



MONTANA LEGISLATIVE BRANCH

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Director
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DATE: November 28, 2014

TO: Members of the Legislative Finance Committee

FROM: Scot Conrady, Fiscal Analyst
Barbara Smith, Operations Manager

RE: MDC, DOJ and resources.

PURPOSE

After the September meeting of the Legislative Finance Committee (LFC) received additional information regarding the number of recent abuse and neglect allegations at the Montana Development Center (MDC). Data provided from the Department of Public Health and Human Services (DPHHS) was different than data provided by the Department of Justice (DOJ). This report focuses on the respective roles of DPHHS and DOJ in assuring safety at the institutions and corresponding resources.

New Program – SB 43 (2013)

DOJ's role was established with the passage and approval of SB 43 of the 2013 session. DOJ is now required to investigate, substantiate or not, each referral of suspect abuse, neglect or injury of unknown origin from MDC within five days. This is an investigation of reports and facts, not a criminal investigation. For this new activity DOJ was appropriated of \$194,128 and 1.0 FTE, which was actually a transfer of resources from MDC. Given the diversity of referrals, the amount of information to review, and the tight turnaround, DOJ found it necessary to acquire a 0.5 FTE through the emergency hire process.

As of this writing, for calendar year 2014 DOJ has investigated 55 cases, based on the agency's definition of a case. There is a difference in the quantity of DOJ cases reported verses the amount reported by MDC. The difference is likely a function of reporting methods between the two agencies. For example, one incident, as reported by DOJ, may have multiple findings during one particular incident that are substantiated and reported as such. MDC in contrast, would report and list all of the same findings as DOJ, but would group those and count as one, with a subset of multiple findings.

Another consideration of the investigative process is the fact that clinical history of the client is not a part of the investigations process by DOJ. DOJ findings are based on investigative and corroborative skills. MDC does rely on clinical information in the review process. Clinical history can be important in understanding the client claims in the investigation and substantiation process.

Both DOJ and MDC have committed to standardizing the method of counting incidents in the future to for clarification.

Resource Challenges

To address workload, DOJ hired an additional 0.5 FTE to keep pace with the work, but that FTE is not requested in the Governor's budget to continue. If the number of referrals does not slow, the program will be inadequately staffed to meet the requirements of SB 43.

MDC has larger resource challenges. The facility has difficulty hiring and maintaining an adequately trained staff. This has led to high turnover, training costs and unmanned shifts. Reasons for this situation may include low wages, a difficult clientele, shift work, the environment of MDC, and the lack of a readily available work force. Consider the situation of direct support staff.

MDC is currently running operations with 111 direct support staff. The optimum level, according to management of the facility would be 135. Due to the spacing and set up of the facility (8 separate buildings located on approximately ¼ mile square area) there is a high requirement for FTE for optimum client supervision. In addition, the workforce is largely unionized and job bidding based on seniority typically results in unfavorable conditions for facility staffing and scheduling. The result of the job bidding process is that, in many occasions, the newest personnel are subject to shift work at the highest secure areas with the most difficult clients during periods where minimal staff and management are present. This has created opportunities with potential unfavorable outcomes.

To achieve optimal staff, an additional 24 FTE are needed at a cost of approximately \$1.9 million. Similar situations exist with behavioral technicians and supervisory staff. MDC is unable to move to optimal staffing without additional budget authority. The facility budget authority was reduced during the last legislative session by approximately \$2.6 million, much of which was rerouted to community providers.

Transition of clients out of MDC to the community has been occurring but it should be noted that some of the client population may not ever be considered appropriate for community living due to the severe intellectual issues, predatory behaviors or violent tendencies that pose imminent risk to the client and others. In the late 1990s MDC received the first criminal commitment, which has since led to a slow change in the population at MDC. Regardless, 14 clients for FY14 and 10 for FY15 year-to-date have been transitioned to the community, a few have returned since then.

Options

Given the number of challenges facing MDC, the legislature could consider:

- 1) Requesting a study resolution to:
 - a) Define the optimal purpose of MDC
 - b) Determine protocol for oversight of suspect abuse and neglect
 - c) Rebase the budgetary needs of MDC
- 2) Adjust resources as part of the HB 2 process
- 3) Revisit the purpose of SB 43 to clarify intent and agency roles