



# THE INTERIM

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## LAW SCHOOL FOR LEGISLATORS

Popular Course Offered... Once again, the Legislative Council has joined with the State Bar of Montana and the University of Montana School of Law in presenting the *Law School For Legislators*. This educational program for new and returning legislators provides an overview of critical legal concepts that every legislator should understand in order to legislate effectively.

The *Law School For Legislators* is scheduled for Wednesday morning, Jan. 5 from 8 a.m. to noon in the House chamber. Legislators can look forward to the following program:

**Law School For Legislators  
Wednesday, January 5, 2005  
8 a.m. to noon  
House Chamber**

- 8:00 a.m. Coffee & pastries served.
- 8:30 a.m. **Welcome and Opening Remarks** – Rep. Mark Noennig, State Bar President Keith Maristuen, and UM Law School Dean E. Edwin Eck.
- 8:45 a.m. **Statutory Construction** – Greg Petesch, director, Legal Services Office, Legislative Services Division
- 9:20 a.m. **Administrative Law** – Catherine M. Swift, legal counsel, Office of the Commissioner of Higher Education and Board of Regents.
- 9:55 a.m. Break
- 10:10 a.m. **The Montana Constitution** – Betsy Griffing, visiting professor, UM Law School
- 10:45 a.m. **The Role of the Court** – A panel of Supreme Court justices
- 11:25 a.m. **State and Indian Law Jurisdictions** – Raymond Cross, professor, UM Law School
- Noon Adjourn

For more information about the *Law School For Legislators*, contact Lisa Mecklenberg Jackson at (406) 444-2957 or [ljackson@mt.gov](mailto:ljackson@mt.gov).

## TRACKING THE 2005 LEGISLATIVE SESSION ON LINE

Training Offered to State Agencies and the Public... The 59th session of the Montana Legislature will begin Jan. 3, 2005. The Legislative Services Division and the Department of Administration's Information Technology Services Division (ITSD) are

## THE INTERIM

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**THE INTERIM** is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

A Publication of  **Legislative Services Division**

offering training to help state agencies and the public track legislation during the legislative session. The training for state agencies and the public will be on Dec. 8 and 13. Both training sessions will be held in Room 137 of the Capitol. The Dec. 8 session will be from 2 p.m. to 4 p.m. and the Dec. 13 session will be from 1 p.m. to 3 p.m. The sessions are identical, so you may attend either one. Each training session will cover two areas:

- Using the legislative branch's Internet interface to the Legislative Automated Workflow System (LAWS) to track legislation and the legislative process. This system allows the public and state agencies to obtain timely information throughout the legislative session. Up-to-date bill status, bill text, hearing schedules, journals, agendas, legislator information, and more are available online through LAWS.
- Using the ITSD-developed Oracle Bill Status Tracking System (BST) to track legislation and maintain internal annotations on legislation of interest to a state agency. This system is only available to state agencies.

Training for LAWS, which provides the public access interface, will precede the agency-only training of the Bill Status Tracking System. Each portion of the training will be about an hour. Seating is open (nonreserved) so larger agencies are asked to schedule some attendees for each session.

The Legislative Services Division contact for LAWS is Jim Gordon, who may be reached at (406) 444-2493 or [jgordon@mt.gov](mailto:jgordon@mt.gov). The ITSD contact for the Bill Status Tracking System is Barry Fox, who may be reached at (406) 444-5895 or [bfox@mt.gov](mailto:bfox@mt.gov).

## COMPUTER SERVICES FOR LEGISLATORS

Access a Click Away...With the 2005 session fast approaching, here is an update on the computer-related services that the Legislative Services Division will be providing for legislators during the session:

- **E-mail address.** For your convenience, we will list your e-mail address on the legislative branch website. This is an optional service.
- **Web message form.** A web message form will be available on the legislative branch website at the start of the session. This message form can be used by a constituent to send a message to a legislator. Messages will be printed and delivered daily to the legislator's desk on the floor.
- **State-owned computers available.** Personal computers will be available in certain areas of the

Capitol for the exclusive use by legislators. Any legislator may use these PCs. The PCs will have access to a word processor (MS Word or equivalent) and an Internet browser (Internet Explorer or equivalent). Printing capability will be provided.

4. **State-owned Desktop Personal Computers.** Certain legislators (but not necessarily all) who have an office in the Capitol will receive a state-owned desktop PC. These PCs will have access to a word processor (MS Word or equivalent), a state e-mail account (Outlook/Exchange), and an Internet browser (Internet Explorer or equivalent).
5. **Laptop connections.** Legislators who bring their own laptop computer can have access to a high-speed Internet (similar to broadband) connection in the Capitol. Your laptop must meet certain specifications to take advantage of this service. If your laptop does not meet the requirements for high-speed Internet access, a dial-up Internet service provider (ISP) account is also available.

If you have questions about any of these services, contact Hank Trenk at (406) 444-4021 or [htrenk@mt.gov](mailto:htrenk@mt.gov).

## LEGISLATIVE AUDIT COMMITTEE

The Legislative Audit Committee met Nov. 16 and 18 in Helena. Legislative Audit Division staff presented the following reports:

### Financial-Compliance Audits

Judicial Branch 04-26...This is a financial-compliance audit of the judicial branch for the two fiscal years ended June 30, 2004. The branch implemented five and partially implemented two of the seven prior audit recommendations. This report contains six recommendations on improving the branch's accounting procedures and enhancing compliance with state law and policies. LAD issued a qualified opinion on the financial schedules contained in this report. The opinion on page A-3 of the report discusses Juvenile Delinquency Intervention Program misstatements in the general fund.

Office of the Governor and Lieutenant Governor 04-23...This is a financial-compliance audit report on the Office of the Governor and Lieutenant Governor for the two fiscal years ending June 30, 2004. The objectives of the audit included determining if the financial schedules present fairly the office's results of operations for each of the two fiscal years ending June 30, 2004; assessing the office's compliance with applicable laws and regulations; determining implementation status of prior audit recommendations; and determining if the office has effective internal controls.

Department of Justice 04-19...This report documents the results of a financial-compliance audit of the Department of Justice for the two fiscal years ended June 30, 2004. The previous audit report contained seven recommendations. Of these, six were implemented and one was partially implemented. This report contains four recommendations. The report discussed problems with the collection of the Montana Law Enforcement Academy (MLEA) surcharge; unallowable charges to the state and Community Highway Safety grant; Internal Service Fund fees not commensurate with costs; and expenditure coding errors. LAD issued an unqualified opinion on the financial schedules contained in this report. This means the reader can rely on the financial information presented and the supporting data on the state's accounting records.

State Auditor's Office 04-20...This report contains the results of a financial-compliance audit of the State Auditor's Office for the two fiscal years ended June 30, 2004. This report contains six recommendations directed to the office concerning compliance with state law pertaining to conflict of interest for insurance examiners, custodial deposit assignments, and recording financial information on the state's accounting records. An unqualified opinion on the office's financial schedules was issued, which means the reader may rely on the financial information and supporting data on the state's accounting records.

Office of the Secretary of State 04-28...This financial-compliance audit report documents the results of an audit of the Office of the Secretary of State for the two fiscal years ended June 30, 2004. LAD issued an unqualified opinion on the financial schedules of the office for fiscal years 2003 and 2004. This means the reader can rely on the financial information presented and the supporting detailed information on the state's accounting records. This audit report contains two recommendations. The first recommendation relates to providing adequate supervision and training over the accounting function to ensure compliance with state law and accounting policy. The second recommendation relates to seeking legislation to amend or clarify state laws concerning state records committee meetings, disposal of elections records, business corporations and nonprofit corporations, untimely delivery of an incomplete corporate report, and voter information packet requirements.

Office of the Commissioner of Political Practices 04-21...This is a financial-compliance audit report of the Office of the Commissioner of Political Practices for the two fiscal years ended June 30, 2004. The objectives of the audit were to: (1) determine if the office complied with applicable laws and regulations; (2) make recommendations for improvement in the management and internal controls of the office; (3) determine if the office's financial schedules present fairly the results of operations for the two fiscal years ended June 30, 2004; and (4) determine the implementation status of the recommendation in our prior audit report. This audit resulted in an unqualified opinion on the office's

financial schedules and no recommendations.

Montana Historical Society 04-24...This report documents the results of a financial-compliance audit of the Montana Historical Society, including the Montana Lewis and Clark Bicentennial Commission for the two fiscal years ended June 30, 2004, and the Montana Heritage Preservation and Development Commission for the fiscal year ended June 30, 2003. The previous audit report contained four recommendations. Of these, three were implemented and one was partially implemented. This report contains four recommendations. The recommendations address areas where the Society can improve compliance with federal regulations, state laws and regulations, and Society policies. We issued an unqualified opinion on the financial schedules contained in this report. This means the reader can rely on the financial information presented and the supporting data on the state's accounting records.

Department of Military Affairs 04-25...This report documents the issues noted during a financial-compliance audit of the Department of Military Affairs for the two fiscal years ended June 30, 2004. The three recommendations in this report relate to accounting for expense advances, cash management, and filing federal program reports. LAD issued an unqualified opinion on the department's financial schedules presented in this report. This means the reader may rely on the financial information presented and the supporting information on the state's accounting records.

Department of Corrections 04-15...This financial-compliance audit report contains the results of an audit of the Department of Corrections for the two fiscal years ended June 30, 2004. LAD issued an unqualified opinion on the financial schedules contained in this report for fiscal years 2003 and 2004. This means the reader can rely on the financial information presented and the supporting detailed information on the state's accounting records. This report contains four recommendations. The recommendations relate to controls over accounts receivable and compliance with state law and policy regarding probation and parole officer training, contracts, and non-treasury cash account reconciliations. The prior audit report contained seven recommendations. The department implemented five recommendations, did not implement one recommendation, and one recommendation is no longer applicable due to a change in state law.

Department of Administration 04-13...This report documents the results of a financial-compliance audit of the Department of Administration for the two fiscal years ended June 30, 2004. The previous audit report of the department contained eight recommendations. The department implemented five recommendations and partially implemented three recommendations. This report contains ten recommendations addressing compliance with state or federal laws and regulations. The first four recommendations address areas where the department could improve compliance to ensure all costs charged to federal programs

are allowable. The six remaining recommendations address improving compliance with state laws. LAD issued an unqualified opinion on the financial schedules contained in this report. This means the reader may rely on the financial information presented and the supporting data on the state's accounting records.

Department of Revenue 04-14...This report documents issues noted during a financial-compliance audit of the Department of Revenue for the two fiscal years ended June 30, 2004. The six recommendations in this report include IRIS funding, liquor receivables, unrecorded expenditures, and compliance with state law. LAD issued an unqualified opinion on the department's financial schedules presented in this report. This means the reader may rely on the financial information presented and the supporting information on the state's accounting records.

Department of Natural Resources and Conservation 04-17...This report documents the results of a financial-compliance audit of the Department of Natural Resources and Conservation for the two fiscal years ended June 30, 2004. The previous report contained eight recommendations to the department. The department implemented five recommendations and did not implement three recommendations. This report contains fifteen recommendations directed to the department. The recommendations address internal control and accounting oversight; Cooperative Forestry Assistance federal award administration; fire expenditure internal control and documentation; accounting procedures; and compliance with state and federal laws and regulations. LAD issued a qualified opinion on the financial schedules contained in the report. This means the reader should use caution in relying on the financial information presented as well as the supporting data on the state's accounting system.

Department of Environmental Quality 04-16...This is a financial-compliance audit of the Department of Environmental Quality for the two fiscal years ended June 30, 2004. The department implemented four and partially implemented two of the six prior audit recommendations. This report contains nine recommendations where the department could improve accounting and enhance compliance with state policies and laws. LAD issued a qualified opinion on the financial schedules contained in this report. The opinion on page A-3 discusses reclamation bond misstatements in the agency fund. The reader should use caution when analyzing the financial information presented and the supporting data on the state's accounting system.

Board of Public Education 04-22B...This is a financial-compliance audit report on the Board of Public Education for the two fiscal years ended June 30, 2004. The objectives of the audit included determining whether the board's financial schedules presented fairly its financial position and results of operations at and for the period ended June 30, 2004, and assessing the board's compliance with applicable laws and regulations. This report does not contain

any recommendations to the board. The prior financial-compliance audit report, issued for fiscal years 2001 and 2002, did not contain any recommendations.

Montana School for the Deaf and the Blind 04-22A...This audit report is the result of a financial-compliance audit of the Montana School for the Deaf and the Blind for the two fiscal years ended June 30, 2004. The previous report contained two recommendations to the school. The school implemented one recommendation and partially implemented one recommendation. This report contains three recommendations addressing accounting controls, program expenditures, and state compliance. LAD issued an unqualified opinion on the financial schedules contained in the report. The reader may rely on the financial information presented in the financial schedules and the supporting data on the state's accounting system.

Montana Chiropractic Legal Panel 04-29...This report documents the issues noted during the financial-compliance audit of the Montana Chiropractic Legal Panel for the two fiscal years ended June 30, 2004. The previous audit report contained no recommendations. This report contains four recommendations directed to the panel director concerning the panel as a state agency, the reasonableness of the panel's fiscal year 2003 fee assessment on chiropractors, noncompliance with statutes relating to selection of panelists, investment of moneys and overpayment of panelist expenditures, and statutes conflicting over confidentiality of panel information. LAD issued an unqualified opinion on the financial schedules presented in this report. This means the reader can rely on the financial information presented and the supporting information on the state's accounting records.

## Performance Audits

Managing Vacant Positions In State Agencies, Office of the Governor 04P-05 (Performance)...This performance audit report presents information related to agency management of vacant positions. It includes an examination of the trends in the number of vacant positions over the past twelve years and concludes that the number of vacant positions has increased, a larger percentage of the state's total FTE are vacant, and long-term vacancies exist. The report also concludes that fiscal issues increase vacancies beyond the naturally occurring vacancy rate and create incentives for agencies to preserve vacant positions and related appropriations. In order to establish more accurate data of positions necessary to provide current state government services, the report recommends that the budget office eliminate long-term vacant positions and remove associated expenditures from the base budget. Implementing this recommendation would reduce base budget personal service requests by at least \$20.7 million for the biennium. If long-term vacant positions are eliminated, a reduction to the mandated vacancy savings rate must be considered.

Caseload Management, Department of Public Health

& Human Services 04P-09 (Performance)...LAD re-viewed caseload management procedures for six divisions/programs within the Department of Public Health and Human Services (DPHHS). The analysis of caseload trends from fiscal years 1998 through 2003 noted that caseloads increased for some programs and decreased for others. We noted four programs/divisions had effective caseload management systems in place, but the department needs to improve how two programs manage caseloads. These programs did not have systems or data in place to ensure cases were managed and resources were used in an efficient manner. These two programs also received more funding for additional FTE than other programs that were reviewed. The department needs to improve caseload management by sharing information among programs on how to effectively manage resources, improve caseload management policies and procedures, develop easy-to-use caseload management reports, establish criteria for closing cases, and ensure managers perform on-going assessments of program activities.

### Performance Audit Survey

Accessibility to Management Information from the Child and Adult Protective Services (CAPS) System, Child and Family Services Division, Operations and Technology Division, Department of Public Health and Human Services 04P-10...Performance audit work focused on accessibility to management information from the Child and Adult Protective Services system administered by the Department of Public Health and Human Services. CAPS is a statewide online information system developed to meet federal reporting standards. It is a mainframe computer system written in COBOL, a programming language developed in the late 1950s. CAPS became operational in 1996.

The review indicates CAPS has the ability to generate reports and statistics, but the time needed can be lengthy. In addition, CAPS users may experience difficulties using the system, which is addressed through the department's ongoing training component and future plans. The department's future plans include a recommendation to replace CAPS with a new system.

Due to the age and design of the CAPS system, and the department's recommendation for a successor system, more audit work does not appear necessary. If a new system is approved in the future, further audit involvement could be re-evaluated at that point in time.

### Information Services Audits

Criminal Justice Information Network (CJIN), Department of Justice 04DP-08 (IS)...The Criminal Justice Information Network is the state's law enforcement network, facilitating criminal record and identification request exchanges by connecting state and local law enforcement to each other and to other states and federal agencies. The CJIN report contains the results of an information systems audit of Department of Justice compliance with state security

statutes. Auditors have four recommendations to improve CJIN security: monitoring firewall access control, monitoring software update installation, establishing security planning, and establishing contingency planning.

Evaluation of Adult Offender Computer System Acquisition Process, Department of Corrections 04DP-07 (IS)...Due to the department's decision to replace ACIS with ProFiles, we did not perform a follow-up audit of ACIS. Approximately seven years have passed since the completion of the last audit. Issues identified by MDOC personnel and reiterated by external consultants led to MDOC halting development and implementation of the replacement system. Currently MDOC is seeking funding for a new system as its solution. During the current audit, no further work was performed on data inaccuracies because MDOC represented that the data residing in the system is still 10 to 15 percent inaccurate. This audit focused on MDOC efforts to resolve issues contributing to the incomplete development of a replacement system, and the approach MDOC is taking to ensure the new offender management system is successfully implemented with quality data. Specific questions to be answered include: (1) Has MDOC resolved the data quality and documentation issues that arose during ProFiles system development? (2) Has MDOC followed a structured decision-making approach for acquiring and implementing a new system? This subject matter is important because it will facilitate the successful implementation of a new offender management system and resolution of continuing data quality issues.

The University of Montana – Missoula Key Computer Applications and General Controls (UM Banner) 04DP-03 (IS)...Banner is a commercial software application developed by SunGard Systems and Computer Technology Corporation used by higher education entities for managing their business processes. Financial aid, human resources, and financial data is processed using the Banner system. The UM – Missoula's network and security provide a foundation for all systems and software applications and, therefore, is central to all of the UM – Missoula's business goals, requirements, and operations. The Legislative Audit Division, Information Systems audit team, selects UM Banner processes approximately every two years to understand the control environment. The audit focused on specific control testing requested by Legislative Audit Division financial compliance staff and specific general controls testing determined relevant to the Banner application. The report contains three recommendations for improving physical and environmental controls and complying with Board of Regents policy by designating an information security manager and engaging in the identification of security issues and exposures regarding the network and developing policies to address those concerns.

### Contracted Audits

Montana State Lottery (Contracted) Financial 04C-

02...This financial-compliance audit report contains the results of the audit of the Montana State Lottery, Department of Administration, for the fiscal year ended June 30, 2004. The audit was conducted by Galusha, Higgins, and Galusha, PC, under contract between the firm and the Legislative Audit Division. The report contains an unqualified opinion on the financial statements contained in the report.

Montana State Lottery Observation (Contracted) Financial 04C-03...This report contains the results of the observation of the Montana State Lottery, Department of Administration, Drawings for the year ended June 30, 2004. The observations were conducted by Galusha, Higgins & Galusha, PC, under a contract with the Legislative Audit Division. There are no recommendations directed to the Lottery as a result of this contract report.

Committee to Meet in December...The Legislative Audit Committee is scheduled to meet Dec. 22 in Room 137 of the Capitol building.

## LEGISLATIVE FINANCE COMMITTEE

Committee Meets in November...The Legislative Finance Committee held its final meeting of the interim on Nov. 16. The agenda and various reports are available on the Legislative Fiscal Division website at <http://www.leg.mt.gov/css/fiscal/default.asp>. For more information, contact Clayton Schenck at [cschenck@mt.gov](mailto:cschenck@mt.gov) or at (406) 444-2986. The following are some of the highlights of the meeting.

State General Fund Revenue Outlook...Staff provided an update on general fund revenue, including some adjustments to information presented at the October meeting. The general fund is now projected to end the 2005 biennium with a balance of \$227.4 million, after allowing for recommended reserves. The "Big Picture Report," prepared in late September, indicated that the ending fund balance would be \$205.9 million. Several revenue sources are performing much better than estimated during the 2003 session. For example, individual income taxes have increased because of federal tax reform and higher real wages per worker, while oil and gas production taxes have increased because of higher production and prices. For further information contact Terry Johnson at [tjohnson@mt.gov](mailto:tjohnson@mt.gov) or at (406) 444-2952.

Potential Agency Cost Over-runs/Supplemental Requests...Staff provided information on supplemental appropriation requests contained in the executive budget. The executive will initially request \$12.65 million general fund supplemental appropriations. In addition to the supplemental requests already anticipated for the Judiciary, the Department of Corrections, the Department of Justice, and elected officials, the executive is also requesting two supplemental appropriations for the Department of Public

Health and Human Services. Funds would be added to the Child Support Enforcement Division due to a reduction in TANF caseload-related collections and the on-going impacts of a loss in federal incentive funds. Foster care costs are exceeding the anticipated level due to a reduction in the number of children eligible for federal cost participation. For further information contact Taryn Purdy at [tpurdy@mt.gov](mailto:tpurdy@mt.gov) or at (406) 444-5383.

Committee Adopts Fiscal Recommendations...As required by statute, the LFC discussed several broad issues related to the budget process of the joint appropriations subcommittees which will begin deliberation of the 2007 biennium budget in early January. The LFC wants to ensure that there is consistency and equity in the budget process. The LFC approved a recommendation that the House Appropriations and Senate Finance and Claims committees jointly direct the subcommittees to adopt the base budget and the statewide present law adjustments as the starting point of budget deliberations for each agency. Other recommendations relate to how the subcommittees can affect the base budget, from that point on, in ways in which agencies and expenditure categories are treated equitably. The options and recommendations will be presented to a joint meeting of the House Appropriations and Senate Finance and Claims committees during the first few days of the legislative session. For further information contact Jon Moe at [jonmoe@mt.gov](mailto:jonmoe@mt.gov) or at (406) 444-4581.

Committee Approves Three Bill Drafts...The LFC considered four draft bills and approved three:

- The LFC approved a bill draft (LC 0552) that would require each state agency to submit "5 percent base reduction plans" (currently submitted separately from the budget) with the agency budget as new proposals. This new requirement would begin with the 2009 biennium budget process. The purpose of this legislation is to allow the Legislature to review a portion of an agency's base budget during each budget cycle. The base reduction plans would not be part of the governor's budget recommendations, but rather would be an option for legislative consideration when revenue is falling or when there are other priorities. Sen. Rick Laible will carry this bill.
- The LFC approved a bill draft (LC 0512) that would establish a budget stabilization, or rainy day, fund. The proposal is similar to a consensus rainy day fund bill that was considered during the 2003 legislative session. The proposal would require that 1 percent of actual unrestricted revenues received in the last completed fiscal year be transferred to the rainy day fund. In addition, 100 percent of the revenue received in the biennium that is in excess of the general fund revenue estimate for the biennium would be transferred to the rainy day fund. Up to \$16 million in the fund would be statutorily appropriated

to the governor for declared emergencies and disasters. The remaining balance would be subject to appropriation by the Legislature with a 2/3 vote. The fund would be capped at 10 percent of the average of the last two year's revenue. Rep. Ruth Buzzas will introduce the proposal.

- The LFC approved a bill draft (LC 0732) that would amend 53-6-110(4), MCA, related to reporting Medicaid cost estimates to the LFC. The amendment would require that the Department of Public Health and Human Services provide monthly Medicaid costs estimates and a department budget status report to the LFC beginning Nov. 15 of each year through June 15 of the following year. The department would also be required to provide a fiscal year-end summary for both prior to the first finance committee meeting following June 30. The Medicaid cost estimates and budget status report would be in a format mutually agreed to by the department and the LFC. Sen. John Cobb will introduce the legislation.
- The committee decided that legislation to clarify that "intercap loans" are state debt was not needed.

## REVENUE AND TRANSPORTATION COMMITTEE

And the Bottom Line Is...The Revenue and Transportation Committee held its final meeting of the interim on Nov. 16 to adopt the initial revenue estimates for the 2005 legislative session. Section 5-5-227, MCA, provides, in part:

(2) The [revenue and transportation interim] committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

The committee's estimates will be contained in HJR 2, the Legislature's revenue estimating resolution.

Paul Polzin, director, Bureau of Business and Economic Research, University of Montana, described national and state economic trends that may have a bearing on state revenue estimates. Positive trends in the national economy include:

- new jobs are being created;
- capital spending is up;
- federal deficits relative to gross domestic product are leveling off; and
- inflation is still under control.

Some negative aspects of the national economy include:

- rising oil prices;
- higher consumer debt;
- Federal Reserve likely to gradually increase interest rates;
- volatility in the Chinese economy;
- stagnation in the housing market;
- terrorism;
- decline in the US dollar abroad; and
- a possible resurgence of inflation in 2005.

Polzin pointed out that oil prices, adjusted for inflation, are not as high as they were in 1980 and 1991 and that oil is now a smaller component of the national economy.

Polzin said that Montana was relatively isolated from the effects of the 2001 recession and September 11. For example, employment in Montana continued to increase while it fell nationally. It wasn't until March of this year that growth in employment nationally matched that of Montana. Declines in high-tech manufacturing, dotcoms, communications, financial services, and airline travel led to the national economic recession. These industries are generally less important in Montana than they are in the nation. Montana's economic base is more dependent on nonresident travel, the wood products industry, agriculture, and mining.

The Legislative Fiscal Division and the Office of Budget and Program Planning each develop biennium revenue estimates for the general fund and certain nongeneral fund revenue sources. The overall difference in the general fund revenue estimates developed by the two agencies for the remainder of fiscal year 2005 and the 2007 biennium was about \$34 million out of an estimated \$4.2 billion, or less than a 1 percent difference.

The Revenue and Transportation Committee typically adopts the fiscal division's revenue estimates and considers amendments based on presentations and committee discussion. The committee adopted assumptions of the budget office related to tobacco settlement money and to oil and natural gas production and prices. The committee also discussed the impact of the I-149 tobacco tax increases on the consumption of cigarettes and other tobacco products.

Based on the committee's work, state general fund revenue for fiscal years 2005, 2006, and 2007 are estimated to be \$1,384.6 million, \$1,429.1 million, and \$1,469.2 million, respectively. When more information becomes available, these estimates are likely to change as the Legislature considers HJR 2 during the 2005 session. Rep. Karl Waitschies will sponsor the revenue estimating resolution.

Department of Transportation Presents Additional Legislative Proposal...At the Sept. 9 meeting of the committee, the Montana Department of Transportation discussed a proposal to add an incremental fee for a term permit for an overweight load. Under the proposal, the department would impose a fee of \$2,500 for a term permit for a vehicle that does not exceed 35,000 pounds in excess axle weight. Because the proposal was not on the Sept. 9 agenda, the committee deferred action until November. At the November meeting, the committee voted to authorize a bill draft by request of the department to impose the incremental fee. The committee also voted to cancel a committee bill draft request related to signs in the right-of-way on secondary roads. The Department of Transportation is conducting a survey of signs on secondary roads and will present the results to the 2005 Legislature.

## SENATE COMMITTEE APPOINTMENTS

Senate Appoints Members to Standing Committees...Listed below are the appointments to Senate standing committees for the 2005 legislative session. House appointments to standing committees have not been made, pending a recount of votes in House District 12.

### Agriculture, Livestock and Irrigation

Hansen, Ken (D) - Chair  
Bales, Keith (R)  
Brueggeman, John (R)  
Larson, Lane (D)  
Pease, Gerald (D)  
Smith, Frank (D)  
Stapleton, Corey (R)  
Steinbeisser, Donald (R)  
Tester, Jon (D)

### Business and Labor

Cocchiarella, Vicki (D) - Chair  
Anderson, Sherm (R), replacement to be named  
Balyeat, Joe (R)  
Perry, Gary (R)  
Roush, Glenn (D)  
Smith, Frank (D)  
Squires, Carolyn (D)  
Steinbeisser, Donald (R)  
Tash, Bill (R)  
Tester, Jon (D)  
Tropila, Joe (D)

### Committee on Committees

Wheat, Michael (D) - Chair  
Elliott, Jim (D)  
Mangan, Jeff (D)  
Roush, Glenn (D)  
Ryan, Don (D)  
Toole, Ken (D)

### Education and Cultural Resources

Ryan, Don (D) - Chair  
Barkus, Gregory (R)  
Black, Jerry (R)  
Elliott, Jim (D)  
Gillan, Kim (D)  
Hawks, Bob (D)  
Kitzenberg, Sam (R)  
Laslovich, Jesse (D)  
Mangan, Jeff (D)  
McGee, Dan (R)  
Story, Robert (R)

### Energy and Telecommunications

Toole, Ken (D) - Chair  
Bohlinger, John (R), replacement to be named  
Cromley, Brent (D)  
Curtiss, Aubyn (R)  
Harrington, Dan (D)  
Lind, Greg (D)  
McGee, Dan (R)  
Perry, Gary (R)  
Roush, Glenn (D)

### Ethics

Ellingson, Jon (D) - Chair  
Schmidt, Trudi (D)  
Shockley, Jim (R)  
Story, Robert (R)

### Finance and Claims

Cooney, Mike (D) - Chair  
Bales, Keith (R)  
Barkus, Gregory (R)  
Brueggeman, John (R)  
Cobb, John (R)  
Esp, John (R)  
Gallus, Steve (D)  
Hansen, Ken (D)  
Hawks, Bob (D)  
Keenan, Bob (R)  
Laible, Rick (R)  
Larson, Lane (D)  
Lind, Greg (D)  
Ryan, Don (D)  
Schmidt, Trudi (D)  
Stapleton, Corey (R)  
Tester, Jon (D)  
Weinberg, Dan (D)  
Williams, Carol (D)

### House Appropriations-Senate Finance Joint Subcommittees

Senate membership on the joint subcommittees begins on p. 9.

### Fish and Game

Tropila, Joe (D) - Chair  
Bales, Keith (R)  
Balyeat, Joe (R)

Barkus, Gregory (R)  
 Gallus, Steve (D)  
 Hansen, Ken (D)  
 Larson, Lane (D)  
 Ryan, Don (D)  
 Tash, Bill (R)

#### Highways and Transportation

Pease, Gerald (D) - Chair  
 Black, Jerry (R)  
 Brueggeman, John (R)  
 Cocchiarella, Vicki (D)  
 Kitzenberg, Sam (R)  
 Laslovich, Jesse (D)  
 Smith, Frank (D)  
 Steinbeisser, Donald (R)  
 Weinberg, Dan (D)

#### Judiciary

Wheat, Michael (D) - Chair  
 Cromley, Brent (D)  
 Curtiss, Aubyn (R)  
 Ellingson, Jon (D)  
 Grimes, Duane (R)  
 Laslovich, Jesse (D)  
 Mangan, Jeff (D)  
 McGee, Dan (R)  
 Moss, Lynda (D)  
 O'Neil, Jerry (R)  
 Pease, Gerald (D)  
 Shockley, Jim (R)

#### Legislative Administration

Tropila, Joe (D) - Chair  
 Barkus, Gregory (R)  
 Cromley, Brent (D)  
 Grimes, Duane (R)  
 Roush, Glenn (D)

#### Local Government

Mangan, Jeff (D) - Ch  
 Esp, John (R)  
 Gebhardt, Kelly (R)  
 Gillan, Kim (D)  
 Hawks, Bob (D)  
 Laible, Rick (R)  
 Moss, Lynda (D)  
 O'Neil, Jerry (R)  
 Shockley, Jim (R)  
 Squires, Carolyn (D)  
 Wheat, Michael (D)

#### Natural Resources

Roush, Glenn (D) - Chair  
 Curtiss, Aubyn (R)  
 Gebhardt, Kelly (R)  
 Harrington, Dan (D)  
 Lind, Greg (D)  
 Perry, Gary (R)

Tash, Bill (R)  
 Toole, Ken (D)  
 Wheat, Michael (D)

#### Public Health, Welfare and Safety

Cromley, Brent (D) - Chair  
 Cobb, John (R)  
 Esp, John (R)  
 Grimes, Duane (R)  
 Moss, Lynda (D)  
 O'Neil, Jerry (R)  
 Schmidt, Trudi (D)  
 Weinberg, Dan (D)  
 Williams, Carol (D)

#### Rules

Tester, Jon (D) - Chair  
 Cocchiarella, Vicki (D)  
 Ellingson, Jon (D)  
 Elliott, Jim (D)  
 Gallus, Steve (D)  
 Gillan, Kim (D)  
 Grimes, Duane (R)  
 Keenan, Bob (R)  
 Laslovich, Jesse (D)  
 McGee, Dan (R)  
 Stapleton, Corey (R)  
 Story, Robert (R)

#### State Administration

Squires, Carolyn (D) - Chair  
 Anderson, Sherm (R), replacement to be named  
 Balyeat, Joe (R)  
 Bohlinger, John (R)  
 Cocchiarella, Vicki (D)  
 Cooney, Mike (D)  
 Ellingson, Jon (D)  
 Gallus, Steve (D)  
 Laible, Rick (R)  
 Shockley, Jim (R)  
 Tropila, Joe (D)

#### Taxation

Elliott, Jim (D) - Chair  
 Black, Jerry (R)  
 Bohlinger, John (R), replacement to be named  
 Ellingson, Jon (D)  
 Gebhardt, Kelly (R)  
 Gillan, Kim (D)  
 Harrington, Dan (D)  
 Kitzenberg, Sam (R)  
 Schmidt, Trudi (D)  
 Story, Robert (R)  
 Toole, Ken (D)

#### **Joint Budget Subcommittees**

##### Corrections and Public Safety Subcommittee

Bales, Keith (R)  
 Gallus, Steve (D)

Schmidt, Trudi (D)

Education Subcommittee

Esp, John (R)

Ryan, Don (D)

Williams, Carol (D)

General Government Subcommittee

Cooney, Mike (D)

Laible, Rick (R)

Larson, Lane (D)

Stapleton, Corey (R)

Long-Range Planning Subcommittee

Brueggeman, John (R)

Cooney, Mike (D)

Keenan, Bob (R)

Tester, Jon (D)

Natural Resources Subcommittee

Barkus, Gregory (R)

Hansen, Ken (D)

Hawks, Bob (D)

Health and Human Services Subcommittee

Cobb, John (R)

Lind, Greg (D)

Weinberg, Dan (D)

## THE BACK PAGE

### WHAT LEGISLATORS SHOULD KNOW ABOUT MEDICAID REDESIGN

By Lois Steinbeck  
Legislative Fiscal Division

#### Introduction

House Joint Resolution 13, approved by the 2003 Legislature, requested that the Department of Public Health and Human Services (DPHHS) undertake a study of the various options available for redesigning the Montana Medicaid Program, the Mental Health Services Plan, the state Children's Health Insurance Program, and other health programs administered by the DPHHS. HJR 13 also requested that DPHHS involve tribes in the redesign process; report periodically to the Children, Families, Health, and Human Services Interim Committee and to the Legislative Finance Committee regarding the progress of the study; and provide a report to the 59th Legislature outlining options that may be undertaken to redesign the health programs administered by DPHHS.

The Governor appointed a 20-member advisory council (Governor's Health Care Advisory Council), which met several times during the interim. The council made 18 recommendations, including a recommendation that would require the review of progress on implementation of the redesign recommendations. The final redesign report will be mailed to each legislator. The report is also available at [http://www.dphhs.mt.gov/phcmr/public\\_health.htm](http://www.dphhs.mt.gov/phcmr/public_health.htm).

This article summarizes the major redesign recommendations and focuses on the most complex proposals that will come before the Legislature during the next legislative session. Short summaries of four legislative proposals to implement some of the redesign proposals are also presented.

#### Why Redesign?

The Legislature recognized the importance of state administered health programs, including rapidly escalating costs and the importance of administering such programs efficiently. HJR 13 anticipated a comprehensive review of health programs administered by DPHHS. However, the study centered primarily on the Medicaid program and to some degree Children Health Insurance Program (CHIP) and mental health services. While the study may not have been as broadly based as the Legislature originally envisioned, the proposed changes to the Medicaid program may be among the most significant considered by the Legislature in recent history.

#### HIFA Waiver

One of the most important fiscal and programmatic components of the redesign recommendations is the Health

Insurance Flexibility and Accountability (HIFA) waiver. This waiver was promulgated by the Bush administration and does not exist in federal rule or in Title XIX of the Social Security Act. A HIFA waiver must include an expansion of health care benefits for the uninsured and must include a public/private partnership. The expansion may be financed by "converting" 100 percent state funded programs to Medicaid services or by limiting or reducing other mandated Medicaid benefits.

#### Use of Existing State Funds to Leverage Federal Medicaid Match

The HIFA waiver under consideration by DPHHS would "refinance" 100 percent state funded services by including those services and persons eligible for them in the state Medicaid program. The waiver would allow state funds currently supporting these services to be used as Medicaid matching funds, thereby leveraging additional federal Medicaid funds. Montana Medicaid services are funded by about 30 percent state funds and 70 percent federal funds. The current proposal anticipates leveraging between \$3.3 and \$5.3 million state funds to generate an additional \$8 to \$12 million in federal Medicaid funds for additional health services.

The source of state match will come from the Mental Health Services Plan (MHSP) and the Montana Comprehensive Health Association (MCHA), the two state funded programs considered for inclusion in the HIFA waiver. MHSP provides prescription drugs and some other services to adults with a serious and disabling mental illness who have incomes under 150 percent of the federal poverty level. The MCHA provides insurance or premium assistance to some persons who have been denied health insurance coverage.

#### Use of Tobacco Settlement Proceeds

The source of state funding for each of these programs is:

- MHSP – general fund, a portion of the federal mental health block grant, and during the 2005 biennium, a one-time appropriation of tobacco settlement proceeds diverted from tobacco control and prevention
- MCHA – health insurance premium assessment and a portion of tobacco settlement proceeds allocated under 17-7-606, MCA

The executive budget proposal is based on permanently changing the allocation of tobacco settlement proceeds from tobacco control and prevention to use as matching funds for the HIFA waiver.

The expansion of health services in the HIFA waiver includes:

- MHSP – add physical health benefit and "refinance" prescription costs for 2/3 of MHSP recipients without other health insurance
- MCHA – expand premium assistance program

- and/or raise premium assistance (recently declined from 55% to 45%)
- Add services for up to 300 children with serious emotional disturbance (SED) transitioning to adult services
- Expand Children's Health Insurance Program (CHIP) type coverage with Medicaid funds rather than using federal CHIP grant. The number of additional children served is undetermined at this time.
- Assistance for low-income working adults transitioning off Medicaid. The number of additional adults served is undetermined at this time.
- Sometime within the five-year period of the waiver, partnership with employers for premium assistance

### Cost Neutrality for Federal Government

All waivers of federal Medicaid regulations must be cost neutral to the federal government. This means that over the period of the waiver, the federal Medicaid cost must be no greater than it would have been without the waiver. The DPHHS proposal must be cost neutral over a five year time period. If it is not, the state must repay excess cost of the federal government. Cost neutrality considerations have constrained some of the proposed HIFA expansions.

DPHHS will be allowed to use cost savings generated by an existing waiver that allows Montana to offer a "basic" package of Medicaid services to adults in the FAIM program, rather than all federally required Medicaid services. Additional cost neutrality components of the proposed waiver rely on the premise that Montana could have made other groups eligible for full Medicaid benefits, but chose to limit benefits thereby saving federal funds. Finally, there will be a per person per month cap on the growth in Medicaid costs for populations covered by the waiver. If cost growth exceeds this cap, then service reductions or other changes in the waiver could be made to ensure cost neutrality.

### Other Major Redesign Proposals

There are several other redesign proposals that will come before the Legislature in January. While the HIFA waiver proposal is the most complex, other proposals, including additional Medicaid waiver proposals are significant policy issues for legislative consideration.

### Waiver of "Deeming"

DPHHS will request a waiver of deeming. This waiver means that parental income and assets are not considered in determining whether a child is eligible for Medicaid. Montana already has two such waivers. One provides services to children who are developmentally disabled and the other provides services to children who are physically disabled. The proposed third waiver would be used to provide services to children with severe emotional disturbances (SED).

All children in these waivers are entitled to Medicaid medical services. In addition, the waiver allows home and community-based services that are not typically covered by Medicaid. For example, respite services for parents who care for disabled children can be covered in a waiver.

This proposal would also establish some type of cost share for families, based on their ability to pay. The cost sharing would be applied to all waivers and not just the new proposal to cover SED children.

### Lookback Period for Medicaid Eligibility

States are required by federal regulations to review transfers of assets for three years previous to the application for Medicaid eligibility. Certain asset transfers made to artificially impoverish a Medicaid applicant are illegal. This proposal would request federal approval to extend the lookback period from 3 years to 5 years.

Asset transfers are usually considered in conjunction with estate planning in order to protect family assets. Since nursing home services can quickly deplete assets, some persons shift the costs of their long-term care to Medicaid. The average Medicaid cost for a person in a nursing home is \$36,000 a year, not including one-time rate enhancements.

### Dollar-for-Dollar Waiver

DPHHS is also considering a dollar-for-dollar waiver that would allow persons who purchase long-term care insurance to retain assets when eligibility for Medicaid nursing care services is considered. Under this concept, an amount of resources equal to the value of insurance paid out to the individual is disregarded in Medicaid eligibility determination. For example, if an individual received \$10,000 of long-term care insurance payout, \$10,000 of assets would be disregarded in determining financial eligibility.

### Health Education

The Medicaid redesign recommendations include two recommendations related to education. One proposal recommends providing education that helps students understand good health practices. The second proposal centers on education about long-term care and planning for such services.

### Family Planning Waiver

DPHHS is reviewing whether to propose a family planning waiver that can expand services to more low-income persons at a 90 percent federal match rate. Services that can be included in such a waiver are prenatal care, delivery, and medical costs for the mother, and ongoing health care for the child. The mix of services and timing of the delivery of those services has not been finalized.

### Waiver of Indian Health Services from State Medicaid Plan

Indian Health Services is reimbursed with 100 percent

federal funds for Medicaid covered services provided to Medicaid eligible persons. However, only services allowed by the state Medicaid plan are eligible for reimbursement.

During the 2003 biennium there were several changes to the state Medicaid plan that eliminated certain services from the state plan in order to avoid cost over runs and to limit general fund costs. Those actions also eliminated Medicaid reimbursement to I.H.S. for those services.

DPHHS will attempt to sever the link between the Medicaid state plan and Medicaid eligible reimbursement for I.H.S. services for two basic reasons:

- I.H.S. Medicaid reimbursement is 100 percent federal.
- Restricting or eliminating coverage of certain Medicaid services can shift the cost to limited I.H.S. funds or higher-cost state plan services, which are partially state funded (30 percent general fund state match)

#### **Develop Transportation Brokerage Pilot Project**

DPHHS is developing a pilot project to determine whether persons can be well served and costs contained by coordinating travel. In some instances, there may be several persons traveling from and to the same place on the same day. Since some or all travel costs can be born by DPHHS programs, coordination may provide efficiencies. The pilot project will be implemented in a region of the state and depending on results could be extended to other or all parts of the state.

#### **Other Recommendations**

There are several other redesign recommendations including:

- Enhance third party collections – DPHHS will undertake efforts to determine whether Medicaid costs for some persons can be partially or fully offset by other insurance coverage that those persons may have such as private insurance and Medicare.
- Develop a strategic plan for adult mental health services – The redesign process emphasized the need for and commitment to a long-term strategic plan for adult mental health services.
- Medicaid eligibility field review – DPHHS is initiating a review of Medicaid eligibility determination to ensure that field staff applies Medicaid eligibility criteria consistently and according to state and federal policies.
- Implement pharmacy cost containment – DPHHS is undertaking several measures to reduce pharmacy cost growth, including establishing a preferred drug

list, including actions such as:

- Adopting a preferred drug list and/or seeking a federal waiver to require higher co-payments for equally effective, but higher cost, drugs
- Examining the potential of developing an evidence-based drug program to work in coordination with the preferred drug list
- Exploring the feasibility of developing a state drug discount program
- Examining the potential for re-importation of drugs from other countries
- Pending the request of I.H.S. or the tribes, seek mechanisms, including, if necessary, a 1915(b) freedom of choice waiver, to insure that I.H.S.-eligible Medicaid participants on reservations have their prescriptions filled at I.H.S. or tribal facilities

#### **Legislation for Redesign**

Four bill draft requests have been submitted to implement components of Medicaid redesign.

LC 0281 –When considering changes to the Medicaid policy or services requires requiring DPHHS and legislature to consider:

- Protecting those persons who are most vulnerable and most in need, as defined by a combination of economic security and medical circumstances
- Giving preference to the elimination of an entire Medicaid program or service, rather than sacrifice the quality of care for several programs or services through dilution of funding
- Giving priority to retaining those service that protect life, alleviate sever pain and prevent significant disability

LC 0290 – Home and community based services waiver guidelines including:

- Allowing such waivers for persons with mental illness
- Allowing DPHHS to determine methods of reimbursement for waiver services
- Rewording existing statutes to enhance organization and clarity

LC 219 – Authorization for DPHHS to require recipients of community-based Medicaid services to share in the cost of services based on their ability to pay with specific directive to review parental ability to pay if the Medicaid recipient is under the age of 18

LC 0292 – Generally allows DPHHS to pursue a HIFA waiver as summarized in the beginning of this article

LC 0293 – Authorization for DPHHS to request a Medicaid waiver for SED children

The Legislative Finance Committee heard a staff report

summarizing the major elements of the Medicaid redesign process undertaken by the Governor’s Health Care Advisory Council and DPHHS progress toward implementing some of

the recommendations. The summary can be viewed on line at: <http://leg.mt.gov/css/fiscal/reports.asp#nov2004>.



# INTERIM CALENDAR

*UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL*

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 2004						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22 Legislative Audit Committee, Room 137	23	24	25

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
26	27	28	29	30	31	

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
January 2005						1
2	3 59th Legislature convenes	4	5 Law School for Legislators, House Chamber, 8 a.m. to noon	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

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