



Children, Families, Health, and Human Services Interim Committee

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61st Montana Legislature

SENATE MEMBERS

RICK LAIBLE--Vice Chair
ROY BROWN
CHRISTINE KAUFMANN
TRUDI SCHMIDT

HOUSE MEMBERS

DIANE SANDS--Chair
MARY CAFERRO
GARY MACLAREN
PENNY MORGAN

COMMITTEE STAFF

SUE O'CONNELL, Research Analyst
LISA JACKSON, Staff Attorney
FONG HOM, Secretary

MINUTES

August 23, 2010

Room 137, Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. DIANE SANDS, Chair
SEN. RICK LAIBLE, Vice Chair

SEN. ROY BROWN
SEN. CHRISTINE KAUFMANN
SEN. TRUDI SCHMIDT

REP. MARY CAFERRO
REP. GARY MACLAREN
REP. PENNY MORGAN

STAFF PRESENT

SUE O'CONNELL, Research Analyst
LISA JACKSON, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, Attachment #1.

COMMITTEE ACTION

- The committee approved a motion for staff to proceed with the Department of Public Health and Human Services' proposed legislation for bill drafting purposes.
- The committee approved a motion to continue its objection the adoption of the Department of Public Health and Human Services' rule 37-509, Medicaid reimbursement rate for physicians. The committee also approved a motion the draft a bill to amend rule 37-509.

CALL TO ORDER AND ROLL CALL

- 00:00:01 Rep. Sands called the meeting to order at 9:37 a.m. The secretary took roll visually.
- 00:00:51 The minutes of the June 28, 2010, meeting were adopted as drafted.

AGENDA

- 00:01:19 **Lee Heiman, Acting Code Commissioner**, introduced Robert Stutz as the new Legal Director.

• **EMERGING ISSUE: MEDICAL MARIJUANA**

- ▶ **Overview of Subcommittee Action and Bill Draft - Sue O'Connell, Research Analyst**

- 00:04:35 Ms. O'Connell discussed LCMM03 (**Exhibit 1**), LCMM02 (**Exhibit 2**), and LCMM01 (**Exhibit 3**).

- ▶ **Public Comment**

- 00:24:54 **Laurie Lamson, Operation Services Manager, DPHHS**, commented on the Department's role in the registry of cardholders.
- 00:28:09 **Erin MacLean, Montana Medical Association**, commented on the Association's position on the standard of care language in LC MM01.
- 00:30:09 **Dr. Ron Skipper, Lewistown, Montana**, commented on sections in LC MM01.
- 00:35:00 **Sheryl Wood, Montana Association of Counties**, distributed a document pertaining to the bill drafts and provided written comments to the committee (**Exhibit 4**).
- 00:38:21 **Charlton Campbell, Montana Buds**, commented on his concerns in LC MM01 regarding the numbers of clients a caregiver can have.
- 00:42:45 **Brad Comer** commented on how useful medical marijuana has been for him.
- 00:44:59 **Zack Lessley** commented on the number of clients a caregiver can have.

- 00:46:17 **Robin Phillips** spoke on the issue of putting an age cap on youth who can obtain a card.
- 00:49:58 **Rick Rosio, Montana Pain Management, Missoula**, commented on including PTSD on the list of debilitating medical conditions and the requirement of a cardholder to be a Montana resident.
- 00:52:46 **Valerie Sigler** wanted clarification of what two ounces of marijuana would be.
- 00:55:21 **Mike Foster, Catholic Hospitals of Montana**, supported LC MM01.
- 00:56:14 **Mike Batista, Montana Attorney General's Office**, supported LC MM01.
- 00:57:13 **John Flink, Montana Hospital Association**, commented on the policy of hospitals being allowed to regulate the use of medical marijuana in the facilities.
- 00:57:50 **Heidi Handford, Montana Connect Magazine, Lincoln, Montana**, commented on the 2-ounce limit and physician certifications.
- 00:59:41 **Kate Cholewa, a writer**, commented on allowing people on probation to be a cardholder.
- 01:01:42 **Brent Brooks, Billings City Attorney**, clarified sections 6 and 22, of LC MM01.
- 01:02:52 **David Max**, commented on chronic pain and growing marijuana indoors and organically.
- 01:05:05 **Renee Brown, Serenity Caregivers**, commented on living with chronic pain.
- 01:06:07 **James Doney** commented on how useful medical marijuana is for him.
- 01:06:56 **Conan Armantrout**, commented on how useful medical marijuana is for him.
- 01:07:59 **Marvin Fletcher, Libby**, commented on his girlfriend's medical condition and how beneficial growing marijuana for medical use would be for Montana.
- 01:08:54 **Caryll Custer**, is against any changes to the Medical Marijuana Act.
- 01:09:56 **Jason Christ, Montana Caregivers Network, Missoula**, said that he does not understand how Initiative 148 can be changed.
- 01:12:13 **Jule Von Koenigsberg** supported the comments made by Mr. Christ regarding the legislative procedure on changing initiatives.

► **Discussion on LC MM01**

- 01:19:49 The members of the committee discussed sections of LC MM01 (**Exhibit 3**), creating a licensing and regulatory system for people who grow, manufacture,

distribute, or sell medical marijuana; requiring Montana residency to obtain a registry identification card; clarifying requirements for physicians who provide written certification; and providing definitions.

01:20:37 **Section 1. Short title.**

01:21:02 **Section 2. Definitions.**

01:56:12 **Section 3. Registry identification cards.**

01:58:14 **Section 4. Revocation of registry card.**

02:00:20 Ms. Mecklenberg Jackson discussed the penalties contained in each section of the Medical Marijuana Act (**Exhibit 5**).

02:00:57 There was a discussion regarding the issue of whether a person in the custody of the Montana Department of Corrections should be allowed to use medical marijuana.

02:01:59 REP. SANDS asked for a motion over losing your card permanently if convicted of a drug offense.

Motion by Sen. Kaufmann

02:04:43 SEN. KAUFMANN **moved** that a person convicted of a drug offense lose their card privileges for a period of 5 years. The motion **failed** on a tie vote.

02:09:12 The members of the committee discussed minors possessing a medical marijuana card and the issue of a card being used by other people who might be in violation of criminal laws.

02:10:19 **Section 5. Prohibitions on physician affiliation with medical marijuana licensees**

Motion by Sen. Kaufmann

02:12:58 SEN. KAUFMANN **moved** to limit review of physician activities to the Board of Medical Examiners. The motion **passed**.

02:14:29 **Section 6. Local government authority to regulate.**

02:14:44 The members of the committee discussed giving local governments the authority to regulate the use of medical marijuana within their boundaries and whether local governments also should have the ability to prohibit it.

02:21:09 REP. SANDS asked if anyone wanted to include the provision for a complete prohibition of the use of medical marijuana in section 6. Sen. Brown and Rep. MacLaren wanted that included. REP. SANDS said that there would be no change in that section because the majority of the committee did not support the idea.

02:21:26 **Section 7. Medical use of marijuana -- limits on amount -- presumption of medical use**

02:36:30 **Section 8. Confidentiality of registry information.**

02:37:58 **Section 9. Legal protections for medical use.**

02:38:44 **Section 10. Registry card or license to be carried and exhibited on demand.**

02:40:34 **Section 11. Limitations of Medical Marijuana Act.**

02:46:38 **Section 13. Rulemaking -- fees.**

02:48:45 **Section 14. State licensing authority -- hiring -- costs.**

02:49:09 **Section 15. State licensing authority -- powers and duties -- rulemaking authority.**

02:50:38 **Section 16. Classes of licenses.**

02:50:06 **Section 17. Providers -- requirements -- allowable activities.**

03:18:48 **Section 22. Persons prohibited as licensees.**

03:23:10 **Section 23. Denial of license.**

03:31:31 **Section 24. Restrictions applicable to new licenses -- local government authority.**

03:31:27 **Section 30. Unlawful acts by licensees.**

03:33:52 **Section 31. Inspection procedures.**

03:36:20 **Section 39. Effective dates.**

LUNCH

04:20:38 The meeting reconvened at 1:58 p.m.

- **DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

- ▶ **Update - Hank Hudson, Branch Manager, Economic Security Services Branch**

04:22:54 Mr. Hudson gave an update on Medicaid Enrollment (**Exhibit 6**). He also discussed the issue of whether or not Montanans are using their TANF debits cards in casinos.

- **AGENCY LEGISLATION**

04:38:07 Ms. O'Connell gave an overview of the purpose of the committee's review of agency legislation.

04:39:35 Mr. Hudson gave a presentation on the Department of Public Health and Human Services' proposed legislation (**Exhibit 7**).

Motion by Sen. Laible to authorize drafting of the legislation for pre-introduction

04:53:56 SEN. LAIBLE **moved** that staff proceed with the request for legislation for bill drafting purposes. The motion **passed** unanimously.

- **SB 399 REPORT ON OUT-OF-STATE PLACEMENT OF CHILDREN - Bob Runkel, Administrator, Developmental Services Division, DPHHS**

04:56:29 Mr. Runkel discussed the Twelve Month Out-of-State Placement and Monitoring Report (**Exhibit 8**).

- **FOSTER CARE UPDATE - Shirley Brown, Administrator, Child and Family Services Division**

05:10:20 Ms. Brown presented the document "Fostering Connections to Success and Increasing Adoptions Act of 2008" (**Exhibit 9**) to the committee.

- **LEGISLATIVE FINANCE COMMITTEE AND THE REFERENCE BOOK OPTIONS - Kris Wilkinson, LFD**

05:30:44 Ms. Wilkinson distributed and discussed the Department of Public Health and Human Services Reference Book Options (**Exhibit 10**).

- **LC 0046: COMMITMENT LAWS FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES - Sue O'Connell, Research Analyst, LSD**

05:40:15 Ms. O'Connell gave a brief background of the Supreme Court's opinion suggesting a legislative review of the commitment laws for people with developmental disabilities. Staff was authorized last September to explore the issues with interested parties which resulted in the drafting of LC 0046 (**Exhibit 11**).

Questions

05:45:09 SEN. SCHMIDT asked if the comments from Judge Larson have been incorporated into LC 0046. **Ms. O'Connell** said the comments were simply provided as public comment on the bill draft and had not been incorporated.

Public Comment

05:46:17 **Anita Roessmann, Disability Rights Montana**, distributed written comments (**Exhibit 12**).

BREAK

06:11:09 The meeting reconvened at 3:48 p.m.

- **DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES LEGISLATIVE REPORTS**

- ▶ **HB 634: Transportation for individuals to and from the Montana State Hospital - Lou Thompson, Administrator, Addictive and Mental Disorders Division**

06:12:17 Ms. Thompson gave a report on the progress of House Bill 634.

- ▶ **HJR 17: Utilizing medication aides in long-term care nursing homes - Laurie Lamson, Operation Services Branch Manager**

06:18:41 Ms. Lamson talked about the working group that was comprised of several representatives from the House, the Montana Health Care Association, the

Montana Hospital Association, the Board of Nursing, the Montana Nurses Association, St. Johns Lutheran Ministries, Valley View Home in Glasgow, and Medicine Valley Manor to address the scope of HJR 17. A report will be given to the committee upon its completion.

▶ **HJR 25: Medicaid Eligibility for Nursing Homes - Linda Snedigar, Administrator, Human and Community Services Division, DPHHS**

06:23:06 Ms. Snedigar discussed the results of the work done on the HJR 25 study. A progress report will be provided by the end of September.

Questions

06:27:55 SEN. LAIBLE asked if this would apply to assisted living facilities as far as having access to Medicaid. **Ms. Snedigar** said it is specifically about long-term care and there are some home and community based services where the eligibility is similar.

06:30:00 SEN. LAIBLE asked what the eligibility requirements are to qualify for Medicaid coverage. **Ms. Snedigar** said that it is based on a person's income and ability to pay.

▶ **HB 330: Goals, responsibilities, performance expectations in services to older Montanans - Kelly Williams, Administrator, Senior and Long-Term Care Division, DPHHS**

06:33:00 Ms. Williams discussed the work that was done by the working group on HB 330.

▶ **Report on Suicide Prevention - Lou Thompson**

06:35:48 Ms. Thompson discussed Appendix A of the Suicide Prevention Report (**Exhibit 13**) that lists all of the activities in the last two years that have been undertaken in an effort to prevent suicides in Montana.

• **ADMINISTRATIVE RULE ACTIVITY - Lisa Mecklenberg Jackson, Staff Attorney**

06:46:18 Ms. Mecklenberg Jackson discussed administrative rule activity (**Exhibit 14**), her memorandum regarding the committee's objection to DPHHS rule adoption 37-509 pertaining to the Medicaid reimbursement rate for physicians (**Exhibit 15**), and her letter to DPHHS objecting to the rule (**Exhibit 16**). Ms. Mecklenberg Jackson told the committee that it could withdraw its objection to the rule adoption, publish its objection in the Montana Administrative Register, request a

bill or resolution to amend the rule and raise the conversion factor to the 6% statutory required level, or do nothing.

Public Comment

06:51:45 **Erin MacLean, Montana Medical Association**, said the statute is clear on the requirement for the Medicaid rate increases. The MMA asks the committee to place its objection in the Administrative Register.

Questions

06:53:12 REP. MORGAN asked what would the point of creating a bill be when it is already in statute. **Ms. Mecklenberg Jackson** said that the bill would change the 6% in the rule and not the statute.

Motion by Sen. Brown

06:55:01 SEN. BROWN **moved** to publish the objection to the rule and to amend the rule and raise the conversion factor to the 6% statutory required level.

Discussion

06:55:18 REP. CAFERRO said that she supports Sen. Brown's motion and is concerned about the provider rate increase.

06:56:34 SEN. LAIBLE asked whether the two issues should be handled by separate motions.

Restated Motion

06:58:36 REP. SANDS said the motion before the committee is to continue to object to the rule 37-509, to request publication in MAR, and to pay the fee for publication. The motion **passed**.

Motion

06:58:52 REP. SANDS **moved** for a committee bill to amend rule 37-509.

Discussion

06:58:55 REP. MACLAREN asked what the purpose of the motion was. **Ms. Mecklenberg Jackson** said that the motion would result in a bill to amend the rule.

07:01:09 REP. CAFERRO said that she is concerned about making sure that providers are adequately reimbursed for the services they provide for people who have Medicaid.

07:04:16 The motion **passed** with Sen. Kaufmann, Rep. Morgan and Sen. Laible voting

no.

- **Public Comment**

07:04:59 **Will Warburg, Kalispell**, commented on the importance of effective behavioral treatment for people with developmental disabilities.

07:11:43 **Rose Hughes, Executive Director, Montana Health Care Association**, gave comments on the HJR 17 Study with regard to medication aides, and commented on the HJR 25 Study with regard to Medicaid eligibility for nursing homes.

07:16:11 **Donald Harr, psychiatrist and legislative representative for Montana Psychiatric Association**, commented on the topic of medical marijuana.

07:20:43 **Anita Roessmann, Disability Rights Montana**, commented on out-of-state placements of children.

07:21:53 **Jason Christ, Montana Caregivers Network**, commented on the topic of medical marijuana.

- **RECESS**

07:27:02 REP. SANDS recessed the meeting at 5:04 p.m., until 8:00 a.m. on August 24, 2010.

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