



MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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MINUTES HJR 35 SUBCOMMITTEE

Wednesday, June 7, 2000
Helena, Montana

The fifth meeting of the House Joint Resolution (HJR 35) subcommittee was called to order by Senator Chuck Swysgood, Chairman, on June 7, 2000 at 8:45 a.m., in Room B-7 of the Federal Building. The following HJR 35 members were present:

Senator Swysgood, Chairman
Senator Waterman
Senator Franklin
Senator Keenan

Representative Taylor, Vice-Chairman
Representative Barnhart

Representative McCann and Representative Soft were excused.

Approval of Minutes

Senator Waterman moved that the minutes of the March 8, 2000, meeting be approved as presented. The motion carried unanimously.

Panel on Community Commitments

Participants of the panel were: **Mike Menahan**, Deputy County Attorney, Lewis and Clark County; **Jeff Sturm**, Director, Helena Golden Triangle Mental Health Center (Exhibit 1); **Dr. Scott Elrod**, Psychiatrist and Medical Director, Western Montana Mental Health Center; and **Gene Haire**, Executive Director, Mental Health Disabilities Board of Visitors (Exhibit 2).

Summarized below are concerns and comments the panelists expressed (Exhibit 3):

Mike Menahan – County Attorney, Lewis and Clark County

- adopt new statute to provide more flexibility for judges – to order treatment options, medications and housing; and
- incorporate elements of conditional release from MSH (Montana State Hospital) for community commitments.

Jeff Sturm – Golden Triangle Mental Health Center

- need to be able to enforce laws and follow-up
- a provision for involuntary medication is needed
- need uniform application – educate courts, county attorneys and mental health centers

Dr. Scott Elrod – Western Montana Mental Health Center

- need equivalent to MSH revocation for community commitments
- need to use “inevitability of decline” rather than “show some deterioration”

Gene Haire – Mental Disabilities Board of Visitors

- more effective laws – careful to protect person’s rights and due process
- balance refusal to take medications with clear consequence/result
- conditional releases should better define when violation occurs
- competency to take medications as a separate process/decision
- caution on forced medications

Senator Swysgood thanked the panel for their comments.

Senator Franklin asked how often community commitments are employed as opposed to commitment to MSH. Mr. Menahan stated about 30 to 40 percent.

Debra Dirkson, CEO, MSH, stated that only about 50 percent of the patients from Helena that are sent to MSH for the two days prior to their hearing are actually committed. In Billings, approximately 25 percent are committed.

Mr. Menahan stated that support centers can not take patients that are charged with a felony so they are sent to MSH for an evaluation. Also, if the support center is full or if a patient is suicidal they are sent to MSH.

Senator Swysgood asked Randy Poulsen, Bureau Chief, Mental Health Services Bureau, Addictive and Mental Disorders Division, Department of Public Health and Human Services (Department), based on DRG calculations how many days on average would be paid for

community hospitalization. Mr. Poulsen stated that it would be based upon specific diagnosis and that he would provide that information to the subcommittee.

Standing Agenda Items

Mental Health Access Plan (MHAP) Claims - Jacqueline Lenmark, representative for Magellan Behavioral Health, presented a handout to the subcommittee regarding claims adjudication data and analysis of denied claims (Exhibit 4). The schedule shows claims data arranged by date of service. The information presents the final month of data by date of service that Magellan was on risk, and May and June the two months that Magellan contracted with the state to adjudicate claims but for which the state was on risk. Information that was not included in the schedule was a quantification of the denied claims that are in dispute. The precise dollar amount is unknown at this time. Final quantification has not been received for all disputed claims.

Senator Swysgood asked Ms. Lenmark to explain what criteria is used to determine precertification. Ms. Lenmark stated that the criterion for precertification varies. The two categories, lack of precertification and client not eligible, total more than 50 percent of denied claims. Once eligibility is determined, there are a number of services that must be preapproved by Megallan before they are provided to the eligible member. **Senator Swysgood** also asked if any of the denied claims are in mitigation. Ms. Lenmark stated that if the provider chose to appeal the denial then the claim would be in mitigation.

Senator Swysgood asked Mike Billings, Administrator, Operations and Technology Division, if the Department is in agreement with the figures Ms. Lenmark provided. Mr. Billings stated he could not answer that because the Department is not privy to all the information that went into the report.

Senator Swysgood asked if the providers are successful in securing a portion of the \$3.6 million difference in unpaid claims for May and June (Exhibit 4) denied by Magellan would that amount be the responsibility of the state. Mr. Billings stated yes. **Senator Swysgood** also asked if the Department allotted for that in their budget. Mr. Billings stated no the Department did not.

Senator Waterman asked Ms. Lenmark if providers can still submit claims for June of 1999. Ms. Lenmark stated that they can. **Senator Waterman** also asked if the state contracted with

Magellan to negotiate the differences between what was billed and what is paid. Ms. Lenmark stated that is correct. The claims for the months of May and June are being adjudicated under the same rules, rates and criteria as all of the claims prior to the time the state was on risk.

Senator Waterman asked how the Department would determine that Magellan paid the appropriate amount. Mr. Billings responded that it is not the Department's intention to proactively pursue that. Claims are being adjudicated in accordance with rates in existence.

Senator Waterman asked what would be the incentive to continue to deny a claim. Ms. Lenmark stated that Magellan made a contract with the state and Magellan would not knowingly and intentionally breach that contract. **Senator Waterman** posed several questions to Ms. Lenmark regarding claims in May and June. Ms. Lenmark stated that procedurally, Magellan would be the entity that is sued, Magellan would defend its decision on the claims and the outcome of the litigation would become the state's liability to Magellan. Magellan will not commit to any settlement amount other than what has been determined under the contract without consultation with the state and agreement from the state. Ms. Lenmark also stated she did not think the state would be responsible for the legal costs.

Representative Barnhart asked how much time a provider has to file an appeal. Ms. Lenmark stated that the provider has 90 days to file a claim. Magellan then has 30 days to adjudicate the claim. The provider then has an additional 60 days to appeal the denial or decision if it disagrees, and then Magellan has another 30 days to respond. If the provider still disagrees with the appeal it has an additional 10 days to access the dispute resolution process which is an informal method available to providers to resolve claims. If the provider is still unsatisfied with the result of the dispute resolution process, then it may arbitrate the dispute with Magellan and there is no time frame set around that. All of the deadlines are extended if the member has other insurance. **Representative Barnhart** also asked if a claim for services is denied does the provider resubmit the bill. Ms. Lenmark stated that many providers have resubmitted claims which delays payment of valid claims. Providers should not resubmit claims; claims should be appealed. Duplicate billings were not included in Ms. Lenmark's report.

Senator Swysgood requested Mr. Billings provide a report before the next meeting showing amount of billed claims, paid claims and amount of denied claims.

MSH Population – Debra Dirkson, CEO, MSH provided to the subcommittee a report on the MSH population for May 2000 (Exhibit 5). The report shows the average daily population (ADP) to be 153. In the prior year it was 168. The report for April 2000 (Exhibit 6) shows the ADP to be 161. In the prior year it was 154. In January and April of each year the MSH has a historical spike in admissions. Ms. Dirkson also provided an HJR 35 Subcommittee Report dated June 7, 2000 (Exhibit 7). This report shows the current census is 156 patients. The new hospital has a total capacity of 184 beds. The target census is 135 patients or 73 percent of licensed capacity.

Senator Franklin asked Ms. Dirkson if the forensic unit is full. Ms. Dirkson reported they have 40 forensic patients now and a bed capacity in the new hospital of 32. Eight of the 40 patients, depending on their treatment, may be able to be served in another location. **Senator Franklin** also asked Ms. Dirkson to comment on a letter that was mailed to county attorneys asking them not to send patients to MSH on Friday afternoon. Ms. Dirkson responded that when the hospital receives admissions on a Friday after business hours most of the clinical staff are gone and it taps their resources and their ability to care for them. The hospital was asking if there is a way of doing some advance planning to do admissions during regular business hours. The statutes provide for advance notice when a patient is being brought to the MSH.

Senator Swysgood referred to Exhibit 7 and asked Ms. Dirkson if an ADP of 135 is realistic. Ms. Dirkson stated she believes the hospital is looking at 150 as realistic. The MSH census is absolutely related to what happens in the community. When a service is developed the census goes down.

Representative Barnhart asked if any clients in the PACT programs have returned to MSH. Ms. Dirkson responded that six patients have returned to MSH. Two patients have been repeated re-admissions.

PACT Update – Randy Poulsen, Department, reported on the PACT programs (Exhibit 8). The Department expected clients to be re-hospitalized and are not particularly concerned with the level of repeat admissions. Mr. Poulsen reported both programs are at capacity and are

operating well. The Billings program is expecting to expand from 40 to 60 clients after the next fiscal year.

Senator Waterman asked Mr. Poulsen to comment on the integration of the staff psychiatrist into the PACT team and transportation of PACT members in the Billings program. He stated that an individual psychiatrist has not been assigned to the PACT team. The duties are being shared by three different positions. The transportation issue has to do with the availability of cars to transport the team members to the clients.

Lois Steinbeck, Senior Fiscal Analyst, Legislative Fiscal Division, (LFD) reported that she participated in the bi-weekly PACT program telephone calls and other challenges the PACT teams are still working on are: 1) the coordination between the hospital staff and the PACT program psychiatrist when patients are re-admitted to MSH; 2) who determines what kinds of diagnoses are appropriate for PACT; and 3) how clients are discharged from PACT and who makes that determination. The PACT team also increased the salaries of individual workers in order to help compensate for the longer hours. The salaries initially were based on comparable salaries of an 8 to 5 job.

Statewide Psychiatric Capacity – Mr. Poulsen distributed two handouts: a report to the Montana Consensus Council (Exhibit 9) and an Inpatient Psychiatric Capacity report (Exhibit 10). Mr. Poulsen reported there is not presently a problem with the capacity of inpatient psychiatric beds. However, there is a problem with distribution of the geographic availability of beds. There is talk of Deaconess and St. Peter's hospital closing their inpatient psychiatric unit. Mr. Poulsen spoke with Mr. Olsen, Vice President, Montana Hospital Association, who stated he did not believe closing of either psychiatric unit would be imminent. The fact that the two hospitals are even talking about closing is of concern to the Department. The Department is looking at various options to try and relieve the pressure on those hospitals. Some of those options are considered in the Executive Planning Process (EPP).

Senator Waterman asked Mr. Poulsen to discuss some of the solutions included in the EPP. Mr. Poulsen described a proposal called Behavioral Health Facility. This is a new service and is in conceptual stage at this time. It would be a small residential or inpatient facility staffed to take behavioral health emergencies. These facilities would take the place of some of the

transportation back and forth to MSH prior to a commitment hearing. (These facilities could also provide short-term treatment.) The Department requested funding to start-up two facilities. The Department believes reimbursement for these facilities could be arranged through Medicaid and MHSP programs.

Ms. Steinbeck, LFD referred to the EPP report prepared by Office of Budget and Program Planning (OPBB) (Exhibit 11). OPBB gave the Department a \$30 million general fund cap in which to request proposals. At this point the start-up facilities are not within the \$30 million cap but, the Department can reprioritize or readjust its estimates.

Laurie Ekanger, Director, Department, reported they are still in the discussion phase and will be meeting with OBPP again.

AMDD Fiscal 2000 Expenditures Compared to Appropriation - Bob Mullen, Bureau Chief, Fiscal Bureau, Addictive and Mental Disorders Division, distributed a handout on Budget and Projected Expenditures - FY2000 for April (Exhibit 12). Mr. Mullen explained that the report projects a general fund deficit of approximately \$3.6 million for the current fiscal year. Approximately \$1.5 million of the deficit is MSH, approximately \$1.3 million is in the Medicaid program and approximately \$1.5 million is in MHSP fee-for-service program. The Department anticipates MSH to have a fiscal year end deficit of approximately \$1.1 million as a result of the building delay. The MHSP program will show a larger deficit when general funds are transferred to the hospital to cover the additional ADP.

Ms. Steinbeck, LFD distributed a copy of a letter to Provider Task Force Members regarding budget control options AMDD is considering (Exhibit 13). One of the service reductions under consideration is elimination of Medicaid funding for children's out-of-home services. This service reduction could shift costs to the general fund in the foster care, school and juvenile correction budgets, resulting in a total increase overall of state general fund spending.

Mr. Poulsen distributed a revised version (Exhibit 14). The items are under consideration and no decisions have been made except to maximize CHIP coverage for MHSP eligible children. Consultec is working on a systems change to ensure services for CHIP eligible children do not get paid by the MHSP program until CHIP benefits are exhausted.

Ms. Steinbeck mentioned the March report in which staff identified three alternatives that general fund costs in the MHSP could be offset: 1) cover all mental health services with CHIP funds for all children eligible for CHIP and MHSP; 2) use costs from MHSP toward TANF MOE thereby freeing up general fund; and 3) use TANF funds to pay for services that are non-medical that can be provided to people who are eligible for MHSP. The Department is not pursuing any of these alternatives.

Senator Swysgood asked Mr. Poulsen if he could respond why the Department is not considering any of the alternatives. Mr. Poulsen stated he did not feel confident to discuss TANF. In regards to CHIP, the decision not to fund MHSP services with CHIP monies was because the Department wanted to maximize the ability to enroll children in the CHIP program.

Senator Swysgood asked Mr. Poulsen if CHIP enrollment has been maximized. Mr. Poulsen stated that he did not have those figures. **Senator Swysgood** requested the information for the next meeting.

Ms. Ekanger, Department, commented that Department budget analysts from the different divisions and programs looked at the TANF options and their recommendation was not to pursue either option because of some complications. Ms. Ekanger stated that Mary Dalton, Chief, Medicaid Services Bureau, and Hank Hudson, Administrator, Human and Community Services Division, could provide a detailed report regarding that recommendation. **Senator Swysgood** requested the report for the next meeting.

Senator Waterman expressed concern regarding CHIP funds being used to balance the budget rather than enrolling children in CHIP or using the money to provide mental health services. Ms. Ekanger stated that the Department is not diverting enrollment of children in CHIP. The Department is enrolling approximately 700 to 800 children per month in CHIP. There are 6,000 children enrolled in CHIP.

Senator Swysgood asked if tobacco money is being used to offset the deficit. Mr. Billings stated that based on current data, he is convinced there is not going to be a surplus of tobacco money in the budget. There is an overall agency deficit of approximately \$4.2 million most of which is in the mental health area. **Senator Swysgood** asked Mr. Billings if the Department was

publishing a budget status report. Mr. Billings stated the report is being adjusted and may be ready Friday (June 9). **Senator Swysgood** asked how long has it been since the Department has had a status report. Mr. Billings stated they had a report in January and maybe February. Ms. Ekanger stated the Department has had a report every month up until this year when information could not be obtained from the new computer system. The Department had two budget status reports this year.

Mr. Mullen, Department, also distributed a handout regarding MHAP claims for May and June 1999. (Exhibit 15) Anticipated claims costs to MCP are \$12,432,574 and payments made through May 30, 2000 are \$12,473,984. This data indicates the Department has paid approximately \$41,000 more in claims than anticipated. There is approximately \$660,000 difference between what the Department has paid MCP and what Magellan said they paid in claims. The Department will reconcile the difference and bring a report to the next meeting.

Mental Health Ombudsman Report - Ms. Adee was unable to attend the meeting. A written report was provided (Exhibit 16).

Medicaid Compliance

Medicaid Criteria - Ms. Steinbeck referred to her report of April 27, 2000 on Medicaid compliance issues raised in the report "Flexibility in Funding Mental Health Services (Exhibit 17). Department staff, Representative Barnhart, and legislative staff called representatives of the federal Health Care Financing Administration (HCFA). During that call it was determined that in implementing PACT the Department should have had a waiver to limit provider participation, and it should have followed federal procurement guidelines. Dave Selleck, State Program Manager, HCFA, further determined that the policy describing how pilot demonstration projects would be evaluated, selected and implemented did not comply with federal criteria. The Department has taken steps to come into compliance regarding these issues.

There are other remaining compliance issues. PACT was funded under the fee-for-service system. Under that system, only services that are Medicaid eligible can be reimbursed. Eligibility for placement in a Medicaid service cannot be made contingent on receipt of or placement in another service. The subcommittee could request that the Department address the issue of funding of PACT and the demonstration programs by reimbursing services that are not

eligible for Medicaid reimbursement and that it make corrections or the subcommittee could take no action.

Mr. Poulsen, Department, responded that Ms. Steinbeck's report has been useful to the Department and in the future they would do some things differently. In regard to the federal funds, Mr. Poulsen stated they could be reversed at anytime with general fund if that becomes necessary. He also stated that if and when new PACT programs are implemented, the Department would try to direct those programs to take people out of MSH whenever it is appropriate and feasible.

Senator Swysgood asked Mr. Poulsen if the PACT programs are funded with general fund. Mr. Poulsen stated that the services are reimbursed either by MHSP or Medicaid depending on eligibility of the individual. **Senator Swysgood** also asked if the Department believes it is appropriate to fund PACT with Medicaid funds. Mr. Poulsen stated yes because the Department believes they did not restrict providers that could provide the service, rather they facilitated the development of the service. Mr. Selleck, HCFA, stated that a pilot project can not be operated with federal funds. He did not say that the PACT program should have been done on a competitive procurement basis.

Ms. Steinbeck, LFD, reported that at the March meeting the subcommittee directed staff to ask if HCFA staff understood that providers were not selected with a competitive requirement and did HCFA staff understand also that providers were being limited. Mr. Selleck, HCFA, responded that they did not understand that providers were being limited and said the process followed by the Department did not comply with federal procurement requirements if provider participation was limited.

Senator Swysgood asked Mr. Poulsen what the Department found to be useful in the report. Mr. Poulsen stated that discussions with Rep. Barnhart, Ms. Steinbeck and HCFA helped clarify a number of things. When the PACT process started the Department did not give much thought to whether they could use federal Medicaid funds for the start-up of PACT. It is clear now that they can not. The Department also has a better understanding of what can and can not be done in terms of pilot or demonstration projects. The Department has a greater awareness of limiting services on an area basis or restricting access or restricting a number of providers.

Senator Swysgood asked Mr. Poulsen if HCFA should request reimbursement of the Medicaid costs used to fund services provided by PACT, does the Department know what the amount would be and where it would come from. Mr. Poulsen stated that the money would have to come from general fund appropriations but he could not provide an amount at this time.

Senator Swysgood requested that Mr. Poulsen provide a report with the start-up cost and ongoing costs of the PACT programs for the next meeting.

Mental Health Managed Care Statutes

Greg Petesch, Director, Legal Services, Legislative Services Division, (LSD) reported on Senate Bill 534/Mental Health Managed Care Statutes (Exhibit 18), which requires Medicaid managed care contractors to comply with financial solvency and licensure requirements or prove to the Commissioner of Insurance that the requirements are unnecessary for the operation of the contract. Statutes also require the Department to incrementally implement mental health managed care. Statute describes a managed care system as a program organized to serve the mental health needs of recipients in an efficient and cost-effective manner by managing the receipt of mental health care and services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

Public Comment

Representatives from various associations offered comments to the subcommittee regarding budget control options, the closing of the group home in Bozeman, lack of acute care, inpatient services, reimbursement rates, cost shifting and the quality of representation for the mentally ill. Comments were received from: Joan-Nell McFaden, Mental Health Oversight Advisory Council, Great Falls, Montana; Tom Paluso, Chairman, National Alliance of Mentally Ill, Gallatin County; Brian Garrity, Mental Health Oversight Advisory Council; and Anita Rosseman, Montana Advocacy Program.

Mental Health Oversight Advisory Council – Senator Keenan reviewed the recommendations of the Council (Exhibit 19). The Council divided into three subcommittees: criminal justice; adults; and children. The Council passed 11 recommendations, 6 under criminal justice, and 5 under adults. There will be a meeting the following Monday to review a second set of recommendations.

Ms. Ekanger, distributed a copy of the Department's response to the Mental Health Oversight Advisory Council recommendations (Exhibit 20). The Department accepted all of the recommendations. Many of the recommendations can be implemented as part of the state plan process development. Four recommendations were included in the EPP.

State Plan (Exhibit 21), Consulting Work Plan (Exhibit 22) and EPP for AMDD - Mr. Poulsen explained that SB 534 required the Department to contract with a consultant for guidance on what the public mental health system should look like in the future. The Department has hired Technical Assistance Collaborative (TAC). TAC has been asked to assess the current system with regard to strengths and weaknesses, to recommend outcome measures, and make recommendations to the Department and to the Oversight Advisory Council on what direction the public mental health system should move.

Ms. Steinbeck referred to the EPP request (Exhibit 11) by the Department. On the last page is a list of items AMDD requested. Agency priority items 44 and above would fall within the \$30 million cap set by OBPP. Items below 44 would not fall within the \$30 million cap without the Department making changes. A significant number of these EPP items may not be funded within the executive budget. Ms. Steinbeck also reported that the EPP items that implement the Oversight Advisory Council recommendations fall below item 44.

Initial Review of Issues/Options

Draft of Issues and Options for Consideration (Exhibit 23)

11. Community commitment

Senator Waterman suggested clarification of the community commitment law to provide clear legal authority for commitment procedures, flexibility for requiring compliance with treatment plan and a process of revocation similar to that of a conditional release from MSH.

1. Local law enforcement issues

D. Training

Senator Keenan suggested endorsing the recommendation from the Oversight Advisory Council Subcommittee on Criminal Justice recommendations for training and education of law enforcement officers.

5. Managed care statutes
 - B. Mandatory implementation

Senator Keenan recommended abandoning the “managed care model” requirements of SB 534 and allowing the Department the flexibility to develop a mental health care system.

- A. Financial solvency/licensure

Senator Waterman commented that if the statute were interpreted that all contracts had to be reviewed it would increase the bureaucracy of establishing programs. However, the risk option should not be removed altogether.

- C. Managed care consultant

Senator Waterman pointed out that the requirement to retain a managed care consultant was to ensure the Department had outside expertise. In the future it may not need to be a requirement but should not be precluded.

Senator Swysgood recommended giving the Department the option of retaining a consultant.

9. Medicaid compliance
 - A. Process to ensure compliance with federal Medicaid criteria

Senator Swysgood recommended that the Department design and implement management processes to insure that programs administering Medicaid services comply with federal Medicaid criteria and submit the process to the HJR 35 Subcommittee.

- B. Use of general fund only to fund pilot or demonstration services – No recommendation was made.

3. Community services for multi-agency children
 - B. Projects/service organization as described by Dr. Lourie – No recommendation was made.

Senator Keenan reported that the Subcommittee on Children has a recommendation for review by the full Oversight Advisory Council that will be brought to the next meeting.

4. Mental Health Services Plan
 - A. Level of poverty

Senator Waterman suggested developing a recommendation that moves the level up to 200 percent and allow other options such as co-pays.

Senator Swysgood requested staff research the cost to increase poverty level above 150 percent.

Direction to Staff

The Subcommittee requested that staff prepare draft legislation to clarify the community commitment process and make the process to revoke a community commitment the same as revocation of a conditional release from MSH.

The Subcommittee adopted the Mental Health Oversight Advisory Council recommendation in training and will add a requirement that agencies cooperate in assisting and attending training.

The Subcommittee directed staff to prepare draft legislation to remove the requirement to incrementally implement mental health manage care and to clarify which Medicaid contractors should be subject to insurance licensure and financial solvency criteria.

The Subcommittee requested that the Department develop a management process to ensure that it complies with Medicaid regulation in the administration of Medicaid funded programs and that the policy be presented for review by the LFC.

The Subcommittee directed staff to analyze the cost to increase eligibility for MHSP services above 150 percent of poverty and to review options for co-payments or other means of cost sharing.

Next HJR 35 Subcommittee Meeting

The next HJR 35 subcommittee meeting is schedule for Tuesday, July 25, 2000 at 8:30 in the Capitol.

Adjournment

Meeting adjourned at 4:35 p.m.

Sen. Chuck Swysgood, Chairman

Diane McDuffie, Committee Secretary