movement of state special grants to federal. Essentially, the language says that it may adjust appropriations between state special revenue and federal special revenue funds as long as the SSR does not increase by more than ten percent of the legislatively established total appropriation for the program. He added that he would like language that would allow some flexibility, but also some control.

Ms. Steinbeck reiterated that the best approach is a language appropriation which says that OBPP can certify that federal revenues are inadequate to support the total level of appropriation anticipated by the legislature, and that it may establish an appropriation from SSR up to "x amount" each year of the biennium. A percentage may not be legal.

Ms. Rostocki said that he does not have a problem with this being in HB 2.

HEARING ON CHILD SUPPORT ENFORCEMENT DIVISION

{Tape: 2; Side: A; Approx. Time Counter: 5.6 - 16.2}

Lonnie Olson, Administrator of Child Support Enforcement Division (CSED), distributed a handout and said that statistics explain what they do at CSED. In the last biennium, CSED established 1,331 cases of paternity and 2,331 child support orders, and it collected over \$100 million for families and reimbursement of public benefits. During that same period of time, QAD notified them that they had saved the State \$2.7 million in costs that would ordinarily have been paid as the State's contribution for Medicaid. In the last year alone, the distribution unit processed well over 200,000 separate payments. For nearly every one of those payments, there is an equivalent warrant or check issued. The financial instrument total is \$400,000 per year. They do this with a caseload of which 78 percent is dominated by those who are living within the bounds of poverty or recently escaped and on the cusp of poverty.

EXHIBIT (jhh14a02)

Mr. Olson stated that the caseload is about 15.5 percent people who are currently receiving public benefits and 61 percent who once received public assistance. This is the most difficult population for which to obtain child support. The obligors may not have regular employment or medical insurance benefits related to employment, which makes it difficult to get child support in many of these cases. There are between 40,000 and 41,000 cases with whom they work at any given time. Of the 41,000 cases that are open at any one time, about 30,000 have arrears due on them. In the last year there was \$185 million owing in child support in the state. They collected \$54.1 million, but that has to be broken down to current support and arrears. They collected \$33.2 million in current support or about 60 percent of support due. In terms of arrears, they were able to collect \$17.2 million.

Mr. Olson explained that it is very difficult to collect arrears payments. There were 10,845 families in the State who did not receive any payment on arrears. CSED works hard to collect payments, but sometimes they do not succeed since the cases that they see are the most difficult. Under Title IV-D, they take any case they are requested to take, and those who receive public benefit are required to open a case with CSED. The vast majority of cases are those voluntarily choosing to use the services. If there is an obligor who pays regularly and provides insurance for the family, there is no need for the State to intervene.

SEN. COBB asked how much of the arrears they realistically expect to collect. **Mr. Olson** said that it would be a fraction; obligors age and their capacity to pay diminishes over time as well. Some of the caseload is maturing into retirement age and Social Security benefits. Because Social Security is subject to the actions of the authority agency, many people who now believe that they will be free and clear of their obligations when they reach retirement age will be unpleasantly surprised when a portion of their Social Security benefits are attached to pay unpaid child support obligations. The debt remains even after the child ages out. The statute of limitations in Montana on child support debts is ten years. Judgments can be reviewed and if left unpaid for ten years, it does not mean that the debt will go away; the judgment can be renewed for a subsequent ten-year period. CSED tries to ensure that it renews the judgments so that the statute of limitations does not prevent the agency from obtaining payment on the debts.

{Tape: 2; Side: A; Approx. Time Counter: 24.7 - 34.7}

Responding to questions from **REP. JAYNE**, **Mr. Olson** explained that they would renew the judgment through administrative or judicial action before the statute of limitations expires. Once the statute of limitations expires, it becomes an affirmative defense available to the obligor to procure and defend against the actions of a judgment creditor. They provide a notice of the alleged debt to the obligor and obtain a judgment through the administrative process. If they do this before the expiration of the ten-year period, the ten-year statute of limitations is renewed. If they continue to do this, it means that the judgment continues without end until the debt is paid.

REP. JAYNE said that someone not using the services may not know that he or she can renew the judgment within the ten-year period. **Mr. Olson** agreed that sometimes people do not know that their rights may be put at risk if they do not use the services. It is up to people to seek the services. **REP. JAYNE** said that the code does not say anything about the possibility of renewal and added that the code may need to be changed. **Mr. Olson** suggested that Montana could do as some other states and completely remove the statute of limitations from child support. In those instances, a child support obligation would not be subject to an affirmative defense regarding the statute of limitations, and such a move would put all obligors on the same footing. Because the statute of limitations is an affirmative defense, it can be waived in certain cases. Both obligors and obligees are affected by this.

{Tape: 2; Side: A; Approx. Time Counter: 34.7 - 42.8}

Mr. Olson continued with his overview saying that the federal government pays 66 percent of child support enforcement costs and

90 percent of the cost for paternity testing. The majority of expenses related to the program are paid by the federal government. Over 70 percent of CSED expenses are personal services, and CSED has worked hard to mitigate the shortfall; even with all that effort, there is little it can do unless they cut FTE. They are approximately \$3.2 million dollars short in this biennium. The plan they have developed to handle the shortfall would allocate \$1.2 million to CSED as part of the supplemental which has already gone before the full Appropriations Committee. There is also a proposal which would allow the CSED a \$2 million loan to be paid back from revenue sources to be obtained in the next biennium. The Subcommittee has been given a letter with regard to this loan.

{Tape: 2; Side: A; Approx. Time Counter: 42.8 - 43.8}

Pat Gervais, LFD, said that LFD staff has requested legal opinion on this. It is a "gray area" of statute and they hope to have the opinion before HB 3 goes forward out of the House Appropriations Committee.

Responding to a question from **SEN. COBB** respecting the other revenue sources, **Mr. Olson** said that fees would be attached to the processing of payments received on behalf of the obligee. **SEN. COBB** asked what they would do if SB 72 did not pass, and **Mr. Olson** said that CSED would have to rethink the budget and whether there are resources to repay the loan. **SEN. COBB** said that it was his understanding that the \$750,000 in fees was to maintain the existing budget, not to pay off the loan. **Mr. Olson** said that without the fees, they may not have enough money to operate the organization or to pay off the loan obligation. The purpose of the fees was to provide enough revenue to operate CSED and repay the loan obligation.

{Tape: 2; Side: A; Approx. Time Counter: 42.6 - 49.5}

Ms. Gervais observed that the Department projection for the SSR anticipates, in addition to fee income, that there will be a small increase in federal incentive funds because a pool available for federal level increases. If Montana's percentage of that pool is consistent, there may be a slight increase of \$100,000 to \$200,000. Additionally, the Department projects a small increase in the share that will be retained in TANF collections because of the increase in the TANF caseload. That is another \$100,000 or so.

{Tape: 2; Side: B; Approx. Time Counter: 0.1 - 3.6}

Ms. Gervais said that the CSED budget is based on contingencies. The Executive Budget assumes that they will generate revenue from fees to achieve the SSR that they need to match. If a fee bill

does not go forward, the SUBCOMMITTEE MAY WISH to provide a general fund appropriation for this division.

Mr. Olson explained that CSED is in deficit because it anticipated receiving revenues from federal incentive payments, and the anticipation was more generous than the incentive. The incentives were drawn in fall of 1999, but the determination was not announced until two years later in October 2001. As a result, CSED overdrew \$1 million in incentives in FY00 and \$886,000 in FY01. They have contacted the grants office of the Office of Child Support Enforcement(OCSE) and requested a period of time in which to pay this back. OCSE required CSED to pay the \$1,080,000 back over four quarters, which it did.

{Tape: 2; Side: B; Approx. Time Counter: 3.6 - 7.6}

Mr. Olson continued that, without any notice to the State, the federal government withdrew the full \$886,000 overdraw for the 2001 incentive calculation to repay the sum. Governor Martz has sent a letter to Secretary Tommy Thompson explaining why the State believes this is unfair. CSED requested active involvement of the regional OSCE representatives in determining its methodology for calculating the incentives in both 1999 and 2000 before it drew any money down. In response to this letter, they do know that OCSE may rethink the repayment scheme for Montana. Director Gray has set a meeting on February 2 with the OCSE Commissioner, Dr. Sherry Heller, to discuss this matter. On other occasions, rules developed by OCSE have allowed states to pay this back, but in Montana's case, it was not given notice or an opportunity to negotiate, which has had an effect on the daily budget. Hopefully, they will grant a period of time so that they will still have the money to use and be able pay the money back, without interest, over a period of four years. This would also change the complexion of the current budget situation of CSED.

{Tape: 2; Side: B; Approx. Time Counter: 7.6 - 10}

Director Gray said that she has met with Senator Baucus on this issue and will meet with Senator Burns. In most of the twelve states affected by this the federal money goes straight into the general fund, but in Montana it goes directly to the program. This creates a tremendous impact on the CSED budget. She expressed some outrage that the commissioner has put out a memo that the response to this was overwhelmingly positive. The Department position is that OCSE should give them four years to pay this back, and the State should have some amnesty in terms of what it will pay back.

{Tape: 2; Side: B; Approx. Time Counter: 10 - 13.5}

SEN. COBB asked if they should put the federal incentive into the general fund henceforth. **Director Gray** replied that as an agency, they would prefer the stability of being funded with general fund. If this were done, they would reimburse the general fund with the federal money. She said that it is doubtful that the legislature would go for it.

SEN. COBB asked if it would work for them to have less than the \$750,000 in fees since they have other monies that may be coming in. **Director Gray** said that they would need to discuss this with OBPP. **SEN. COBB** said that the legislature will want to look at alternatives before it looks at a \$7 (per case) transaction fee. The alternative would be to have no fee and put up \$400,000 to \$500,000 in general fund each year.

LFD Issue Associated with the CSED Fee

{Tape: 2; Side: B; Approx. Time Counter: 13.5 - 16.4}

Ms. Gervais said that part of the increased revenue that they are expecting in SSR is related to increased TANF collections because the TANF caseload has increased. If the TANF caseload is turned back around, there will be a negative affect on this division.

SEN. STONINGTON reported that the CSED fee bill was not well received in committee and she does not believe they will be able to get it out of committee.

Ms. Gervais continued that the federal incentive funds include language indicating that they are to be used to supplement rather than supplant the program. The federal expectation is that the State will reinvest all of the incentive funds in the program. Without the \$750,000, she questions whether the division can operate in the next biennium. They would be in danger of violating the language to supplement rather than supplant which would include reductions in federal incentives. If the fee bill does not pass, there will need to be an appropriation FROM THE GENERAL FUND OR ANOTHER SOURCE for the division to continue to operate and to avoid federal penalties regarding supplantation of federal incentive funds.

{Tape: 2; Side: B; Approx. Time Counter: 16.4 - 20.3}

Mr. Andersen said that it is essential to have an effective operational program since CSED is key to receiving TANF funding. If they do not fund this program at a certain level to maintain compliance with IV-D regulations, it places TANF in jeopardy.

Ms. Gervais concurred with this assessment of the situation.

Director Gray added that before this happened the Department would look for other solutions, such as a reduction in TANF benefit. **Mr. Chappuis** said that it is not just TANF that would

be affected, but all other programs would be affected if TANF goes.

{Tape: 2; Side: B; Approx. Time Counter: 20.3 - 30.4}

Ms. Gervais explained the federal TANF block grant of \$44 million to \$45 million per year, and the state maintenance of effort(MOE)of \$14.8 million per year.

SEN. STONINGTON asked what other options there may be. **Director Gray** said that the ultimate negative consequence is to lose everything. If people are not willing to look at a fee, it may mean a reduction in cash assistance.

Mr. Andersen said that when the situation came to light, Mr. Olson did major restructuring of the budget immediately. He shut down the phone CENTER, reduced staff, cut back in several other areas. OBPP suggested a fee as a legitimate way to produce revenue. He emphasized that the organization had been magnificent in responding to the situation.

Ms. Gervais said that the federal regulation on distribution is complex. She continued that there is a "family first" allocation in TANF, if the state attempts to take a fee from the obligor, the State is the last to get paid. This means that all current funds and arrears will go to families before the state can retain a fee. In order to realize income from a fee, it needs to come from the obligee.

SEN. STONINGTON said that those who are opposed to the fee are those who would be receiving it. For most of these people, it is too much money. **Mr. Olson** said that the proposal caps it at 10 percent of the amount of payment. The maximum amount paid on any amount would be \$7. They would also cap the total in fees at \$28 a month, which would be the maximum impact on any family. The federal government changed distribution requirements several years ago. Current support must be paid first to all families for which an obligor has responsibility. Only after current support is paid in full can arrears be paid. Families are paid arrears first. Only after the families receive their current support and arrears in full does the State receive its recoupment. After all of that has been paid, a fee can be assessed against an obligor. About 30,000 of the caseload have arrears owed, and in the majority of those cases, CSED would not receive revenue if it were to collect the fees from obligors.

SEN. STONINGTON asked how it is all done administratively. **Mr. Olson** said that CSED has some discretion, although any proposal that it puts forth must meet federal approval. The federal government looks at it as cost recovery. It allows fees to be

assessed if they help pay for the system and are related to the cost of the transaction. He said that he is unsure that they could put a sliding fee scale on this because this is cost recovery. It is not tied nor can it be tied to the financial posture of the obligee.

REP. JAYNE asked how they would separate tribal obligors on a reservation since they can not assess a fee on them because it would be the same as a tax. **Mr. Olson** said that they may have no power to act on tribal obligors.

{Tape: 3; Side: A; Approx. Time Counter: 0.9 - 8.8}

Mr. Olson clarified that they charge no fee for TANF cases. The cases that they are discussing are those who contract with CSED to collect the child support for them. The agency will now do this for them for a fee. **SEN. STONINGTON** said that this changes the picture for her because it now becomes a case of receiving something where before the individual would have received nothing. It is a free collection agency. **REP. JAYNE** commented that they provide services for everyone regardless of income; this is wrong because some people can afford to pay for services. She again expressed her belief that it is wrong to charge the obligee \$7 per payment since it is the obligor who should pay. She asked how they had come to this situation where they must charge a fee. **Mr. Olson** explained once again how the state had overestimated its federal incentive, how it had drawn down that amount, how the federal government had demanded repayment of \$1 million over four quarters, and how the federal government had cleaned out the CSED account of \$886,000.

LFD Issue Associated with Fees

{Tape: 3; Side: A; Approx. Time Counter: 8.8 - 14}

Ms. Gervais explained that TANF caseload has declined and with it the associated SSR. In 1999, the legislature approved the use of fees because it was anticipated that the decrease in TANF caseload would not allow them to generate sufficient SSR to continue operation of the division. As they learned more about the calculations for incentive funds, it looked like the new calculations were going to be more beneficial to Montana than the old calculation. They did not find out until the fall of 2001 that this was not the case. The estimates had been overstated. It is the third biennium that this issue has been included in the Budget Analysis.

In reference to the lawsuit against CSED by investigators, **Director Gray** said that CSED investigators won a class-action appeal of their grade of pay. The result was an increase in CSED expenses.

In response to questions about the federal incentive funds, **Ms. Gervais** said that there are five performance measures that every state is measured on. If states meet the minimum standard, they are eligible for a part of the federal pool of money. There is a scale to determine how much they should receive in funds which is based on a complex calculation, and Montana is eligible for .32 percent of the federal pool. The funds are paid to achieve minimum performance standards within the CSE program. In Montana, the funds come back to the State to support the CSED, and they are matched against federal funds.

Director Gray commended the division on its performance. Even when the allocations went down, their performance went up; some other states' performance went up which caused Montana's share of the pot to go down.

{Tape: 3; Side: A; Approx. Time Counter: 14 - 20.2}

SEN. COBB asked whether they have to pay the federal government some of the funds they collect. **Mr. Olson** said that because it is a cost recovery system, the federal government requires the states to pay two dollars out of every three that they receive.

REP. HAINES asked how many people are out there who could use the system versus those who actually do use it. He added that he is trying to get at how they arrived at the \$7 fee. **Mr. Olson** said that he does not have the total number of child support cases in the state. Payments can be made voluntarily so those payments are hard to assess since they do not go through the system. The University of Montana did a fee assessment through an internal analysis of the agency; it determined that it costs the agency \$7 to handle a transaction. The 10 percent of payment was put in as a cap for those who receive modest payments.

{Tape: 3; Side: A; Approx. Time Counter: 20.2 - 30.9}

SEN. STONINGTON asked if there was a way to make this more progressive since those who receive weekly paychecks are usually those who are at the low-end of the wage scale. There was Subcommittee discussion of the kind of information that they would like Mr. Olson to provide them. **Director Gray** said that they would be happy to provide the information, and she reiterated that this shortfall is not a mistake of the division.

REP. JAYNE asked why the loan was not in their information. **Ms. Gervais** said that the shortfall is discussed on B-1 and B-2 of the Budget Analysis, and that when they were putting The Budget Analysis together, the Department did not have a plan for dealing with the CSED shortfall.

{Tape: 3; Side: A; Approx. Time Counter: 30.9 - 40.6}

There was discussion between **Director Gray** and the Subcommittee about the meeting she would be having in Washington. She suggested that the Subcommittee could write a letter for her to take for the Commissioner of OCSE. She said that she wants to be able to show the Commissioner that the Department has support from the Governor, the congressional delegation, and the state legislature. They have already paid one of the year's payments back. They would like that \$1 million dollars back, and they do not want to pay the \$886,000 for this year. A fall-back position would be that they keep the first million, not pay the money for this year, and anything in the future will have a payment plan. Montana should not have to fund this loan since it did not cause the problem.

Mr. Andersen referred to the Governor's letter and said that the incentive program had struck a crippling blow to Montana. At one time, they thought that the division would be adding money into the general fund, but this did not happen.

CHAIRMAN CLARK said that the Subcommittee would write a letter for them to get the loan forgiven. **Director Gray** said that the Department would draft a letter for the Subcommittee.

{Tape: 3; Side: A; Approx. Time Counter: 40.6 - 50}

Mr. Olson went over the number of FTE, the agency configuration, FTE distribution, and the positions that they occupy. Most of the FTE work in caseload handling and processing. He said that he would get information to them on caseloads and how many cases the attorneys are handling.

{Tape: 3; Side: B; Approx. Time Counter: 0.3 - 0.8}

Chad Dexter, Bureau Chief for Field Service, said that he has been tracking the cases that come in on a monthly basis. There are about 100 new cases a month, and they close about 100 a month. They have a steady caseload of 40,000.

Mr. Olson said that there are four attorneys and a caseload of 40,000. All the cases are legal cases and each attorney is responsible for all cases assigned within the region. Because of the hiring freeze, they do not have an attorney in one of the regional office so the remaining four attorneys have had to divide those cases between them. **Mr. Olson** said that he could provide the actual caseload for each attorney for **REP. JAYNE**. He added that the work in the attorney's office is more than the actual representation. They have been required by the federal government to make changes in the income withholding process which requires legal input. **Mr. Olson** reviewed the paralegal responsibilities within the division.

He confirmed the information that the Subcommittee would like from him: 1) scenarios of transaction payments, 2) a breakdown of payments, and 3) a breakdown of attorney and paralegal responsibilities.

Mr. Olson concluded his presentation by distributing information on the Montana Access Card and the CSED web-site.

EXHIBIT (jhh14a03)

EXHIBIT (jhh14a04)

{Tape: 3; Side: B; Approx. Time Counter: 11.8 - 1}

Referring the Subcommittee to the Budget Analysis, **Ms. Gervais** reviewed the LFD issues involved in the division.

SEN. COBB asked if they were to give the division extra money whether it would still go broke in the future. **Ms. Gervais** said that in order for revenues and expenditures to match, they need \$750,000 to \$800,000 per year additional revenue. They still have a \$225,000 general fund appropriation in the base, and additionally, a portion of the System for Enforcement and Recovery of Child Support (SEARCHS) system included in the Operations and Technology Division (OTD) is funded with general fund. The \$750,000 would not be adequate to cover the expenditures included in the general fund base, but could support current expenditures supported by SSR.

ADJOURNMENT

Adjournment: 11:20 A.M.

REP. EDITH CLARK, Chairman

SYDNEY TABER, Secretary

EC/ST

EXHIBIT (jhh14aad)